



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 19, 2023

Tremont, LLC
Attn: Dale Kern and Chuck Kingsley
202 NW Sixth Street
PO Box 906
Corvallis, OR 97339

Re: Administrative Order No. **21655** to permanently fill 0.08 acres and indirectly impact 0.09 acres of non-federally regulated wetlands, which are waters of the state, to construct the Waldron Woods Residential South project in Bellingham, Whatcom County, Washington

Dear Dale Kern and Chuck Kingsley:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on May 26, 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 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

Tremont, LLC
April 19, 2022
Page 2 of 2

By certified mail: 9171 9690 0935 0233 1185 62

Enclosure (1)

Sent via email to: dale@commercialassociates.org, and chuck@commercialassociates.org

E-cc: Molly Porter, NW Ecological Services
Kristin Murray, U.S. Army Corps of Engineers
Randel Perry, U.S. Army Corps of Engineers
Kim Weil and Steve Sundin, City of Bellingham
Chris Luerkens, Department of Ecology
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 21655
ADMINISTRATIVE ORDER TO) Corps Ref. No. NWS-2017-430
Tremont, LLC) Waldron Woods Residential South,
pursuant to RCW 90.48.120 and WAC 173-201A) in wetlands located in Whatcom County,
) Washington.

TO: Tremont, LLC
Attn: Dale Kern and Chuck Kingsley
202 NW Sixth Street
PO Box 906
Corvallis, OR 97339

This is an Administrative Order requiring Tremont, LLC 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 Wetlands A, B, C, D, E, F, K, and L are not waters of the U.S. On May 26, 2022, Ecology received a request to fill 0.08 acres and indirectly impact 0.09 acres of non-federally regulated wetlands, which are waters of the state, to construct Waldron Woods Residential South in Bellingham, Whatcom County. The project is located directly South of Tremont Avenue and approximately 900 feet west of Guide Meridian Road, Bellingham, Section 01, Township 38N, Range 2E, Whatcom County, and WRIA 1.

This Administrative Order authorizes fill of 0.08 acres of Category III and IV wetland, and indirect impacts to 0.09 acres of Category III wetland at the project location. Onsite mitigation for this proposal will consist of approximately 0.08 acres of wetland creation, 0.38 acres of wetland enhancement, 1.0 acres of wetland buffer enhancement, and 0.16 acres of temporary buffer impacts that will be restored.

For purposes of this Order, the term "Project Proponent" shall mean Tremont, LLC 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 May 26, 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 a cc to chris.luerkens@ecy.wa.gov. Any submittals shall reference Order No. **21655**.
3. The Project Proponent shall provide access to the project site and mitigation 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 above 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
 - b. At least seven (7) days prior to conducting work activities in wetlands

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in the *Wetland Mitigation Report, Waldron Woods Residential South* (hereafter called the “Mitigation Plan”) prepared by NW Ecological Services, and dated May 2022 (Revised Feb 2023), or as modified by this Order or revised and approved by Ecology.
2. The Project Proponent shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.

Implementation

3. Unless otherwise approved by Ecology in writing, the Project Proponent shall begin the compensatory mitigation project before, or concurrently with impacting wetlands, or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
4. The Project Proponent shall provide a status report on the mitigation construction to Ecology 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.
5. After completing construction and planting of the mitigation sites(s), the Project Proponent shall submit to Ecology (see A.2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - a. Be submitted within 90 days of completing construction and planting.
 - b. Include documentation of the recorded legal mechanism required in Condition C.6.
6. The Project Proponent shall follow the steps below to record a legal site protection mechanism for the onsite wetland mitigation area:
 - c. Request a template from Ecology or use an appropriate alternative to develop a draft site protection mechanism.
 - d. Send the draft site protection mechanism to Ecology for review and approval.
 - e. Record the Ecology-approved site protection mechanism with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

- f. Record the site protection mechanism with a figure that corresponds with the legal description showing the area that is being protected, a copy of this Order, and a site map showing the location of wetlands and their buffers that are being protected.
- g. Send a copy of the recorded site protection mechanism to Ecology with the As-Built Report (see C.5.), unless otherwise approved by Ecology.

Monitoring and Maintenance

7. The Project Proponent shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must be submitted by December 31 of each monitoring year.
8. The Project Proponent's obligation to compensate for wetland impacts under Condition C.1 is not met until the Project Proponent has received written notice from Ecology that the obligation is 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://elaho.wa.gov/content/12>.

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:
<https://eluhwa.gov/content/12>

Filing by mail

Mailing Address:

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

Filing electronically

Email address:

pchb-shbappeals@eluhwa.gov

Filing in person (or by certified mail/courier)

Street Address:

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

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:

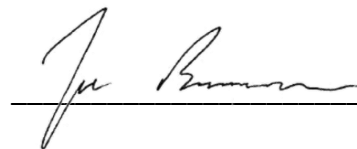
Chris Luerkens
Department of Ecology
Bellingham Field Office
913 Squaticum Way, Suite 101
Bellingham, WA 98225
(360) 410-4807
Chris.luerkens@ecy.wa.gov

More information

- **Pollution Control Hearings Board Website**
<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

Dated this 19th day of April, 2023 at the Department of Ecology, Shoreline, Washington



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