



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

November 30, 2023

Deacon Development, LLC
Steve Deacon
901 NE Glisan St Suite 100
Portland, OR 97232

Re: Administrative Order No. 22385 to permanently fill/impact 1.295 acres of non-federally regulated wetlands, which are waters of the state, to construct West Main Commons in Clark County, Washington

Dear Steve Deacon:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on October 30, 2023, 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 Meghan Tait at 360-210-2783 or Meghan.tait@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Maria Sandercock, Section Manager
Shorelands and Environmental Assistance Program

Enclosure

By certified mail 9489 0090 0027 6383 2201 16

cc: Brad Johnson, U.S. Army Corps of Engineers
Craig Tumer, Pacific Habitat Services
John van Staveren, Pacific Habitat Services
Drew Helmes, City of Battle Ground
Randy Baker, Battle Ground Acres HOA, JPN Commenter
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 22385
ADMINISTRATIVE ORDER TO) Corps Ref. No. NWS-2022-412
Deacon Development, LLC) West Main Commons, Wetlands A-G located in
pursuant to RCW 90.48.120) Clark County, Washington.
and WAC 173-201A)

TO: Deacon Development, LLC
Attn: Steve Deacon
901 NE Glisan St., Suite 100
Portland, OR 97232

This is an Administrative Order requiring Deacon Development, 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 October 24, 2023, concluding that Wetland A-G are not waters of the U.S. On October 30, 2023, Ecology received a request to directly impact 1.295 acres and indirectly impact 0.09 acres of non-federally regulated wetlands, which are waters of the state, to construct West Main Commons in Clark County. The project is located at 1305 West Main Street in Battle Ground, S3, T3N, R2E, Clark County, and WRIA 28 Salmon-Washougal.

This Administrative Order authorizes direct impacts to 1.295 acres and indirect impacts to 0.09 acres of Category 4 wetlands at the project location. Mitigation for this proposal will consist of purchasing 1.14 credits from East Fork Lewis Wetland Mitigation Bank and all other actions as proposed in *Bank Use Plan* dated November 6, 2023.

For purposes of this Order, the term "Project Proponent" shall mean Deacon Development, LLC (Steve Deacon) 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 October 30, 2023 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 Meghan.tait@ecy.wa.gov. Any submittals shall reference Order No. 22385.
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. The Project Proponent shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. **These statements shall be provided to Ecology before construction begins at the project.**
7. To transfer this Order to a new owner or operator the Project Proponent shall:
 - a. Complete a Request for Transfer of Order with a specific transfer date of the Order's obligations, coverage, and liability and submit it to Ecology per condition A.2. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this Order to the new owner or operator; and,

- c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.

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. Within seven (7) days of completing work activities in wetlands.

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in *Bank Use Plan* (hereafter called the "Mitigation Plan") prepared by Pacific Habitat Services, Inc., dated November 6, 2023, 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 1.14 mitigation bank credits (credits) from the East Fork Lewis Wetland Mitigation 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. West Main Commons
 - 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 West Main Commons 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. The appeal process is governed by RCW 43.21B and WAC 371-08. "Date of receipt" is defined in RCW 43.21B.001(2).

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 information 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 by mail, in person, or by email (see addresses below).

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

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit:

<https://eluhho.wa.gov/> or call: 360-664-9160.

Administrative Order 22385
Aquatics ID No. 141674, Corps Ref. No. NWS-2022-412
November 30, 2023
Page 5 of 6

Service on Ecology

Street Addresses:

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

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Contact information

Please direct all questions about this Order to:

Meghan Tait
Department of Ecology
Vancouver Field Office
12121 NE 99th St Suite 2100
360-210-2783
Meghan.tait@ecy.wa.gov

More information

- **Pollution Control Hearings Board Website**
<https://elaho.wa.gov/>
- **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>

Administrative Order 22385

Aquatics ID No. 141674, Corps Ref. No. NWS-2022-412

November 30, 2023

Page 6 of 6

- **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 30th day of November 2023, at the Department of Ecology, Lacey, Washington.



Maria Sandercock, Section Manager
Southwest Region
Shorelands and Environmental Assistance Program

Attachment A
Statement of Understanding
Administrative Order Conditions

West Main Commons
Deacon Development, LLC
Administrative Order No. **22385**

I, _____, state that I will be involved as an agent or contractor for Deacon Development, LLC in the site preparation and/or construction of the West Main Commons located at 1305 West Main St, Battle Ground, Clark County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Administrative Order No. 22385 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

Signature

Date

Title

Phone

Company