



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 12, 2022

Whatcom County Public Works
Attn: James Lee, P.E.
322 N. Commercial Street, Suite 301
Bellingham, WA 98225

RE: First Amendment for Water Quality Certification Order No. **18192**, Corps Reference No. **NWS-2020-49**, Swift Creek 5-Year Channel Maintenance and Stockpile Construction Project, Whatcom County, Washington

Dear James Lee:

On June 28, 2022, the Department of Ecology received a request from Whatcom County Public Works to amend the project description in Water Quality Certification Order No. 18192, issued on July 22, 2020. Subsequent correspondence on June 29, 2022, and July 1, 2022, further clarified the request.

Enclosed is an amendment to this Order, as well as a strikeout version of the Water Quality Certification that reflects the changes that have been made. All other conditions of the Water Quality Certification Order No. 18192 remain in effect.

If you have any questions, please contact Rebekah Padgett at (425) 365-6571 or e-mail Rebekah.Padgett@ecy.wa.gov. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

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

Enclosures (2)

Sent via email to: jlee@co.whatcom.wa.us

Whatcom County Public Works

Aquatics No. 135360

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e-cc: Randel Perry, U.S. Army Corps of Engineers
Amy Jensen, Environmental Protection Agency
Steve Fox, Whatcom County Public Works
Joel Ingram, Washington Department of Fish and Wildlife
Elizabeth Fint, Department of Ecology
Chris Luerkens, Department of Ecology
Cris Matthews, Department of Ecology
Rebekah Padgett, Department of Ecology
Loree' Randall, Department of Ecology
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A WATER) ORDER No. 18192 First Amendment
QUALITY CERTIFICATION TO) Corps Reference No. NWS-2020-49
Whatcom County Public Works) Swift Creek 5-Year Channel Maintenance and
in accordance with 33 U.S.C. 1341) Stockpile Construction Project, Swift Creek,
(FWPCA § 401), RCW 90.48.120, RCW) Everson, Whatcom County, Washington.
90.48.260, and Chapter 173-201A WAC)

Whatcom County Public Works
Attn: James Lee, P.E.
322 N. Commercial Street, Suite 301
Bellingham, WA 98225

On June 28, 2022, the Department of Ecology (Ecology) received a request from Whatcom County Public Works to amend the project description within Order No. 18192, issued on July 22, 2020, for the Swift Creek 5-Year Channel Maintenance and Stockpile Construction project. Subsequent correspondence on June 29, 2022, and July 1, 2022, further clarified the request.

After reviewing the request and documentation, Ecology determined that an amendment to the above-referenced Administrative Order was appropriate.

This amendment is issued under the authority of Chapter 90.48 Revised Code of Washington (RCW) and Chapter 173-201A Washington Administrative Code (WAC).

Administrative Order No. 18192 is hereby amended as follows:

1. The project description is changed from:

The proposed project entails:

- Placement of rip rap along an average of 638 lineal feet of stream banks per year for bank stabilization repair.
- Annual excavation of approximately 10,000 cubic yards of sediments from the Swift Creek channel.
- Placement of the excavated material on the existing levees, within the levee footprint or within the Oat-Coles Sediment stockpile.
- Expansion of the Oat Coles Sediment Stockpile that will involve placement of excavated sediments in 0.68 of an acre of wetlands.

To the following:

The proposed project entails:

- Placement of rip rap along an average of 638 lineal feet of stream banks per year for bank stabilization repair.
- Annual excavation of sediments from the Swift Creek channel, not to exceed a total of 65,000 cubic yards over the 5-year period.

- Placement of the excavated material on the existing levees, within the levee footprint or within the Oat-Coles Sediment stockpile.
- Expansion of the Oat Coles Sediment Stockpile that will involve placement of excavated sediments in 0.68 of an acre of wetlands.

No other conditions or requirements of the above-mentioned Order are affected by this Amendment. The Department of Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

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

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. 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).

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

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on 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 Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

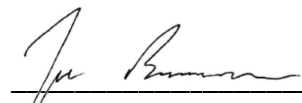
Rebekah Padgett
Department of Ecology
(425) 365-6571
Rebekah.Padgett@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **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>

SIGNATURE

Dated this 12th day of July, 2022 at the Department of Ecology, Shoreline, Washington.



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

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July 12, 2022 First Amendment changes are reflected in Red

IN THE MATTER OF GRANTING A)	ORDER No. 18192
WATER QUALITY)	Corps Reference No. NWS-2020-49
CERTIFICATION TO)	Swift Creek 5-Year Channel Maintenance and
Whatcom County Public Works)	Stockpile Construction Project, Swift Creek,
in accordance with 33 U.S.C. 1341)	Everson, Whatcom County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260, and Chapter 173-201A WAC)	

Whatcom County Public Works
Attn: James Lee, P.E.
322 N. Commercial Street, Suite 301
Bellingham, WA 98225

On January 14, 2020, the Department of Ecology (Ecology) received Whatcom County Public Works' request for a Section 401 Water Quality Certification (WQC) for Swift Creek 5-Year Channel Maintenance and Stockpile Construction Project. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on January 31, 2020.

The proposed project entails:

- Placement of rip rap along an average of 638 lineal feet of stream banks per year for bank stabilization repair.
- Annual excavation of ~~approximately 10,000 cubic yards of~~ sediments from the Swift Creek channel, **not to exceed a total of 65,000 cubic yards over the 5-year period.**
- Placement of the excavated material on the existing levees, within the levee footprint or within the Oat-Coles Sediment stockpile.
- Expansion of the Oat Coles Sediment Stockpile that will involve placement of excavated sediments in 0.68 of an acre of wetlands.

To compensate for permanent wetland impacts, the project will provide 0.88 acres of wetland creation and 1.58 acres of wetland enhancement at the 2.46-acre mitigation site located adjacent to the impact area in the upper Breckenridge Creek watershed.

A large, complex landslide in the upper watershed on Sumas Mountain causes the excessive sediment in Swift Creek. Approximately 150,000 cubic yards of material move into the creek system annually. The exposed slide material contains naturally occurring, elevated levels of asbestos, nickel, manganese, cobalt, chromium, and magnesium. These compounds are present in amounts toxic enough to prevent vegetation from growing on the slide material, and Swift Creek has no resident fish. The movement of sediment downstream in Swift Creek contributes to water quality problems in the Sumas River.

The project is intended to relieve stream aggradation and flooding concerns while also reducing downstream transport of naturally contaminated sediments.

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The project is located within Swift Creek from 5,000 feet upstream of the Goodwin Road Crossing to 1,000 feet downstream of the Oates-Cole Road Crossing and in wetlands adjacent to an unnamed tributary to Breckenridge Creek near Everson, Whatcom County, Section 33, Township 40 North, Range 4 East, WRIA 1, Nooksack Watershed.

Upon issuance of this certification Order, Order No. 13830 is officially rescinded.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306, and 307).
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws.
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS

With this Certification and through issuance of this Order, Ecology certifies it has reasonable assurance the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize Whatcom County Public Works 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 certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

A. General Conditions

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1. In this Order, the term “Applicant” shall mean Whatcom County Public Works and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent via email to fednotification@ecy.wa.gov with a copy to Lori Kingsbury, Federal Permit Manager, at lori.kingsbury@ecy.wa.gov. All submittals shall be identified with Order No. 18192 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 14, 2020, unless otherwise authorized by Ecology.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order is not effective until the Corps issues a permit for this project.
7. The Applicant shall send (per condition A2 above) a copy of the final Corps permit to Ecology’s Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
9. The Applicant 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 conditions of this Order are being met.
10. 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 water quality.

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11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins.
13. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
15. This Order will automatically transfer to a new owner or operator if:
 - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A2;
 - b. A copy of this Order is provided to the new owner or operator; and
 - c. Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.
16. Conditions in this Order apply to all planned phases of the construction and the mitigation for this project.

B. Notification Requirements

1. The following notification shall be made via email to fednotification@ecy.wa.gov with a copy to lori.kingsbury@ecy.wa.gov. Notifications shall be identified with Order No. **18192** and Corps No. NWS-2020-49. Include the Applicant's name, project name, project location, project contact, and the contact's phone number.
 - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions. In addition to the phone or email notification, the Applicant shall submit a detailed written report to

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Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

- b. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
 - c. At least ten (10) days prior to completing work at the wetland mitigation site.
 - d. Within ten (10) days after the completion of construction for each construction season.
2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per condition A2 a written construction status report and submit status reports every 12 months until construction and mitigation are completed.

C. Timing

1. This Order will expire five (5) years from the date of issuance. Continuing this Order beyond the five-year term of this Order will require the Applicant to apply for an extension prior to the expiration of this Order.
2. In-water work shall be conducted from July 15 to October 15 of any year, unless otherwise approved by Ecology.
3. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review.

D. Water Quality Monitoring & Criteria

1. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-200(1) (e) (i) for Swift Creek. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. The Applicant shall monitor water quality during in-water activities according to the protocols outlined in the approved *Water Quality Monitoring Protocol, 2016 Swift Creek Sediment Removal Project* (WQMP), prepared by Whatcom County Public Works, River and Flood, dated October 20, 2016, or as modified by this Order or revised and approved by Ecology.
3. The Applicant must provide, in writing, any further changes or additions to the WQMP prior to implementation of the changes or additions.

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4. If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be submitted to Ecology's Federal Permit Manager on a monthly basis per condition A2 of this Order.
5. If water quality exceedances are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
6. Notification of exceedances shall be made to Ecology within 24 hours of occurrence. Notification shall be made by email to fednotification@ecy.wa.gov with a copy to lori.kingsbury@ecy.wa.gov. The Applicant shall, at a minimum, provide Ecology with the following information:
 - a. Corps Reference No. NWS-2020-49, Order No. 18192, project name and applicant name.
 - b. A description of the nature, extent, and cause of the exceedance.
 - c. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the project will return to compliance.
 - d. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - e. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, water quality monitoring results and location, photographs, and any other pertinent information.
7. Mitigation and/or additional monitoring may be required if the monitoring results indicate the water quality standards have not been met.

E. Construction

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. All work in, over, and near waters of the state shall be conducted so as to minimize turbidity, erosion, and other water quality impacts.

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3. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before the start of construction activities and shall be maintained throughout construction.
4. The project area shall be clearly marked/staked prior to construction. All clearing limits, travel corridors, staging and stockpile areas, and trees to be preserved shall clearly be marked. Sensitive areas and their buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries. Equipment shall enter and operate within the marked operating limits.
5. No construction or waste material shall be stored or stockpiled on a temporary or permanent basis at or below the ordinary high water mark (OHWM) of the creek. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
6. No petroleum products, fresh concrete, lime, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
7. Work within waters of the state shall be conducted in the dry, during periods of low-flow to the extent practicable.
8. Staging and stockpile areas will be located on the existing levee. Suitable BMPs shall be installed to prevent erosion and protect water quality.
9. Excavated material shall not be temporarily or permanently stockpiled below the OHWM of the creek. All excavated sediment shall be placed upland, on top of existing levees and within the Oat Coles Sediment Stockpile.
10. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands a minimum of 50 feet, and where practical, 200 feet from waters of the state, including wetlands, in order to prevent contamination to surface waters.
11. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
12. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.

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13. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
14. Placement of rip-rap shall be conducted in compliance with state water quality standards for turbidity.
15. Channel excavation shall be conducted in a manner that minimizes disturbance and turbidity, and prevents the accidental discharge of petroleum products, chemicals, or other toxic or deleterious substances into waters of the state.

F. Wetland Compensatory Mitigation Conditions

1. The Applicant shall mitigate wetland impacts as described in the *Wetland Mitigation Plan, Oat Coles North Swift Creek Sediment Stockpile* (hereafter called the "Mitigation Plan") prepared by Whatcom County Public Works, and dated December 2019 and revised May 2020, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall submit any proposed changes to the Mitigation Plan in writing to Ecology (per condition A2 of this Order) for review and approval before implementing the changes.
3. The Applicant shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.

Implementation

4. Unless otherwise approved by Ecology in writing, the Applicant 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.
5. If the mitigation site cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
 - a. Swift Creek 5-Year Channel Maintenance and Stockpile Construction Project.
 - b. The Oat Coles North Mitigation Site.

With the:

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

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6. The Applicant shall submit an updated written notification every 12 months thereafter until the Swift Creek 5-Year Channel Maintenance and Stockpile Construction Project and The Oat Coles North Mitigation Site are complete.
7. The Applicant shall ensure no material is stockpiled within existing wetlands or their buffers at the wetland mitigation site at any time, unless otherwise provided for in the Mitigation Plan.
8. The Applicant shall not use polyacrylamide at the mitigation site.
9. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site, unless otherwise approved by Ecology.
10. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.
 - a. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit.
 - b. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
11. If weed-barrier fabric is used on the site, the Applicant shall use only water-permeable, fully biodegradable, non-toxic weed-barrier fabric for the entire site and/or individual plant weed control, unless otherwise approved by Ecology. If non-biodegradable plastic weed-barrier fabric is approved by Ecology, it shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
12. If seeding is used for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.
13. If solid or mesh plant protector tubes are used on the mitigation site, Ecology strongly recommends the Applicant use fully biodegradable options. If non-biodegradable plant protection options are used, they shall be removed before they interfere with plant growth or before the end of the monitoring period, whichever comes first.
14. The Applicant shall place signs at the mitigation area's boundaries, including buffers, every 50 feet to mark the area as a wetland mitigation site.

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15. After completing construction and planting of the mitigation site, the Applicant shall submit to Ecology an as-built report (per condition A2 of this Order), 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. Include one hard copy and one electronic file.
 - b. Include the information listed in Attachment B (Information Required for As-built Reports).
 - c. Include documentation of the recorded legal site protection mechanism required in condition F17.
16. The Applicant shall provide Ecology with documentation of a recorded restrictive covenant for the Oat-Coles North Mitigation Site. The Applicant shall:
 - a. Request a restrictive covenant template from Ecology or use an appropriate alternative to develop a draft restrictive covenant.
 - b. Send the draft restrictive covenant to Ecology for review and approval.
 - c. Record the Ecology-approved restrictive covenant with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
 - d. Record the restrictive covenant 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.
 - e. Send a copy of the recorded restrictive covenant to Ecology with the As-Built Report (as defined in condition F16), unless otherwise approved by Ecology.

Monitoring and Maintenance

17. The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless Ecology authorizes in writing the system to remain for a longer period.
18. The Applicant shall monitor the mitigation site for a minimum of ten (10) years. The Applicant shall use the monitoring methods described in Chapter 5, pages 28 – 33 of the Mitigation Plan.
19. The Applicant shall submit to Ecology (per condition A2 of this Order) monitoring reports documenting mitigation site conditions as identified in the Mitigation Plan for years 1, 3, 5, 7, and 10. The monitoring reports must:
 - a. Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.

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- b. Include the information listed in Attachment C (Information Required for Monitoring Reports).
20. The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
21. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the contingency measures.
22. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the current or upcoming planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
23. For monitoring years five (5) and ten (10), the Applicant 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.
24. If the Applicant 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.
25. The Applicant's obligation to compensate for wetland impacts under condition F1 of this Order is not met until the Applicant has received written notice from Ecology that the obligation is met.

G. Emergency/Contingency Measures

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

This document shows the conditions that have been amended since the original Order was issued on July 22, 2020. Therefore it is not the official certification and should only be used for informational purposes.

July 12, 2022 First Amendment changes are reflected in Red

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4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
5. Work causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify the Ecology Federal Permit Manager per condition B1 and immediately take the following actions:
 - a. Cease operations at the location of the non-compliance.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - d. Immediately notify Ecology's Regional Spill Response Office 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.
 - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.