



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office

PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

December 20, 2022

D.R. Horton
Attn: Jon Beem
11241 Slater Avenue NE, #200
Kirkland, WA 98033

Re: Administrative Order No. **21500** to permanently fill/impact 0.71 acres of non-federally regulated wetlands, which are waters of the state, to construct Blackburn Ridge in Skagit County, Washington

Dear Jon Beem:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on April 4, 2022, requesting authorization for proposed work in non-federally regulated wetlands, which are waters of the state. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Chris Luerkens at (360) 410-4807 or by email at chris.luerkens@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burcar, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

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Enclosure (1)

Sent via email to: JBeem@drhorton.com

E-cc: Craig Cammock, NORDCO Group LLC
Alia Richardson, Wetland Resources, Inc.
Kelly Werdick, U.S. Army Corps of Engineers
Randel Perry, U.S. Army Corps of Engineers
Rebecca Bradley-Lowell, Mount Vernon
Chris Luerkens, Department of Ecology
ECYREFEDPERMITS@ECY.WA.GOV – Aquatics ID No. 139648

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 21500
ADMINISTRATIVE ORDER TO) Corps Ref. No. NWS-2019-929
D.R. Horton) Blackburn Ridge, in wetlands located in
pursuant to RCW 90.48.120 and WAC 173-201A) Skagit County, Washington.

TO: D.R. Horton
Attn: Jon Beem
11241 Slater Avenue NE, #200
Kirkland, WA 98033

This is an Administrative Order requiring D.R. Horton to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(2) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination on November 3, 2020, concluding that Wetland A is not a water of the U.S. On April 4, 2022, Ecology received a request to impact 0.71 acres of non-federally regulated wetlands, which are waters of the state, to construct Blackburn Ridge in Skagit County. The project is located at approximately 2915 and 2917 Blackburn Road, Mount Vernon, Section 28, Township 34N, Range 04E, Skagit County, and WRIA 3.

This Administrative Order authorizes 0.71 acres of Category IV wetland impacts at the project location. Wetland mitigation for these impacts will occur through purchase of 0.60 credits from the Skagit Environmental Bank.

For purposes of this Order, the term "Project Proponent" shall mean D.R. Horton and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(2):

IT IS ORDERED that the Project Proponent shall comply with the following:

A. General Conditions:

1. The Project Proponent shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on April 4, 2022, or as otherwise approved by Ecology.

2. For purposes of this Order, all submittals required by its conditions shall be sent to fednotification@ecy.wa.gov and cc to chris.luerkens@ecy.wa.gov. Any submittals shall reference Order No. 21500.
3. The Project Proponent shall provide access to the project site upon request by Ecology.
4. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and forepersons, and state and local government inspectors.
5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
6. The Project Proponent shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.

B. Notification Requirements:

1. The Project Proponent shall provide written notification to Ecology in accordance with condition A.2. for the following activities:
 - a. Immediately following a violation of the state water quality standards or when the project is out of compliance with any condition of this Order.

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in *Mitigation Plan D R Horton – Blackburn Ridge* (hereafter called the "mitigation plan") prepared by *Wetland Resources, Inc.*, dated March 31, 2022, or as revised and approved by Ecology.

2. The Project Proponent shall notify and submit in writing to Ecology (see A.2) any proposed changes to the amount of wetland impacts or revisions to the mitigation plan before implementing the changes.
3. Prior to impacting wetlands, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.60 mitigation bank credits (credits) from the Skagit Environmental Bank. This documentation must include the Ecology Order number, Order issuance date, impact acreage, the amount of credits required by the Order, and date of credit purchase.
4. The Project Proponent shall complete the purchase of credits before the impacts to wetlands occur, or Ecology may require additional compensation to account for temporal loss of wetland functions.
5. If the Project Proponent has not purchased credits within 13 months of the date of this Order, the Project Proponent shall inform Ecology, in writing, of the status of:
 - a. *Blackburn Ridge* project
 - b. When bank credits will be purchased

With the:

- c. Reason for the delay
- d. Expected date of completion

The Project Proponent shall submit an updated written notification every 12 months thereafter until *Blackburn Ridge* is complete and the required credits are purchased.

6. Until the Project Proponent has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Project Proponent's obligation under Condition C.1 to mitigate for wetland impacts is not met.

D. Timing

1. This Order is valid until the Project Proponent meets all its requirements and the Project Proponent has received written notification from Ecology to that effect.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by RCW 43.21B and WAC 371-08 WAC. “Date of receipt” is defined in RCW 43.21B.001(2). More information is available at <https://eluhwa.gov/content/11>.

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). “Filing” means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. “Notice of appeal” is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of Ecology, in paper form, by mail or in person (see addresses below). E-mail is not accepted.

You must also comply with other applicable requirements in RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:
www.eluhwa.gov/content/11

Filing by mail

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Filing in person (or by certified mail/courier)

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW, STE 301
Tumwater, WA 98501

Filing electronically

E-mail address:

pchb-shbappeals@eluhwa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Filing in person (or by certified mail/courier)
Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Contact information

Please direct all questions about this Order to:

Chris Luerkens
Department of Ecology
Bellingham Field Office
(360) 410-4807
chris.luerkens@ecy.wa.gov

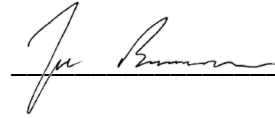
More information

- **Pollution Control Hearings Board Website**
[https:// elaho.wa.gov/content/11](https://elaho.wa.gov/content/11)
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

Signature

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Dated this 20th day of December, 2022 at the Department of Ecology, Shoreline, Washington.



Joe Burcar, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program