



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

April 27, 2023

City of Tacoma  
ATTN: Steve Hoffman  
326 East D Street  
Tacoma, WA 98421

Re: Amendment to 401 Water Quality Certification Order No. **16036** for U.S. Army Corps of Engineers Reference No. NWS-2011-859-WRD, Leach Creek Holding Basin Maintenance, Leach Creek, Tacoma, Pierce, Washington

Dear Steve Hoffman:

Enclosed is an amendment to Water Quality Certification Order No. 16036, issued on September 24, 2018, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 16036 remain in effect.

The purpose of this amendment is to modify work at the outfall structure and permit timeline extension of 1 year.

If you have any questions, please contact Loree' Randall at 360-485-2796. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

Brenden McFarland, Section Manager  
Environmental Review and Transportation Section, HQ  
Shorelands and Environmental Assistance Program

Enclosure (2)

By certified mail: 9489 0090 0027 6383 9287 46

Sent via e-mail: shoffman2@cityoftacoma.org

E-cc: Daniel Krenz, U.S. Army Corps of Engineers  
Calvin Taylor, City of Tacoma  
Shauna Hansen, City of Tacoma  
Char Naylor, Puyallup Tribe of Indians

First Amendment to WQC Order No. 16036  
Aquatics ID No. 135665, Corps No. NWS-2011-859-WRD  
April 27, 2023  
Page 2 of 2

Russ Ladley, Puyallup Tribe Indians  
Melissa Malott, Citizens for a Healthy Bay  
Mathew Curtis, WDFW  
Linda Storm, EPA  
Zach Meyer, Ecology  
Loree' Randall, Ecology  
Dana Mock, Ecology  
Sheila Marcoe, Ecology  
Angela Vincent, Ecology  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A WATER ) WQC ORDER No. 16036, First Amendment**  
**QUALITY CERTIFICATION TO ) Corps Reference No. NWS-2011-859-WRD**  
**City of Tacoma ) Leach Creek Holding Basin Maintenance Project**  
In accordance with 33U.S.C. 1341 ) located within Leach Creek and Wetlands,  
(FWPCA §401), RCW 90.48.120, RCW ) Tacoma, Pierce County, Washington  
90.48.260 and Chapter 173-201A WAC )

City of Tacoma  
ATTN: Steve Hoffman  
326 East D Street  
Tacoma, WA 98421

On September 24, 2018, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to City of Tacoma for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on April 14, 2023, to modify work at the outfall structure and permit timeline extension of 1 year.

WQC Order No. 16036 dated September 24, 2018, is hereby amended as follows:

- I. The following is added to the bulleted list of proposed project activities:
- Remove and replace the existing overflow riser structure with a precast concrete overflow riser structure of similar dimensions; and
  - Install a new 42-inch diameter inline check valve at the existing outfall.

- II. Condition number C.1. which reads:

This Order shall remain in effect for a period of five (5) years from the date of issuance unless otherwise modified by Ecology.

Is replaced with:

The time limit for completing the work authorized ends on August 5, 2024.

No other conditions or requirements of the above referenced Order are affected by this amendment.

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 amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended 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 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 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 Chapter 43.21B RCW and Chapter 371-08 WAC.

## **Filing an appeal with the PCHB:**

For the most current information regarding filing with the PCHB, visit:  
<https://eluh.wa.gov/content/11>

## **Address and Location Information**

### **Street Address:**

#### **Department of Ecology**

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

#### **Pollution Control Hearings Board**

1111 Israel RD SW  
STE 301  
Tumwater, WA 98501

### **Mailing Addresses:**

#### **Department of Ecology**

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

**Pollution Control Hearings Board**

PO Box 40903  
Olympia, WA 98504-0903

**E-Mail Address:**

**Department of Ecology**

Not currently available (see WAC 371-08)

**Pollution Control Hearings Board**

Pchb-shbappeals@eluhwa.gov

## Contact Information

Please direct all questions about this WQC Order to:

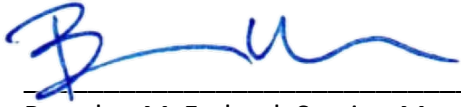
Loree' Randall  
Department of Ecology  
360-485-2796  
loree.randall@ecy.wa.gov

## More Information

- Pollution Control Hearings Board Website  
<http://www.eluhwa.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>

**Signature**

Dated this 27th day of April 2023, at the Department of Ecology, Lacey Washington.



---

Brenden McFarland, Section Manager  
Environmental Review and Transportation Section, HQ  
Shorelands and Environmental Assistance Program

This document shows the activities and conditions that have been amended since the original WQC Order was issued. Therefore, it is not the official certification and should be used for information purposes only.

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 16036, First Amendment</b>
<b>WATER QUALITY</b>	)	
<b>CERTIFICATION TO</b>	)	<b>Corps Reference No. NWS-2011-859-WRD</b>
<b>The City of Tacoma</b>	)	Leach Creek Holding Basin Maintenance
<b>ATTN: Mr. John Burk</b>	)	Project, within Leach Creek and Wetlands,
in accordance with 33 U.S.C. 1341	)	Tacoma, Pierce County, Washington
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

TO: City of Tacoma  
Environmental Services Department  
ATTN: Mr. John Burk  
326 East D Street  
Tacoma, WA 98421

On July 10, 2017, the Department of Ecology (Ecology) received a Joint Aquatic Resource Permit Application (JARPA) from the City of Tacoma, Environmental Services Department, requesting a Section 401 Water Quality Certification (WQC). The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on September 26, 2017. On June 14, 2018, the City of Tacoma submitted a Withdraw and Reapply for 401 WQC. Ecology issued a second public notice for the project on June 21, 2018.

The existing 42 acre Leach Creek Holding Basin serves as a regional stormwater detention facility to regulate discharges to Leach Creek. The facility receives stormwater through five major outfalls and has approximately 80 acre-feet of active storage capacity. The holding basin dam and gated outlet structure were constructed in 1961.

The purpose of the proposed project is to improve the operational capacity of the Leach Creek Holding Basin and reduce downstream effects from flooding and channel erosion. The project will also address dam safety issues identified by the Department of Ecology's Dam Safety Office during a recent inspection.

The project is proposing the following activities:

- Expand pump station forebay with the creation of a 1,000 foot-long stormwater channel to connect the forebay with the outfall and spillway structures;
- Relocate the stormwater discharge flowpath away from the toe of the dam;
- Construct an access ramp to the proposed channel to facilitate maintenance;
- Remove gravel from the existing spillway;
- Replace the 48 inch concrete overflow riser structure;
- Add a trash rack to the outlet control structure;
- Restore temporarily disturbed areas with wetland plantings; ~~and,~~
- Perform ongoing maintenance activities;:-

- Remove and replace the existing overflow riser structure with a precast concrete overflow riser structure of similar dimensions; and
- Install a new 42-inch diameter inline check valve at the existing outfall.

The proposed project will permanently impact 0.03 acres of forested Category I wetlands and will convert 1.02 acres of forested Category I wetlands to emergent wetlands. Mitigation to compensate for the wetland impacts will be in the form of preservation of 16 acres of Category I forested wetlands within the basin and the purchase 0.27 credits from the Pierce County In-Lieu Fee Program. Temporarily disturbed wetland areas will be restored and monitored for a period of five (5) years.

The existing Leach Creek dam, holding basin, and pump station are located west of South Orchard Street near South 34th Street in the City of Tacoma, Pierce County, Washington, 98424; NE Quarter of Section 14; Township 20 North; Range 2 East; WRIA 12, Chambers-Clover Watershed.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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; and,
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:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate 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 the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent



cleanup of surface waters, ground waters, or sediments occurring as a result of project construction or operations.

**A. General Conditions:**

1. For purposes of this Order, the term “Applicant” shall mean the City of Tacoma and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology’s Southwest Regional Office, Attn: Federal Permit Manager, SEA Program, PO Box 47775, Olympia, WA 98504-7775, or via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) with a copy to [lori.kingsbury@ecy.wa.gov](mailto:lori.kingsbury@ecy.wa.gov). All submittals shall reference Order No. **16036** and Corps No. **NWS-2011-859-WRD** and include the Applicant name, project name, project contact, and contact phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 10, 2017 unless otherwise authorized by Ecology.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that may affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of an updated information, Ecology will determine if the revised project requires a new Water Quality Certification and public notice or if a modification to this Order is required.
6. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
7. 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 lead workers, and state and local government inspectors.
8. The Applicant shall provide access to the project site and mitigation site(s) upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. Nothing in this Order waives Ecology’s authority to issue additional orders if Ecology determines that 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.
10. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards; 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 that are applicable to this project.

11. The Applicant shall ensure that all appropriate 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 the Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be submitted to Ecology (per Condition A.2.) before construction begins.
12. 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 the conditions of this Order.
13. Failure of any person or entity 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.

**B. Water Quality Conditions:**

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-600 (1) (a) (iv).
  - a. Turbidity must not exceed 5 NTU over background when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
  - b. pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
2. During and immediately after project construction, the Applicant or their contractor shall monitor for turbidity discharges at the point of compliance as specified in WAC 173-201A-200(1)(e)(i). A turbidimeter is recommended, however, visual gauging with photo documentation of turbidity is acceptable.
3. The Applicant shall submit a Water Quality Monitoring and Protection Plan (WQMPP) to the Federal Permit Manager per condition A.2. of this Order for review and approval at least 60 days prior to work activities below the Ordinary High Water Mark (OHWM) of

Leach Creek. Work is not authorized to begin until approval is received. At a minimum the WQMPP shall include the following information:

- a. The name(s) and contact information of the person responsible for on-site monitoring and reporting;
  - b. The Best Management Practices (BMPs) and procedures to be used to protect water quality during specific work activities within the of Leach Creek;
  - c. A water quality monitoring plan for turbidity which includes sample locations and frequency;
  - d. The monitoring locations shall include, but are not limited to: a background, half the distance to the point of compliance, and at the point of compliance, unless otherwise approved by Ecology;
  - e. A map with the numbers or named sampling locations; and,
  - f. A contingency plan in the event of an exceedance.
4. Results of the water quality monitoring shall be documented in a report and submitted weekly to the Federal Permit Manager per condition A.2. (Refer to Attachment B for an example.) The Report must include the following monitoring information: Date, time, monitoring location, turbidity observations, name of the personnel doing the monitoring, and the weather conditions at the time of the monitoring.
5. Ecology must approve, in writing any changes or additions to the WQMPP.
6. 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, correct the problem, and prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the procedures below:
- a. Notification of exceedances: Notification of exceedances shall be made to Ecology within **24 hours of occurrence**. Notification shall be made with reference to Order No. 16036 Attn: Federal Permit Manager by telephone at (360) 407-6926 or by e-mail at [Lori.kingsbury@ecy.wa.gov](mailto:Lori.kingsbury@ecy.wa.gov). The Applicant shall , at a minimum, provide Ecology with the following information:
    - i. A description of the nature, extent, and cause of the exceedance.
    - ii. The period of non-compliance, including exact dates, duration, and times and/or anticipated time when the project will return to compliance.
    - iii. The steps taken, or to be taken to reduce, eliminate, and prevent a recurrence of the non-compliance.
    - iv. In addition, within five (5) days after the notification of the exceedance, the Applicant shall submit a written report to Ecology (per conditions A.2.) that describes the nature of the exceedance(s), corrective action taken and/or planned, steps taken to prevent a recurrence, photographs, and any other pertinent information.

- b. Mitigation and/or additional monitoring may be required as a result of the exceedance(s).

**C. Timing:**

- ~~1. This Order shall remain in effect for a period of five (5) years from the date of issuance unless otherwise modified by Ecology.~~

~~The time limit for completing the work authorized ends on August 5, 2024.~~

2. Work on the outfall at the dam outlet must occur between July 15 and September 30.

**D. Notification Requirements:**

1. The Applicant shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manager per condition A.2 of this Order, within two (2) weeks of receipt of the permit.
2. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Southwest Regional Office Federal Permit Manager in accordance with condition A.2 above for the following activities:
  - a. Immediately when the project is out of compliance with any conditions of this Order;
  - b. At least ten (10) days prior to the onset of any work on site;
  - c. Within fourteen (14) days after completion of project construction.
3. If project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report per Condition A.2. The Applicant shall submit status reports every 12 months thereafter until project construction is complete.

**E. Construction, Equipment Staging and Maintenance:**

1. The project shall obtain and comply with the conditions of the current Construction Stormwater General Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. All work within the basin shall occur with the gated outlet closed to isolate the basin from Leach Creek.
3. Work shall occur in the dry to the extent practicable.
4. All work in and near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place prior to starting construction and inspected and maintained throughout project implementation.
5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state, including wetlands.

6. All construction debris shall be properly disposed of in a manner to prevent it from entering wetlands and/or wetland buffers.
7. All work within the project limits shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Sensitive areas and 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 clearing limits corridors and stockpile areas.
8. Machinery and equipment used during construction shall be serviced, fueled, and maintained in a confined area on uplands a minimum of 50 feet, and where practical, 100 feet from waters of the state including wetlands. Fueling areas will be provided with adequate spill containment.
9. Appropriate BMPs shall be implemented to minimize track-out during construction.
10. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet from waters of the state (including wetlands), unless authorized by Ecology.
11. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working area shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
12. The Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

*Culvert Work & Temporary Diversion Structures*

13. All culvert work shall be conducted in the dry or in isolation from stream flow.
14. Temporary cofferdams to divert water around the work area shall be in place prior to initiation of work within the wetted perimeter and shall remain in place until in-water work is completed and disturbed areas are stabilized.
15. The temporary diversion shall be of sufficient size, constructed of non-erosive materials, and installed to divert the entire flow through the bypass or around the isolated work area for the duration of the work.
16. The diversion system shall be designed and operated so as not to cause erosion in the channel or on the banks of the waterbody in which the work is being conducted.
17. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.
18. Prior to returning water flow to the work area, all bank protection measures shall be in place.
19. Re-introduction of water into the isolated work area shall be done gradually, and at a rate not higher than the normal flow, in order to minimize the mobilization of sediments and fines.

20. Upon completion of the work activities, all material used for the temporary cofferdam and diversion shall be removed from the site.

**F. Wetland Compensatory Mitigation Conditions:**

1. The Applicant shall mitigate wetland impacts as described in the *Leach Creek Stormwater Facility Wetland Mitigation Plan*, (hereafter referred to as the "Mitigation Plan") prepared by Grette Associates LLC, dated March 13, 2017, or as modified by this Order or as revised and approved by Ecology.
2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (per condition A.2 of this Order) for review **and approval** before work begins.
3. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation within 12 months of impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
4. If the project mitigation (including credit purchase) cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
  - a. The Leach Creek Holding Basin Maintenance Project,
  - b. When ILF credits will be purchased and onsite mitigation completed.

With the:

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

The Applicant shall submit an updated written notification every 12 months thereafter until the Leach Creek Holding Basin Maintenance Project is complete, the required ILF credits purchased, and the on-site mitigation completed.

5. If the Applicant has not met all conditions, including performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
6. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition F.1 to mitigate for wetland impacts is not met.

*In-Lieu-Fee (ILF) Conditions*

7. Prior to impacting wetlands, the Applicant shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 0.27 credits for this impact project. The Applicant shall submit a copy of the Statement of Sale to Ecology (per Condition A.2 of this Order) prior to impacting wetlands at the project site. Documentation from the Sponsor shall include:
  - a. Ecology's Order number;

- b. Order issuance date;
  - c. Description of mitigation credits purchased; and,
  - d. Signatures from the Sponsor and the Applicant.
8. The Applicant shall notify and submit in writing to Ecology (see A.2) any proposed changes to the amount of wetland impacts, revisions to the mitigation plan, and/or submittal of new information for review and approval before work begins.
9. The Applicant 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.

*Restoration of the Wetland Conversion Area*

10. The approximately 1.02 acres of temporarily disturbed forested wetland area shall be restored and converted to emergent wetland.
11. The Applicant shall have a wetland professional at the wetland conversion area site to supervise the restoration and planting.
12. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the site and above the 100-year floodplain.
13. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at any time, unless provided for in the Ecology-approved Mitigation Plan.
14. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology approved Mitigation Plan.
15. The Applicant shall not use polyacrylamide at the mitigation site(s).
16. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).
17. 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. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
18. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control. Non-biodegradable plastic weed-barrier fabric 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.
19. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species.



20. The Applicant shall not use solid or mesh plant protector tubes at the mitigation site(s) unless otherwise approved by Ecology.
21. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation, from a surveyor or project engineer, that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes. The confirmation should indicate how final elevations were confirmed. The written confirmation can be in the form of an email or signed letter.
22. After completing the restoration and planting of the wetland conversion area, the Applicant shall submit to Ecology (per condition A.2 of this Order) 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. 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 mechanism required in Condition F. 19 below.

#### *Monitoring and Maintenance*

23. The Applicant shall water and maintain all conversion area 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 permission is received in writing from Ecology to allow the system to remain for a longer period.
24. The Applicant shall monitor the wetland conversion area for a minimum of 5 years. The Applicant shall use the monitoring methods described on page(s) 11 through 14 of the Mitigation Plan.
25. The Applicant shall submit to Ecology (per condition A.2 of this Order) monitoring reports documenting the wetland conversion area site conditions for years 1, 2, 3, and 5. The monitoring reports must:
  - a. Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.
  - b. Include the information listed in Attachment C (Information Required for Monitoring Reports).

#### *Preservation Area*

26. The Applicant shall send a draft restrictive covenant to Ecology for review and approval. Within 90 days after Ecology approval, the approved restrictive covenant must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property and a copy of the



recorded notice sent to Ecology per Condition A.2 of this Order. The restrictive covenant shall be recorded with a figure that corresponds with the legal description showing the area that is being protected, a copy of this Order, and the site map from the final wetland mitigation plan or as-built report showing the location of wetlands and their buffers.

**G. Emergency/Contingency Measures:**

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. 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.
3. 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 waters of the state.
4. Work activities or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, 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 A.2 of this Order 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.
5. 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.