STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 1190 Fourth Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

January 18, 2005

REGISTERED MAIL
RR 359 893 377 US

King County Department of Natural Resources and Parks
Wastewater Treatment Division
ATTN: William Wilbert
201 South Jackson Street – Suite 503
Seattle WA 98104

Dear Mr. Wilbert:

RE: Order # 1840
U.S. Army Corps of Engineers # **200201289**
Water Quality Certification and Coastal Zone Management Consistency Determination for Brightwater Regional Wastewater Treatment System, Snohomish County, Washington.

The request for certification for proposed work in wetlands and Puget Sound has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Alice Kelly at (425) 649-7145. Written comments can be sent to her at the Department of Ecology, 3190 – 160th Ave. SE, Bellevue, WA 98008. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:ak
Enclosure

cc: Jim Green, Corps
Pamela Erstad, WDFW
Mark Henley, Ecology
Nancy Brennan-Dubbs, USFWS
Chance Asher, DNR
Phyllis Meyers, NOAA
Tom Gries, Ecology

IN THE MATTER OF GRANTING A	)	**ORDER # 1840**
WATER QUALITY	)	**Corps Reference No. 200201289**
CERTIFICATION TO	)	Construct and operate Brightwater Regional
King County Dept. of Natural	)	Wastewater Treatment System, which includes a
Resources and Parks,	)	treatment plant on 114 acre site to provide
Wastewater Treatment Division	)	secondary treatment of wastewater, 15.6 miles of
in accordance with 33 U.S.C. 1341	)	conveyance system, and a marine outfall
(FWPCA § 401), RCW 90.48.120, RCW	)	extending 5,200 feet into Puget Sound; located in
90.48.260 and Chapter 173-201A WAC	)	King and Snohomish Counties, Washington.

TO: King County Department of Natural Resources and Parks
Wastewater Treatment Division
ATTN: William Wilbert
201 S. Jackson Street - Suite 503
Seattle, WA 98104

On May 24, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (Federal Water Pollution Control Act §401). The Joint Aquatic Resources Permit Application from King County requesting water quality certification was also received on May 24, 2004. The proposed project entails construction of a regional wastewater treatment system consisting of three primary components: 1) sewage treatment plant site; 2) conveyance system; 3) marine outfall. The project originally included a safety relief valve to be constructed on the Sammamish River, but that portion of the project has been eliminated and is not authorized by this certification. No comments were received by the Department of Ecology (Ecology) during the comment period.

For purposes of this Order, the term "Applicant" shall mean King County Department of Natural Resources and Parks, Wastewater Treatment Division, and its agents and contractors.

For purposes of this Order, all submittals required by conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Permit Coordinator, 3190 160th Ave SE, Bellevue, WA 98008, with Order No. 1840 displayed.

Work authorized by this Order is limited to the work described Joint Aquatic Resource Permit Application (JARPA) received by Ecology on May 24, 2004.

PROJECT DESCRIPTION:

Wastewater treatment plant site: The treatment plant site is 114 acres in size, and is located in the vicinity of State Route (SR) 9 just north of the City of Woodinville in Snohomish County, Washington. The mostly undeveloped northern portion of the site is approximately 37 acres and will be the location of wetland mitigation and enhancement, stream modification, upland plantings, and trails. To the south, the footprint of the treatment plant and support facilities is 43

acres. Onsite stormwater facilities, site landscaping and community trails will occupy approximately 34 acres.

Outfall: The outfall will consist of a 60-inch inside diameter pipe starting upland at the conveyance tunnel portal located at Point Wells (Portal 19) and ending in a multi-port diffuser 5,200 feet offshore. The 500-foot long diffuser will be located in a flat area at -605 feet Mean Lower Low Water (MLLW).

Outfall construction methods include installation of sheet pile from onshore to a depth of -30 MLLW. The width of the sheet-pile trench will be 20 feet wide. From -30 to -80, trench construction will not use sheet pile so the width of disturbance may be 100'. Beyond -80 MLLW to the diffuser location, the pipeline would be placed directly on the seafloor without trench excavation. A total of 30,000 cubic yards of material will be excavated. Sediments excavated by barge-mounted equipment during nearshore open-trench construction will be disposed at either an approved upland site or at one of the Puget Sound Dredged Material Disposal Analysis (PSSDA) sites. Spoils from the outfall trench will first be loaded on barges attached to the working barge. Sediments will be tested according to the Sampling and Analysis Plan and disposal planned according to test results.

Chevron Barge Pier Maintenance: Up to 30 piles will be driven to upgrade the existing Chevron barge pier. The existing barge pier footprint will not increase. Barges will remove the excavated material from the construction of the upland portal site via covered conveyor along the dock to the barge.

North Kenmore Portal (Portal 44): Construction at this portal will result in wetland fill of 0.014 acre of wetland and temporarily impact approximately 97 linear feet of stream. The other portal construction sites will not result in fill in wetlands or streams.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

A1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). 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.

B. Timing Requirements:

B1. The Applicant will be out of compliance with this certification and must reapply with an updated application if five (5) years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.

B2. This Order shall be valid during construction and long-term operation and maintenance of the project.

B3. The Applicant shall submit an updated application to Ecology if the information contained in the May 24, 2004, Revised JARPA is altered by subsequent submittals to the federal agency and/or state agencies. Within 30 days of receipt of an updated application Ecology will determine if a modification to this Order is required.

B4. Any future construction-related activities that could impact waters of the state at this project location, emergency or otherwise, that are not defined in the May 24, 2004, Revised JARPA as amended, or have not been approved in writing by Ecology, are not authorized by this Order. Such proposed actions shall be reviewed with Ecology for approval prior to implementation.

B5. In-water work shall be subject to timing limitations imposed by Washington State Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

B6. Documents required for review and/or approval within this Order shall be deemed approved 60 days after the Applicant submits them to Ecology, unless Ecology notifies the Applicant in writing that more time will be needed or if additional information is required. At that time Ecology will set a new timeframe for review and approval.

C. Notification Requirements and Pre-Construction Meeting:

C1. **Treatment Plant Site and North Kenmore Portal Site:** Approximately 30 days before construction begins at the treatment plant site and/or the North Kenmore Portal site, the Applicant shall hold a pre-construction meeting between the project manager, Project Engineer(s), Lead Contractor(s), the environmental inspector (EI) or Pollution Control Officer (PCO), all necessary construction contractors, and State agency representatives including Department of Ecology and Washington Department of Fish and Wildlife. During this meeting, site conditions, permit specifications and the requirements of the Stormwater Pollution Prevention Plan (SWPPP) and the Erosion and Sediment Control Plans will be reviewed. This will assist all involved parties in understanding the intent, specifications, and requirements of the permits and plans. Notification of the meeting shall occur at least 15 working days in advance of the meeting. The project construction schedule for the treatment plant and/or North Kenmore Portal construction phase of the project shall be provided with the meeting notification.

C2. **Marine Outfall Site:** Approximately 30 days before construction begins at the marine outfall site, the Applicant shall hold a pre-construction meeting between the project manager, Project Engineer(s), Lead Contractor(s), the environmental inspector (EI) or Pollution Control Officer (PCO), all necessary construction contractors, and State agency representatives including Department of Ecology and Washington Department of Fish and Wildlife. During this meeting, site conditions, permit specifications and the requirements of the Stormwater Pollution Prevention Plan (SWPPP), and the Erosion and Sediment Control Plans will be reviewed. This will assist all involved parties in understanding the intent, specifications, and requirements of the permits and plans. Notification of the meeting shall occur at least 15 working days in advance of the meeting. The project construction schedule for the marine outfall construction phase of the project shall be provided with the meeting notification.

C3. Notification of the pre-construction meetings shall be made to Ecology's Federal Permit Coordinator, 3190 160th Ave SE, Bellevue, WA 98008, **telephone 425-649-7145, fax 425-649-7098.** The notification shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

C4. The Applicant shall ensure that all appropriate Project Engineer(s) and the Lead Contractor(s) at the project site and/or mitigation sites have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. This shall be accomplished by providing a signed statement (see Attachment A

for an example) from each project manager, Project Engineer(s), Lead Contractor(s), and environmental inspector (EI) or Pollution Control Officer (PCO) that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology no less than seven (7) days before each Project Engineer or Lead Contractor begins work at the project or mitigation sites.

D. Treatment Plant (SR9) Site and North Kenmore Portal Site Mitigation:

D1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order, and including approved revisions for the 100% construction plans:

- Route 9 Site Critical Area Study: Wetlands, Streams and Fish and Wildlife Habitat Conservation Areas (November 2004);
- North Mitigation Area - 60 Percent Design Report, Volume I, Specifications and Details (November 19, 2004);
- North Mitigation Area - 60 Percent Design , Volume II, Drawings (November 19, 2004);
- Treatment Plant Site Mitigation plans prepared for the HPA submittal (September, 2004); and
- North Kenmore Portal Site Wetland Delineation Report (March 2004) and Conceptual Wetland Mitigation Plan (August 2004).

D2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions of this Order:

a) Compensatory Mitigation Plans: Final Wetland Mitigation Reports and Plan Sheets (100% documents) shall be submitted to Ecology for review and approval, with copies to the local jurisdictions and the Army Corps of Engineers. Ecology shall review and approve these Final Mitigation Reports and Plans prior to commencement of work on the treatment plant site or at the North Kenmore Portal site. The plans shall be sent to Alice Kelly at Ecology's Northwest Regional Office, 3190-160th Ave. SE, Bellevue, WA 98008-5452.

b) Preconstruction Meeting: The applicant's wetland ecologist assigned to oversee wetland mitigation construction, shall be present at the pre-construction meeting for the project.

c) Timing: The wetland mitigation plan shall be implemented prior to or concurrently with the site construction for the development.

d) Record Report and Drawings: A report documenting the final design of the mitigation project areas shall be prepared when site construction and planting is completed. The report shall include the following:

- Vicinity map showing site access;
- Final site topography;
- Hydrologic design for mitigation sites;
- Drawings that shall clearly identify the boundaries of the mitigation areas;
- The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
- Photographs of the area taken from permanent reference points;
- Locations of photopoints, sampling and monitoring sites;
- An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the Record Report shall be sent to Alice Kelly at Ecology within 60 days of completing construction, and in no case later than December 31, 2006. If plantings are not installed in 2006, an extension of time may be granted by Ecology upon written request by the Applicant. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

e) Field Supervision: The wetland mitigation grading activity and plant installation shall be field-supervised by a qualified wetland ecologist to ensure proper elevations are achieved and plants are appropriately placed.

f) Performance Standards: The performance of the wetland mitigation shall be measured by the criteria identified in the "Route 9 Site Critical Area Study: Wetlands, Streams and Fish and Wildlife Habitat Conservation Areas (November 2004)," Performance Standards section, pages 27 -- 29.

g) Monitoring: Monitoring to insure that the project performance standards are met shall be performed as described in the "Route 9 Site Critical Area Study: Wetlands, Streams and Fish and Wildlife Habitat Conservation Areas (November 2004)", Monitoring Plan section, pages 29 -- 32. Monitoring shall take place over a period of ten years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. **Copies of all monitoring reports shall be submitted to Ecology's Federal Permit Coordinator at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452**, identified with Order No. 1840 and Corps Reference No. 200201289, as well as to Snohomish County and the U.S. Army Corps of Engineers.

h) Maintenance: The Applicant is responsible for maintenance of the wetland mitigation sites such that the required performance standards are met. Irrigation will be required from June through Mid-October for the first growing season following plant

installation, to ensure a minimum of one inch of water per week. Irrigation will not be necessary on those weeks where rainfall at the site exceeds one inch per week. Maintenance will also include removal of non-native invasive species as needed throughout the wetland mitigation sites. Other maintenance measures are described in the "Route 9 Site Critical Area Study: Wetlands, Streams and Fish and Wildlife Habitat Conservation Areas (November 2004)," Maintenance section, page 32.

i) Access: The Applicant shall provide access to the mitigation sites upon request by Ecology personnel for site inspections, monitoring, and necessary data collection to ensure that the wetland construction and monitoring plans are implemented as approved.

E. Construction:

E1. During construction, the Applicant shall comply with all stormwater requirements within the Individual Construction Stormwater NPDES permits WA-003204-2 and WA-003205-1 that Ecology will issue for this project.

E2. Prior to clearing and grading in wetlands, the wetlands to remain undisturbed shall be identified and protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.

E3. During clearing and filling at the project site, the Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.

E4. Compensatory wetland and stream mitigation as described in Conditions D1 and D2 is required to be constructed during or prior to the year that fill is placed.

F. Stream and Riparian Mitigation:

F1. Erosion control methods shall be used to prevent silt-laden water from entering the streams and/or any wetlands associated with the streams. These may include, but are not limited to, straw bales, filter fabric, temporary sediment ponds, check dams of pea gravel-filled burlap bags or other material, and/or immediate mulching of exposed areas.

F2. Structures containing concrete shall be sufficiently cured prior to contact with water to avoid leaching. Fresh concrete shall not be allowed to come into contact with state waters.

F3. Before water is diverted into the permanent new channel, approved fish habitat components, streambed materials and bank protection to prevent erosion shall be in place. Fish habitat components and bank protection material shall be installed to withstand the 100-year peak flows.

F4. During construction, the new channel shall be isolated from the flowing stream. Bypass structures shall be substantial enough to prevent flood flows from entering the new channel during construction.

F5. During the initial introduction of water into newly constructed stream channels, turbid water not meeting water quality standards shall be pumped upland to infiltrate or be treated.

F6. The work site must be completely isolated so that fish cannot enter the project site.

F7. Culvert(s) shall be installed in the dry or in isolation from the stream flow by the installation of a bypass flume or temporary culvert, or by pumping the stream around the work area.

G. Marine Outfall Construction:

G1. The Applicant shall characterize the sediments at the marine outfall location in accordance with the "PSSDA Confirmatory Surface Sediment Characterization at the Brightwater Marine Outfall Alignment Draft Sampling and Analysis Plan" dated April 2004 and shall incorporate the requirements in the May 3, 2004 letter from the Corps Dredged Material Management Office to King County.

G2. Impacts to eelgrass and aquatic resources at the marine outfall site shall be mitigated through measures described in the following documents:

"Draft Eelgrass Restoration and Biological Resources Implementation Workplan," dated November 2004, Prepared by Grette Associates, Battelle Marine Sciences Laboratory, and King County.

"Draft Eelgrass Restoration and Monitoring Plan," dated April 5, 2004, prepared by Sea-Run Consulting, Grette Associates, Battelle Marine Sciences Laboratory, and Parametrix.

Any revisions or updates to the above referenced documents shall be approved by the Washington Department of Fish and Wildlife, and a copy submitted to Ecology.

G3. <u>Water Quality Monitoring</u>: WAC 173-201A-110(3) allows a 150-foot mixing zone for temporary exceedances of the turbidity standards during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This certification does not authorize a temporary turbidity mixing zone greater than that

allowed by WAC 173-201A-110(3). The Applicant shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). Within the temporary turbidity mixing zone, the Class AA standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the temporary turbidity mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.

G4. The waiver of specified standards within the temporary turbidity mixing zone is intended for brief periods of time (such as a few hours) and is not an authorization to exceed those standards for the entire duration of construction. In no case shall turbidity exceedances cause degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm.

G5. **Sampling Protocol:**

a) Sampling for turbidity is required during each discrete marine in-water construction activity. In-water construction activities include: pile driving; pile removal or extraction; sheet pile installation; sheet pile removal; trench excavation inside of sheet pile (MLLW to -30); trench excavation without sheet pile (-30 to -80 MLLW); or any activity that disturbs in-place sediments waterward of MHHW (mean higher high water).

b) Timing of samples: Turbidity sample shall be collected and analyzed <u>a minimum of every two hours throughout the first day of in-water construction activity for each activity.</u> Subsequent sampling is dependent upon monitoring results, but shall be a minimum of once per day during in-water activity if no exceedances are detected. Sampling shall increase if exceedances are detected, and shall be reported to Ecology as outlined in G5.e) below.

c) A background sample shall be collected before construction begins each day.

d) Location of samples: Samples shall be collected at a minimum at the point of compliance 150 feet radially from the construction or activity. Sampling 100 feet from the point of activity will provide a margin of safety to respond to potential exceedances.

e) Reporting of results: Results of water quality monitoring shall be submitted to Department of Ecology, Federal Permit Coordinator, 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, fax 425-649-7098.

If no exceedances are detected, results shall be submitted once a week.

If exceedances are detected:

i) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem. Additional samples shall be taken to verify that an exceedance has occurred.

ii) Notify Ecology of the failure to comply. Notification shall be provided within 24 hours to Ecology's Alice Kelly at (425) 649-7145.

iii) Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of samples taken, and any other pertinent information.

G6. The onshore project limits shall be clearly marked/staked prior to construction. Travel corridors and stockpile sites shall be clearly marked. Sensitive areas (wetland) to be protected from disturbance shall be delineated and marked with brightly colored construction fence, so as to be clearly visible to equipment operators. Equipment shall enter and operate only within the delineated construction limits and corridors.

G7. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains. For equipment that is not barge-mounted and will be in contact with waters of the State, equipment must be cleaned before coming on-site.

Upland Spoils Disposal onto Barges:

G8. All over-water sections of the spoils conveyor shall be completely enclosed.

G9. A fixed downspout shall be installed and maintained on the end of the conveyor to prevent wind from blowing spoils into the water during material transfer.

G10. The conveyor shall be designed to deposit spoils in the center of the barge.

G11. Only barges with bin walls shall be loaded, and material shall be loaded so that material remains at least two feet below the tops of the bin walls. Barges shall be moved back and forth using a cable haulback system to ensure even loading.

G12. A trained dock worker shall remain stationed on the dock to observe operations during barge loading.

G13. Washing or sweeping any spilled material into the water is prohibited. If any spill does occur, loading operations shall be halted while the spilled material is cleaned up.

G14. Following the completion of barged spoils disposal operations, an underwater survey shall be performed along transects not more than ten (10) feet apart to detect accumulated spillage and quantify any resultant effects on the extent and density of eelgrass and macroalgae cover. Any loss of eelgrass or macroalgae cover shall be mitigated in the same manner as specified for outfall construction impacts (Section 6.1.3.3).

H. Permanent Stormwater and Wastewater Treatment Facilities

H1. All permanent stormwater facilities must be designed to comply with the Stormwater Management Manual for Western Washington, August 2001, or an equivalent manual.

H2. The permanent stormwater and wastewater treatment facilities shall be located and designed to address seismic faults and activities in accordance with all appropriate seismic building codes.

H3. The Applicant shall apply for, obtain, and comply with terms and conditions of the Department of Ecology's NPDES permit for the discharge of treated effluent through the marine outfall.

I. Emergency/Contingency Measures:

I1. In the event the Applicant is unable to comply with any of the terms and conditions of this Order due to any cause, the Applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Alice Kelly at (425) 649-7145.
- Submit a detailed written report to Ecology within five (5) days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

I2. 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. No refueling of equipment shall occur over, or within 50 feet of streams or wetlands.

J. General Conditions:

J1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

J2. The Applicant will be out of compliance with this Order if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

J3. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

J4. 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 foremen, and state and local government inspectors.

J5. The applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.

J6. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

J7. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by Order 1840 may obtain review thereof by appeal. Pursuant to chapter 43.21B RCW, a person can appeal this order to the Pollution Control Hearings Board within 30

days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 1/18/05 at Bellevue, Washington.

Jeannie Summerhays

Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington