



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 9, 2024

Entitle Fund Two, LLC
ATTN: Geoff Sherwin
PO Box 188
Puyallup, WA 98371

Re: Water Quality Certification Order No. **22706** (Corps No. **NWS-2023-0688**), Plateau at Liberty Bay project, City of Poulsbo, Kitsap County, Washington

Dear Geoff Sherwin:

On September 22, 2023, Entitle Fund Two, LLC (Geoff Sherwin) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Plateau at Liberty Bay project in the City of Poulsbo, Kitsap County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies with conditions that the work described in the Water Quality Certification Request and supplemental documents complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. **This certification is subject to the enclosed Water Quality Certification Order (WQC Order).**

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Neil Molstad at neil.molstad@ecy.wa.gov or (425) 389-5549. The enclosed WQC Order may be appealed by following the procedures described within.

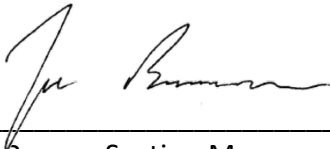
WQC Order No. 22706, Corps No. NWS-2023-0688

Aquatics ID No. 142977

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Sincerely,



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

Enclosure (1)

By certified mail: 9489 0090 0027 6381 5324 88

Sent via e-mail: geoff@jkmonarch.com

E-cc: Sarah Albright-Garland, U.S. Army Corps of Engineers
Meryl Kamowski, Wetland Resources, Inc.
Heather Wright, City of Poulsbo
Jan Wold, Commenter
Loree' Randall, Ecology
Neil Molstad, Ecology
ECYREFEDPERMITS@ecy.wa.gov



In The Matter of Granting a Water Quality
Certification with Conditions to Entitle Fund Two, LLC (Geoff Sherwin)
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

Entitle Fund Two, LLC
Attn: Geoff Sherwin
PO Box 188
Puyallup, WA 98371

WQC Order No.	22706
Corps Reference No.	NWS-2023-0688
Site Location	Plateau at Liberty Bay project, located within wetlands that discharge to Liberty Bay, City of Poulsbo, Kitsap County, Washington.

Entitle Fund Two, LLC (Geoff Sherwin) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Plateau at Liberty Bay project, located in the City of Poulsbo, Kitsap County, Washington. The following required processing dates are listed below:

- On 8/16/2023, Entitle Fund Two, LLC (Geoff Sherwin) submitted a pre-filing meeting request.
- On 9/22/2023, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 9/28/2023, Entitle Fund Two, LLC (Geoff Sherwin) submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 11/9/2023, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under the Nationwide Permit (NWP) Program.
- On 11/20/2023, Ecology issued a public notice for the project. One comment letter was received.
- Ecology’s “Reasonable Period of Time” for this project has been established as 7/1/2024.

This project proposes to construct a 63-unit residential development on an assemblage of parcels. The development will include residential buildings, access roads, and associated utilities. The applicant proposes to impact 360 square feet of Wetland F to accommodate the access road into the development. Wetland impacts will be mitigated for through onsite

wetland creation and wetland enhancement. Mitigation for buffer impacts will be provided through wetland/stream buffer enhancement.

The project site is located at the southwestern edge of the City of Poulsbo, to the west of Viking Ave NW, in Kitsap County, Washington, Section 15, Township 26 N., Range 01 E., within Water Resource Inventory Area (WRIA) 15 (Kitsap).

With this WQC Order, Ecology is granting with conditions Entitle Fund Two, LLC (Geoff Sherwin)'s request for a Section 401 Water Quality Certification for the Plateau at Liberty Bay project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 9/22/2023, and the following supporting documentation:

1. Wetland and Stream Delineation Report for the Plateau at Liberty Bay project. Revision #1: April 29, 2024. Received by Ecology on May 1, 2024.
2. Compensatory Mitigation Plan for the Plateau at Liberty Bay project. Revision #1: April 29, 2024. Received by Ecology on May 1, 2024.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, Entitle Fund Two, LLC (Geoff Sherwin) must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize Entitle Fund Two, LLC (Geoff Sherwin), hereafter referred to in this WQC Order as the Project Proponent, to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves the Project Proponent from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Special Conditions:

1. In this WQC Order, the term "Project Proponent" shall mean Entitle Fund Two, LLC (Geoff Sherwin) and its agents, assignees, and contractors.
 - Justification - Ecology needs to identify that conditions of this WQC Order apply to anyone conducting work on behalf of the Project Proponent to ensure compliance with the water quality standards and other applicable state laws.
 - Citation - 40 CFR 121.1(j), Chapter 90.48 RCW, RCW 90.48.080, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC, Chapter 173-201A WAC, and WAC 173-225-010.

2. This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. **22706** will remain valid until December 31, 2035.
 - Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, Ecology needs to be able to specify how long the WQC Order will be in effect.
 - Citation – Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.
3. The Project Proponent shall send a copy of the final Federal permit via e-mail to fednotification@ecy.wa.gov and cc to neil.molstad@ecy.wa.gov prior to starting any work authorized by this WQC Order.
 - Justification - This condition is needed to ensure that the federal permit has been issued and all the conditions of the WQC Order have been included into the federal permit.
 - Citation - 40 CFR 121.10, 40 CFR 121.11, and Chapter 90.48 RCW.
4. To transfer this WQC 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 WQC Order's obligations, coverage, and liability and submit it to Ecology at fednotification@ecy.wa.gov and cc to neil.molstad@ecy.wa.gov. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this WQC 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.
 - Justification – Ecology has independent state authority to ensure protection of state water quality. Ecology needs to ensure that anyone conducting work at the project, including any new owners or operators, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.
 - Citation – 40 CFR 121.5, Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.

5. The Project Proponent shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this WQC Order are being met.
 - Justification - Ecology must be able to investigate and inspect construction sites and facilities for compliance with all state rules and laws.
 - Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.090, RCW 90.48.120, Chapter 173-201A WAC, and WAC 173-225-010.
6. The Project Proponent shall obtain and comply with the conditions of the Construction Stormwater General Permit (National Pollutant Discharge Elimination System - NPDES) issued for this project.
 - Justification - Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
 - Citation – 40 [CFR 122] {delete CFR if NPDES is not EPA}, Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, RCW 90.48.260, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.
7. The Project Proponent shall mitigate wetland impacts as described in the Compensatory Mitigation Plan (hereafter called the “Mitigation Plan”) identified above, or as required by this Order.
 - Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When adequate mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.
 - Citation - 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
8. Unless otherwise authorized by this WQC Order, the Project Proponent shall begin the compensatory mitigation project before, or concurrently with, impacting wetlands. Otherwise, Ecology may require the Project Proponent to provide additional compensation to account for additional temporal loss of wetland functions.

- Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action.
 - Citation - 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
9. After completing construction and planting of the mitigation site, the Project Proponent shall submit to Ecology 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 the information listed in Attachment A (Information Required for As-built Reports).
 - c. Include documentation of the recorded legal site protection mechanism required in Condition 10.
 - Justification - This condition is necessary to ensure the mitigation site was constructed and planted per the approved mitigation plan and serves as a baseline for monitoring performance standards, which must be met to ensure success of the mitigation site.
 - Citation - 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.
10. The Project Proponent shall follow the steps below to record a legal site protection mechanism for the Plateau at Liberty Bay project mitigation site:
- a. Send a draft to Ecology for review prior to recording.
 - b. Record, on the mitigation site property deed, a description of the mitigation area identified in the final mitigation plan and a site map from the final wetland mitigation plan or as-built report showing the location of wetlands and their buffers.
 - c. Record these documents with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
 - d. Submit proof of this recorded documentation to Ecology within 90 days of recording it.

- Justification - The mitigation plan needs to ensure that measures will be taken to protect the site for the long term to ensure that wetland functions and values are replaced, thereby preserving beneficial uses and offsetting pollution.
- Citation - 40 CFR 131.12, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.

11. The Project Proponent shall submit to Ecology monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must:

- a. Be submitted by December 31 of each monitoring year.
 - b. Include the information listed in Attachment B (Information Required for Monitoring Reports).
- Justification- Monitoring reports track the environmental progress of the mitigation site and are necessary to track environmental changes at mitigation sites to ensure success of the mitigation site.
 - Citation - 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.

12. For monitoring years five (5) and ten (10), the Project Proponent shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g., data sheets, maps, wetland size, etc.) in the monitoring reports.

- Justification - Delineation of wetlands helps to determine if the wetland area is adequately replaced, achieving no net loss. Delineation also informs whether mitigation is on track for success or if changes need to be made.
- Citation - 40 CFR 131.12, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.

13. If the Project Proponent has not met all compensatory mitigation conditions by the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both. Conditions include specifications in the approved Mitigation Plan, such as performance standards for the mitigation site.

- Justification - If the mitigation site is not meeting all compensatory mitigation conditions then the water quality impacts will not be offset by the mitigation.
- Citation - 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.

14. The Project Proponents obligation to compensate for wetland impacts under Condition 7 is not met until the Project Proponent has received written notice from Ecology that the obligation is met.

- Justification - If the mitigation site is not meeting all compensatory mitigation conditions then the water quality impacts will not be offset by the mitigation.
- Citation - 40 CFR 131.12, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.

15. Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited¹. If such work, conditions, or discharges occur, immediately notify² Ecology's Regional Spill Response Office at 360-407-6300 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems. You will also need to notify the Washington Emergency Management Division³ at 1-800-258-5990, for spills to water only. This condition is necessary to prevent oil and other hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, this WQC is granted with conditions to Entitle Fund Two, LLC (Geoff Sherwin) for the Plateau at Liberty Bay project.

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 Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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

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

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://eluh0.wa.gov/> or call: 360-664-9160.

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

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

Neil Molstad

Department of Ecology

(425) 389-5549

neil.molstad@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://eluhc.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>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **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>

WQC Order No. 22706, Corps No. NWS-2023-0688

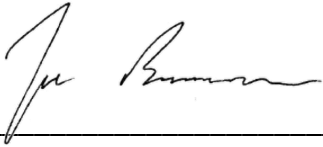
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Signature

Dated this 9th day of May, 2024, at the Department of Ecology, Shoreline, Washington.

A handwritten signature in black ink, appearing to read "Joe Burcar", written over a horizontal line.

Joe Burcar, Section Manager

Northwest Region Office

Shorelands and Environmental Assistance Program