



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

October 26, 2012

144th Street LLC
Attn: Douglas Rhine
1124 112th Street E
Tacoma, WA 98447-3710

Re: Administrative Order No. 9523 to Permanently Fill .42 Acres of Isolated Wetlands to Construct the Summerwood Park Residential Project in Pierce County, Washington

Dear Mr. Rhine:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application on October 2, 2012 requesting an Administrative Order for proposed work in isolated wetlands. 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. If you have any questions, please contact Alex Callender at (360) 407-6167. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Perry J Lund, Unit Supervisor
Southwest Regional Office
Shorelands and Environmental Assistance Program

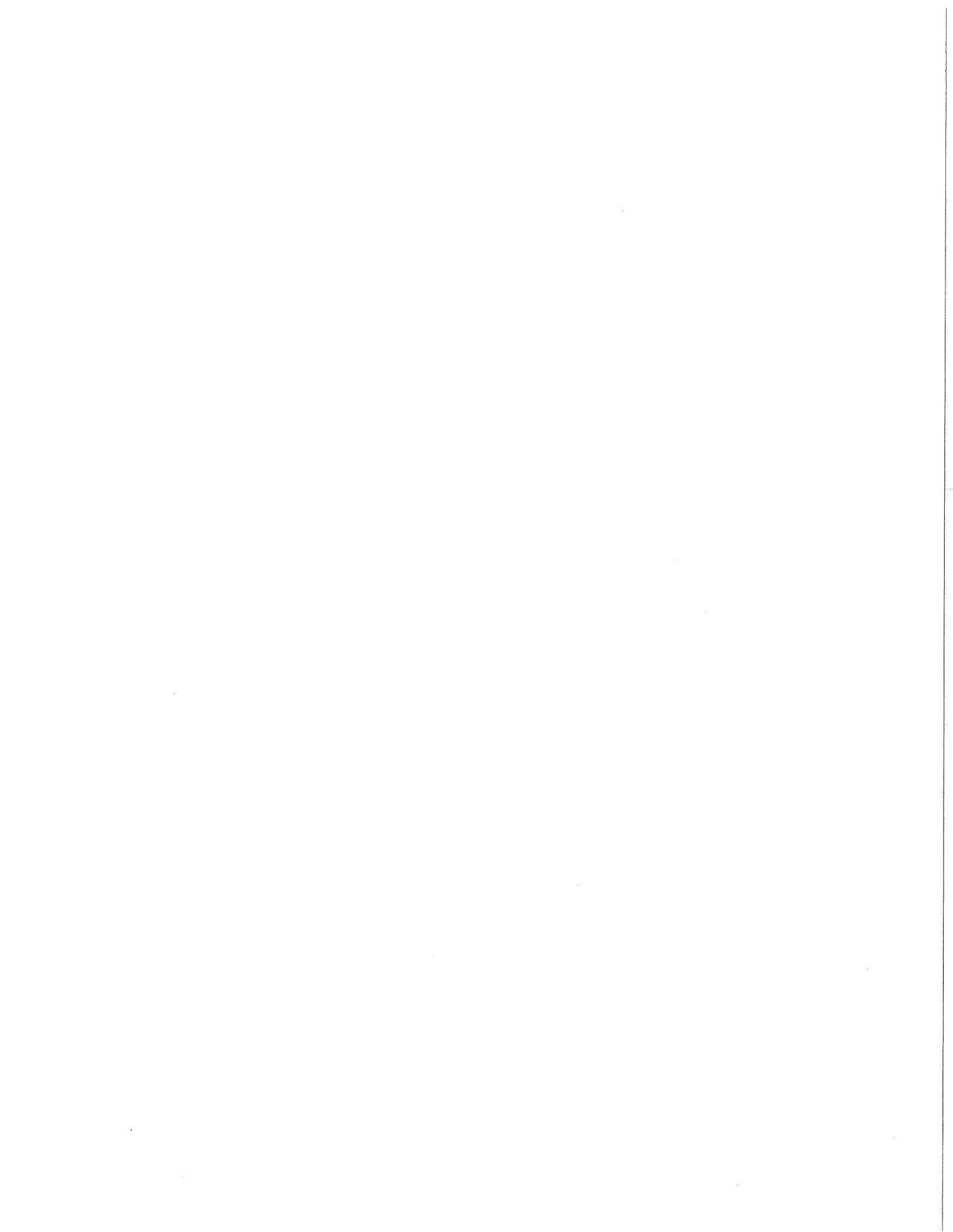
PL:th
Enclosure

cc: Ron Wilcox, U.S. Army Corps of Engineers
Tom Deming, Habitat Technologies
Diane Ryba, City of Pierce County

e-cc: ECY RE FED PERMITS
Lori Ochoa, Ecology/SWRO
Loree' Randall, Ecology/Headquarters
Alex Callender, Ecology /SWRO
Deborah Cornett, Ecology/SWRO

CERTIFIED MAIL: 7011 1150 0000 7970 3242





DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) Corps NO. **NWS-2009-1515**
144th Street LLC)
FOR AN ADMINISTRATIVE ORDER TO) ORDER NO. 9523
CONDUCT WORK IN AN ISOLATED WETLAND)

To: 144th Street LLC
Attn: Douglas Rhine
1124 112th Street E
Tacoma, WA 98447-3710

This is an Administrative Order requiring 144th Street LLC to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions that are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or may create a substantial potential to violate any provision of Chapter 90.48 RCW.

Ecology received the 144th Street, LLC Joint Aquatic Resources Permit Application (JARPA) on October 2, 2012 requesting an Administrative Order to impact 14,671 sq ft of isolated Category III Wetlands and 3,868 sq ft of isolated Category II wetlands and to construct the Summerwood Park Residential Community on a 110 - acre site in Pierce County. The site is located at 6220 – 136th Street East in Pierce County, WA; on a portion of the NE and SE 1/4 of Section 18, Township 19N, Range 4E., W.M., WRIA 10, Puyallup/White River Watershed.

This Administrative Order authorizes 14,671 sq ft of isolated Category III wetland impacts and 3,868 sq ft of isolated Category II wetlands impacts at the project location. Onsite Mitigation for this proposal will consist of 29,342 sq ft of creation of new wetland area to compensate for filling of the Category III wetlands and 7,763 sq ft wetland creation to compensate for the filling of the Category II wetlands. The mitigation will also enhance 15,503 sq ft of isolated Category II wetlands as proposed in the *Revised Final Mitigation Program For Unavoidable Impacts Associated With Required Roadway and Site Development Improvements* dated October 10, 2011 and the addendum dated October 2, 2012. The project and mitigation will occur in the approximate location of NE and SE 1/4 of Section 18, Township 19N, Range 4E., W.M. in Pierce County, WA.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on October 2, 2012 or as otherwise approved by Ecology.

2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Manager, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. All submittals shall reference Order No. 9523 and Corps Reference No. NWS-2009-1515.
3. The Applicant shall provide access to the project site upon request by Ecology.
4. This Order does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
5. 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 workers, and state and local government inspectors.
6. 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 the public interest.

B. Notification Requirements:

1. 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. At least ten (10) days prior to a pre-construction meeting
 - b. At least ten (10) days prior to the onset of any work on site
 - c. At least ten (10) days prior to the onset of in-water work, including wetlands
 - d. At least ten (10) days prior to the onset of work at the wetland mitigation site
 - e. Immediately following a violation of the state water quality standards or any condition of this Order
 - f. Within fourteen (14) days after completion of construction.

C. Wetland Compensatory Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the *Revised Final Mitigation Program for Unavoidable Impacts Associated with Required Roadway and Site Development Improvements* dated October 10, 2011 and the addendum dated September 5, 2012 (hereafter called the "Mitigation Plan") prepared by Habitat Technologies, or as modified by this Order or revised and approved by Ecology on October 2, 2012

11. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).
12. 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.
13. If seeding is used at the wetland mitigation site, the seed mix must contain only native, annual, non-invasive plant species.
14. The Applicant shall place signs at the mitigation area's(s') boundaries, including buffers, every 50 feet to mark the area as a wetland mitigation site(s).
15. Upon completion of site grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes. Written confirmation can be in the form of a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether those elevations are consistent with the Mitigation Plan.
16. After completing construction and planting of the mitigation sites(s), the Applicant shall submit to Ecology (see A.2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - a) Be submitted within 90 days of completing construction and planting. 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 D.17.
17. Within 90 days of the date the Order was issued, the Applicant shall record a conservation easement for Summerwood Park Residential Community, a copy of this Order, and a site map indicating the location of mitigation site(s) and their buffers. These documents must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

Monitoring and Maintenance:

18. The Applicant shall water and maintain all plantings at the mitigation site to meet the mitigation plan's performance standards.

2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before work begins.
3. The Applicant shall get review and written approval from Ecology of any plan changes required if problems arise during construction and planting of the wetland mitigation site.
4. The Applicant shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.

Implementation

5. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrent with, impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
6. If the mitigation site(s) cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of :
 - a) Summerwood Park Residential Community Project
 - b) The Summerwood Park Residential wetland mitigation site.

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 Summerwood Park Residential Community and Summerwood Park Wetland Mitigation Site is complete.
7. 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 wetland mitigation site and above the 100-year floodplain.
 8. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.
 9. 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.
 10. The Applicant shall not use polyacrylamide on exposed or disturbed soil at the mitigation site(s).

19. The Applicant shall monitor the mitigation site for a minimum of ten (10) years as described in the mitigation plan. Additional monitoring of the mitigation area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
20. The Applicant shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must:
 - 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 D (Information Required for Monitoring Reports).
21. The Applicant shall implement the mitigation plan's contingency measures if goals, objectives, and performance standards are not being met.
22. Prior to implementing any unidentified contingency measures, the Applicant shall consult with Ecology.
23. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or a native plant alternative appropriate for the location, during the first available planting season and note the species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.
24. 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, etc.) in the monitoring reports.
25. If the Applicant has not met all conditions and performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
26. The property owner shall grant Ecology access to the mitigation area for inspection during the 10 year monitoring period or until mitigation success has been achieved.
27. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition C.1 to mitigate for wetland impacts is not met.

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 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 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 Rd 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:

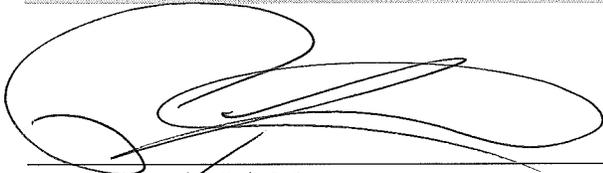
Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
loch461@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

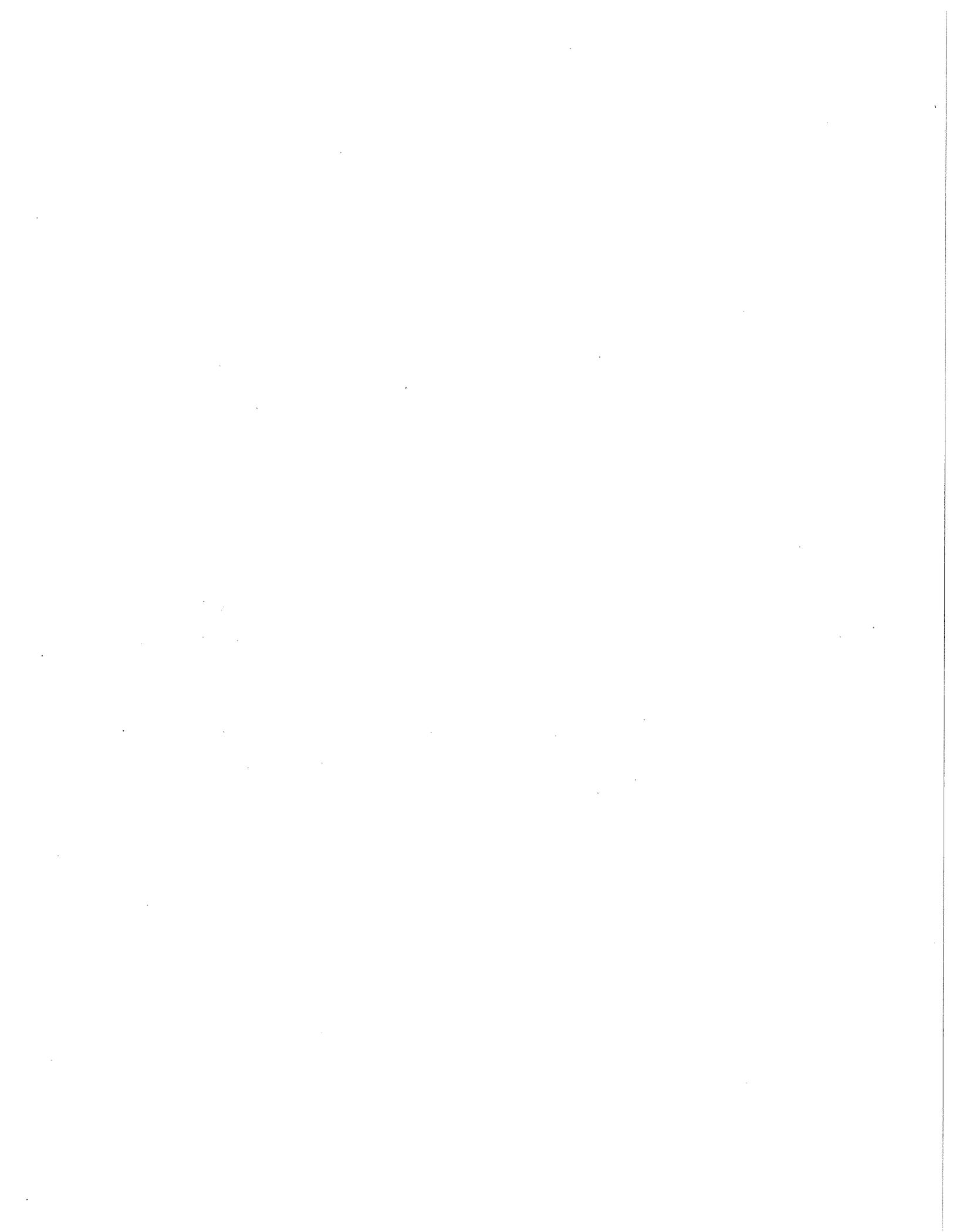
- **Chapter 371-08 WAC – Practice And Procedure**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 Washington Administrative Code (WAC) Sediment Management Standards**
<http://www.ecy.wa.gov/biblio/wac173204.html>
- **Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington**
<http://www.ecy.wa.gov/biblio/wac173200.html>
- **Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington**
<http://www.ecy.wa.gov/biblio/wac173201A.html>

SIGNATURE



Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office
Department of Ecology

10/26/2012
Date



Attachment A
Statement of Understanding
(See Condition A. 7.)

144th Street LLC
Summerwood Park Residential Development
Administrative Order # 9523
And
Corps No. #NWS-2009-1515

I, _____, state that, I will be involved as an agent or contractor for 144th Street, LLC in the site preparation and/or construction of the Summerwood Park Residential Community located on a 110-acre site at 6220 – 136th Street East in the Summit Area of Pierce County, WA; in a portion of the NE and SE1/4 of Section 18, Township 19N, Range 4E., W.M.. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Administrative Order #9523 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company



Attachment B
Information for As-built Reports
(See Condition C. 9.)

144th Street, LLC
Summerwood Park Residential Community
Administrative Order #9523
And
Corps No. NWS-2009-1515

Background Information

- 1) Project name.
- 2) Ecology docket number and the Corps reference number.
- 3) Name and contact information for the parties responsible for the mitigation site including:
 - a) The applicant.
 - b) The landowner.
 - c) Wetland professional on site during construction of the compensatory mitigation site.
- 4) Name and contact information for the party responsible for preparing the report.
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*
- 6) Month and year the report was produced.

The Development Site

- 7) Brief description of the development project. Include:
 - a) Directions to the site.
 - b) Month and year construction of the development project started and ended.
 - c) Area (acres) and type(s) (rating category, HGM classification, and Cowardin classification) of wetlands that were **actually** impacted by the development project, including temporary impacts.

The Compensatory Mitigation Project

- 8) Brief description of the **final** compensatory mitigation project with any changes from the approved plan made during construction. Include:
 - a) Directions to the site.
 - b) Who completed the compensatory mitigation project (name, address, and phone number).
 - c) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.

- d) Important dates including:
 - i. Month and year the wetland impacts occurred.
 - ii. When work on the compensatory mitigation site began and ended.
 - iii. When different activities began and ended such as grading, removal of invasive plants, installing plants, and installing habitat features.
- 9) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the compensatory mitigation site.
- 10) Any changes to the goals, objectives, and performance standards of the compensatory mitigation project.
- 11) List of any follow-up actions needed, with a schedule.
- 12) Final site maps (8 1/2" x 11" or larger) of the compensatory mitigation site(s) including the following (at a minimum):
 - a) Geographic location of the site with landmarks;
 - b) Clear delineation of the project perimeter(s);
 - c) Topography (with a description of how elevations were determined);
 - d) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material);
 - e) Location of habitat features;
 - f) Location of permanent photo stations.

The final site maps should reflect on-the-ground conditions after the site work is completed. Include the month and year when the maps were produced and, if applicable, when information was collected.
- 13) Photographs of the site at as-built conditions taken from permanent photo stations. We recommend photo pans.
- 14) Copies of any records of deed notification or conservation easements.

Attachment C
Wetland Notice for Deed Notification
(See Condition C.11.)

144th Street, LLC
Summerwood Park Residential Community
Administrative Order # 9523
And
Corps No.NWS-2009-1515

Tax Parcel Number: _____

Legal Description: _____

Legal Owner: _____

NOTICE: This property contains wetlands as defined by Chapter 36.70A030(20) RCW, Chapter 90.58.030 (2)(h) RCW and WAC 173-201A-020. The property was the subject of an Ecology action under Chapter 90.48.260 RCW or Chapter 90.48.120(1) RCW.

_____, issued on _____, 20____
(Corps federal reference #) Ecology Docket #

to _____ for _____
(Applicant Name) (Project Name)

Restrictions on use or alteration of the wetlands may exist due to natural conditions of the property and resulting regulations. A copy of Ecology's Order and the site map from the final wetland mitigation plan indicating the location of wetlands and their buffers is attached hereto.

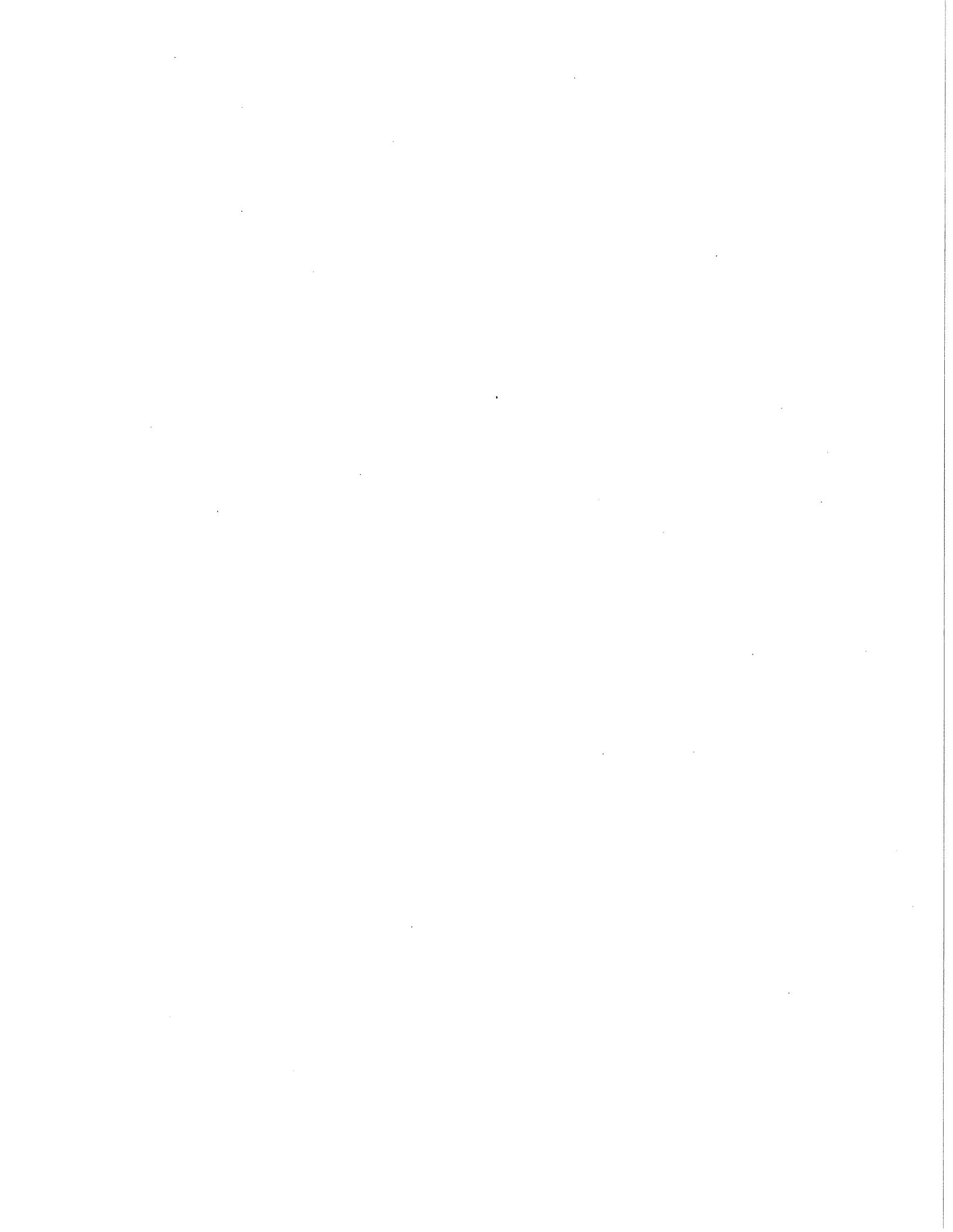
EXECUTED this _____ day of _____, 20 ____.

State of Washington)
County of _____)

I certify that I know or have satisfactory evidence that _____
Signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

GIVEN under my hand an official seal this _____ day of _____, 20 ____.

NOTARY PUBLIC in and for the state of Washington,
residing at _____
(Amended by Ord. 11200 § 50 (part), 1996)



Attachment D
Required Information for Monitoring Reports
(See Condition C 14)

Summerwood Park Residential Community
Or
Administrative Order # {9523}
And
Corps Reference # NWS 2009-1515

Ecology requires the following information, for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other regulators.

Background Information

- 1) Project name
- 2) Ecology docket number and Corps reference number
- 3) Name and contact information of the parties responsible for the mitigation site including:
 - a) The applicant
 - b) The landowner
- 4) Name and contact information for the party responsible for the monitoring activities and report
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*
- 6) Month and year the monitoring data were collected
- 7) Month and year the report was produced

Mitigation Project Information

- 8) Brief description of the mitigation project including:
 - a) Directions to the site
 - b) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts
- 9) Brief description of monitoring approach and methods.
- 10) A list of the goals and objectives for the mitigation project
- 11) Summary table of monitoring data compared with performance standards. Using the monitoring data, describe how the site is developing toward goals and objectives and whether the project is in compliance with performance standards
- 12) Summary (including dates) of management actions (maintenance, contingencies, and corrective actions) implemented at the site(s)
- 13) Summary of any difficulties or significant events that occurred on the site that may affect the ultimate success of the project
- 14) Specific recommendations for any additional corrective actions or adaptive management with a time table
- 15) Summary of any lessons learned
- 16) Site maps (8 1/2" x 11" or larger) of the compensatory mitigation site(s) including the following (at a minimum):

- a) The month and year when the maps were produced and, if applicable, when information was collected
 - b) The geographic location of the site with landmarks.
 - c) Clear delineation of the project perimeter(s).
 - d) Species, numbers, and approximate locations of all replanted material vegetation.
 - e) Location of habitat features.
 - f) Location of permanent photo stations and location of any other photos.
 - g) Location of sampling points or transects.
- 17) Photographs taken at permanent photo stations (and other photographs as needed) from the most recent monitoring visit, which are dated and clearly indicate the direction from which the photo was taken. We recommend photo pans.