



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

October 29, 2007

REGISTERED MAIL
RB 670 439 435 US

City of North Bend
Attn: Tom Mohr
P.O. Box 896
1155 East North Bend Way
North Bend, WA 98045

RE: Water Quality Certification Order #5187 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200700063, Gardiner Creek Sediment Control and Stream Realignment Project, City of North Bend, King County, Washington

Dear Mr. Mohr:

On January 12, 2007 the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from the City of North Bend requesting a Section 401 Water Quality Certification for the Gardiner Creek Sediment Control and Stream Realignment project. A joint public notice regarding the request was distributed by the Corps for the above-mentioned project pursuant to the provisions in Chapter 173-225 WAC on August 23, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on January 12, 2007, and in the public notice (August 23, 2007) complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On August 29, 2007, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form from the City of North Bend for this project. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the City of North Bend's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the City of North Bend's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



Tom Mohr
October 29, 2007
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If you have any questions, please contact Cynthia Walcker at (425) 649-4318 or cynt461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Susan Powell, U.S. Army Corps of Engineers
Stewart Reinbold, Washington Department of Fish and Wildlife, Region 4

e-cc: Penny Keys, Ecology
Loree' Randall, Ecology

IN THE MATTER OF GRANTING A) ORDER #5187
WATER QUALITY) Corps Reference #200700063
CERTIFICATION TO)
City of North Bend)
in accordance with 33 U.S.C. 1341) Excavate 1,930 cubic yards of accumulated
(FWPCA § 401), RCW 90.48.120, RCW) sediment from Gardiner Creek and install a 30-
90.48.260 and Chapter 173-201A WAC) foot by 40-foot precast concrete sediment trap.
) Realign, widen and rehabilitate the existing
) Gardiner Creek stream channel for a length of
) 700-feet. Located near 400 S. Fork Avenue SW,
) City of North Bend, King County, Washington.

TO: City of North Bend
Attn: Tom Mohr
P.O. Box 896
1155 East North Bend Way
North Bend, WA 98045

On January 12, 2007, the City of North Bend submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 23, 2007.

The proposed project entails removal of 1,930 cubic yards of accumulated sediment from Gardiner Creek and installation of a 30-foot by 40-foot precast concrete sediment trap at the downstream end of a 66-inch diameter culvert that crosses under I-90 near the Factory Stores outlet mall. The project also proposes to realign, widen and rehabilitate the existing stream channel for a length of 700-feet. Work includes installation of log cross vanes, construction of pools behind the cross vanes, installation of root-wad buttresses, log J-hooks, and stream bank stabilization with geotextile wrapped willow stakes. Additionally, a permanent access road, 12-foot by 130-feet, will be constructed from the outlet mall parking lot to the sediment trap. The project is located at 400 South Fork Avenue SW on the west side of the Outlet mall parking lot, City of North Bend, King County, Washington. ¼ Section Southwest, Section 9, Township 23 North, Range 8 East, WRIA #7, Snohomish Watershed.

Proposed mitigation includes replanting of disturbed areas with native trees, shrubs and ferns.

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 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, 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 quality 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

- A1. For purposes of this Order, the term "Applicant" shall mean the City of North Bend, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Permit Coordinator, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #5187 and Corps Reference #200700063.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 12, 2007. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA 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.
- A5. This Order shall be rescinded if the Corps does not issue a Section 404 permit.
- A6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. 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, and/or to ensure that conditions of this Order are being met.
- A9. 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.
- A10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor 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 before construction begins at the project or mitigation sites.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation per day for each day of continuing noncompliance.

B. Construction

- B1. Construction Stormwater and Erosion Control: Work in or 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 suitable to prevent exceedances of state water quality standards (*e.g.*, a perimeter erosion control silt fence, etc.), shall be in place before starting work at the site, and shall also comply with all requirements of the NPDES Construction Stormwater Permit, if applicable.
- B2. All construction debris and overburden material shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- B3. 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.
- B4. The Applicant shall prepare and implement a Temporary Water Pollution/Erosion Control Plan. Adjustments to planned erosion and sediment control may be necessary to successfully control off-site movement of materials. The following will be incorporated as part of the TESC Plan:
- Bare earth areas shall be protected from erosion using mulch or vegetation within seven days of project completion.
- B5. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- B6. A contingency plan shall be developed detailing actions to be made in the event of adverse weather conditions or other foreseeable undesirable conditions.
- B7. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas will be provided with adequate spill containment. During fueling and servicing of the excavator, BMPs shall be in place to contain any spill of petroleum products.
- B8. Turbid water generated from construction activities and/or work area shall not be discharged directly to waters of the state and shall be routed to an upland location above the ordinary high water line to allow removal of fine sediment and other contaminants.

C. Water Quality Sampling and Monitoring

- C1. Turbidity shall be assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 100-foot temporary mixing zone from the point of disturbance for waters up to 10 cfs flow at the time of construction. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable.

For this project, the following is considered to be an exceedance of the standard:

- Project-related turbidity visible at 100 feet from the discharge point, OR
 - 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, at 100 feet from the project site when a turbidimeter is used.
- C2. If an exceedance occurs the Applicant shall modify the activity causing the problem and continue to monitor every four (4) hours. If exceedances occur with two (2) consecutive measurements (four (4) hours apart), the applicant shall stop the activity causing the turbidity until the problem is resolved. The Applicant shall notify Ecology per condition A2 of any exceedances.

D. Project Mitigation

- D1. Impacts affecting the Gardiner Creek stream buffer shall be mitigated through measures described in the following document, except as modified by this Order:
- City of North Bend Priority 1 Storm Projects, Wetland and Buffer Mitigation Plan (Mitigation Plan), North Bend, Washington, dated November 2006.
- D2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
- Timing: Construction and installation of mitigation must occur within six months following project construction.
 - As-Built Report: An As-Built Report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:

- a) Vicinity map showing site access.
- b) The installed planting scheme showing densities, sizes, and approximate locations of plant communities (this may include several typical planting schemes), as well as plant sources and the time of planting.
- c) Photographs of the area taken from permanent reference points.
- d) Locations of photopoints, transects, and sampling sites.
- e) A description of any changes to the mitigation plan that occurred during construction.

A copy of the as-built report shall be sent to the 401/CZM Federal Permit Coordinator within 60 days of completing plantings, and in no case later than December 31, 2008.

- Field Supervision: Plant installation shall be field-supervised by a qualified plant ecologist to ensure that plants are appropriately placed.
- Monitoring: Monitoring shall be completed as described in the Mitigation Plan.
- Monitoring shall take place over a period of 5 years, with monitoring performed in years 1, 2, 3, and 5. Copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Project Manager within 30 days of completing monitoring for the given year and no later than December 31 of each monitoring year.
- Maintenance: The Applicant is responsible for maintenance of the mitigation site such that the performance standards outlined in the Mitigation Plan are met. Maintenance may include:
 - Installing supplemental plantings as needed;
 - Watering or providing irrigation during dry periods or that the soils are unusually dry;
 - Removing non-native or invasive species;
 - Providing fencing around ground plants to prevent animal damage; and
 - Providing fencing to prevent vandalism or damage caused by humans.

E. Timing Requirements

- E1. This Order is valid until all compliance requirements in this document have been met.

- E2. In-water work shall be subject to timing limitations imposed by Washington 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.

F. Notification Requirements

- F1. The Applicant shall notify Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000, fax (425) 649-7098, or in writing to Ecology Northwest Regional Office, 3190 – 160th Avenue SE, Bellevue, WA 98008., referencing Corps Reference #200700063, Order #5187.
- a. at least seven (7) days in advance of the pre-construction meeting.
 - b. at least three (3) days prior to the start of construction at the project site.
 - c. within 14 days after completion of construction at the project site.

G. Emergency/Contingency Measures

- G1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- G2. The work site 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.
- G3. 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.
- G4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a) Cease operations at the location of the violation.
 - b) Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c) Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Permit Coordinator at (425) 649-4318 or (425) 649-7000.
- d) Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- G5. 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.
- G6. In the event of finding distressed or dying fish, the Applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant is instructed by Ecology or WDFW on what to do with them. Ecology or WDFW may require analyses of these samples before allowing the work to resume.
- G7. 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.

H. Appeal Process

You have a right to appeal this Order. To appeal this Order you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.

- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Cynthia Walcker
3190 160th Avenue SE
Bellevue, WA 98008-5452

*For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated October 29, 2007 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology, Northwest Regional Office
State of Washington

ATTACHMENT A

**CITY OF NORTH BEND
GARDINER CREEK SEDIMENT CONTROL AND STREAM REALIGNMENT PROJECT
Water Quality Certification Order #5187**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #5187 Section 401 Water Quality Certification for the City of North Bend Gardiner Creek Sediment Control and Stream Realignment Project. I have also read and understand all permits, plans, documents, and approvals associated with the City of North Bend Gardiner Creek Sediment Control and Stream Realignment project referenced in this Order.

Signature

Date

Title

Company