



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

July 22, 2005

NorMed-Shaw Partnership  
ATTN: Lawrence M. Shaw  
PO Box 3644  
Seattle, WA 98124

**REGISTERED MAIL**  
**RR 359 893 655 US**

Dear Mr. Shaw:

**RE: Order # 2590**  
**U.S. Army Corps Reference # 200500013**  
**Water Quality Certification/Coastal Zone Consistency Determination for NorMed-Shaw Partnership, Wetland Fill for Construction of Additional Office and Warehouse Space, Southgate Creek, King County, Washington**

The request for certification for proposed work in and adjacent to Southgate Creek 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. This letter also serves as the State response to the Corps of Engineers.

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 Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at [rp461@ecy.wa.gov](mailto:rp461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent  
Interim Section Manager  
Shorelands and Environmental Assistance Program

GT:rrp:rc  
Enclosure

cc: Suzanne Skadowski, U.S. Army Corps of Engineers  
Larry Fisher, Washington Department of Fish and Wildlife  
Alison Moss, Dearborn & Moss, PLLC  
Penny Keys, Ecology  
Erik Stockdale, Ecology  
Loree' Randall, Ecology



**IN THE MATTER OF GRANTING A ) ORDER # 2590**  
**WATER QUALITY ) Corps Reference No. 200500013**  
**CERTIFICATION TO ) Placement of fill in 0.74 acre of wetlands**  
**NorMed-Shaw Partnership ) adjacent to Southgate Creek for commercial**  
in accordance with 33 U.S.C. 1341 ) development; Tukwila, King County,  
FWPCA § 401, RCW 90.48.120, RCW ) Washington; Section 15, Township 23 N.,  
90.48.260 and Chapter 173-201A WAC ) Range 4 E.

TO: NorMed-Shaw Partnership  
ATTN: Lawrence M. Shaw  
PO Box 3644  
Seattle, WA 98124

On April 4, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The project consists of placing fill in 0.74 acre of wetlands for construction of additional office and warehouse space.

Compensatory wetland mitigation includes creation of 0.75 acres (32,490 square feet) of wetland and enhancement of 1.1 acres (47,427 square feet) of wetland. Additionally, approximately 200 linear feet of Southgate Creek will be daylighted and at least 327 linear feet of new stream channel will be added.

A public notice was originally circulated by the U.S. Army Corps of Engineers (Corps) under Reference #2002-4-00296 on November 18, 2002. The project was withdrawn on November 14, 2003 in order to allow the applicant to finalize its wetland mitigation proposal.

#### **AUTHORITIES:**

For purposes of this Order, the term "Applicant" means NorMed-Shaw Partnership and its agents, assigns, and contractors.

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.

**CONDITIONS OF ORDER # 2590 AND WATER QUALITY CERTIFICATION:**

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. Southgate Creek, WRIA #9, is classified as Class A waters of the state. Certification of this proposal does not authorize 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 Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

**B. Project Mitigation:**

- B1. Impacts to wetlands and aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Certification and Order, and including any approved revisions:
  - NorMed Development Wetland Mitigation Report, prepared by Adolfson Associates, sheet 5 of 5 of NorMed Development mitigation drawings, revised July 5, 2005.
  - Wetland mitigation planting plan, sheet 2 of 5, revised July 5, 2005.
  - Wetland mitigation notes and details plans, sheet 4 of 5, dated July 5, 2005.
  - Wetland mitigation grading plan, sheet 1 of 5, revised July 5, 2005.
  - Stream restoration plan, sheet 3 of 5, revised July 5, 2005.
  - Joint Aquatic Resources Permit Application Form, November 4, 2004, received by Ecology November 5, 2004.
- B2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for all mitigation sites:
  - Pre-Construction Meeting: The Applicant's wetland ecologist assigned to oversee wetland mitigation construction shall be present at the pre-construction meeting for

the project. The ecologist shall confirm attendance of the meeting no later than 10 working days after the meeting, by submitting meeting notes and names and titles of those in attendance to Ecology's Rebekah Padgett.

- Timing: The wetland mitigation plan shall be implemented concurrently with the site construction for the development.
- Record Report and Drawings: A report documenting the final design of the mitigation project areas shall be prepared when site construction and planting are completed. The "as built" or "Record Report" shall include the following:
  - a. Vicinity map showing site access;
  - b. Final site topography;
  - c. Hydrologic design for mitigation sites;
  - d. Drawings that clearly identify in plan view the boundaries of the mitigation areas;
  - e. The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
  - f. Photographs of the area taken from permanent reference points;
  - g. Locations of photopoints, sampling and monitoring sites; and
  - h. A description of any changes to the mitigation plan that occurred during construction.

A copy of the Record Report shall be sent to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

- Field Supervision: The wetland mitigation grading activity and plant installation shall be field-supervised by a qualified wetland ecologist to ensure that proper elevations are achieved and plants are appropriately placed. A chronology of field supervision visits shall be included in the wetland monitoring reports submitted to the Corps of Engineers and Ecology.
- Soil Grading: The top 12 inches of the soil on the site is proposed for removal as a measure to control reed canarygrass. The amount removed may be reduced based on site conditions, provided that written approval is obtained by the Corps of Engineers and Ecology.
- Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation sites (such as a conservation easement, property deed showing County of City ownership, or similar) to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006.

- **Performance Standards:** The performance of the wetland mitigation listed in the wetland mitigation report shall be assessed by an appropriate quantitative vegetative cover field assessment methodology.
- **Monitoring:** Monitoring to ensure that the project performance standards are met shall be performed as described in the wetland mitigation report. The monitoring period shall be for 10 years, or longer if performance standards are not met. **Copies of all monitoring reports shall be submitted to Ecology at 3190 – 160<sup>th</sup> Avenue SE, Bellevue, WA, 98008-5452**, as well as to the U.S. Army Corps of Engineers. The monitoring reports should indicate Ecology Order #2590, U.S. Army Corps Reference #200500013.
- **Maintenance:** Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the wetland mitigation report. Irrigation from June through mid-October for the first growing season following plant installation is strongly recommended to ensure a minimum of 1 inch of water per week. Irrigation may not be necessary on those weeks where rainfall at the site exceeds 1 inch per week. Maintenance will also include removal of non-native invasive species as needed throughout the wetland mitigation sites.
- **Weed Control:** The mitigation report stipulates that no more than 20 percent cover of non-native or invasive plant species will be allowed, except for 10 percent for reed canarygrass. In addition, 0 percent of Japanese knotweed (*Polygonum cuspidatum*) and its hybrid Bohemian knotweed (*Polygonum bohemicum*) will be allowed for the site during the duration of the monitoring period.
- **Contingency Measures:** The Applicant is responsible for the success of the mitigation measures. The wetland mitigation report states that a contingency plan shall be prepared on a case-by-case basis to remedy any aspect of the mitigation that does not meet the performance standards. The contingency plan shall be approved by Ecology, the Corps of Engineers and the City. The monitoring period may be extended beyond the 10-year period if contingency measures are implemented.
- **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.
- **Native Growth Protection Area (NGPA) Signs:** The NGPA signs shall be repaired and or replaced if damaged, for the duration of the monitoring period.

**C. Stormwater Management:**

- C1. 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., detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites, and shall also comply with all requirements of the NPDES Permit.
- C2. All permanent stormwater facilities must be designed to comply with the Stormwater Management Manual for Western Washington, February 2005 (Ecology Publication No. 05-10-30), or other approved manual.
- C3. Stormwater treatment facilities are to be maintained so they function as designed.

**D. Construction:**

- D1. Before clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed before 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.
- D2. 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.
- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. 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.
- D5. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

**E. Emergency/Contingency Measures:**

- E1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, 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 Rebekah Padgett at (425) 649-7129.
- Submit a detailed written report to Ecology within 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 Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E2. 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 creeks or wetlands.

**F. Notification:**

F1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of placing fill in wetlands or other waters of the state. Notification can take place by e-mail to [rpad461@ecy.wa.gov](mailto:rpad461@ecy.wa.gov), telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

**G. General Conditions:**

G1. Applicant shall comply with conditions in the Washington Department of Fish and Wildlife's Hydraulic Project Approval, Control Number 00000F4793-1, issued June 10, 2005, that protect water quality and aquatic habitat. These conditions are found in the Flow Bypass and Channel Realignment sections of the Hydraulic Project Approval.

G2. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

G3. Applicant will be out of compliance with this certification 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.

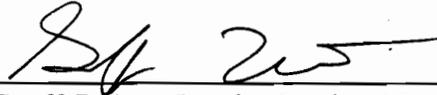
- G4. Applicant will be out of compliance with this certification and must reapply with an updated application if 5 years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- G5. Applicant will be out of compliance with this certification 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.
- G6. This Order is valid until all compliance requirements in this document have been met.
- G7. 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. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.
- G8. 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.
- G9. 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.
- G10. 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 #2590 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 July 22, 2005 at Bellevue, Washington.



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Geoff Tallent, Interim Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington