

After Recording Return to:

Barbara Sikorski, Asst. Clerk
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

Agencies: Snohomish County and City of Mill Creek
Tax Account No.: N/A
Legal Description: N/A
Reference No. of Documents Affected: ILA Recorded at AFN# (Insert AFN for Annex ILA)
Filed with the Auditor pursuant to RCW 39.34.040
Document Title:

**INTERLOCAL AGREEMENT
BETWEEN THE
CITY OF MILL CREEK AND SNOHOMISH COUNTY
CONCERNING THE DISPOSITION OF 35TH AVE. SE AND WETLAND
MITIGATION TRACTS WITHIN THE ANNEXATION OF LAND
KNOWN AS THE NORTHEAST AREA**

Section 1. Parties

This Interlocal Agreement (the "Agreement" or "ILA") is made by and between the City of Mill Creek (the "City") and Snohomish County (the "County"), political subdivisions of the State of Washington, pursuant to the Growth Management Act, Chapter 36.70A RCW; the State Environmental Policy Act, Chapter 43.21C RCW; and the Interlocal Cooperation Act, Chapter 39.34 RCW.

NOW, THEREFORE, in consideration of the terms, conditions, and mutual benefits of this Agreement, the County and City agree as follows:

Section 2. Recitals

2.1 The Snohomish County Boundary Review Board ("BRB") approved the boundaries of the Northeast Area Annexation in their written findings on July 25, 2005.

2.2 The term "Northeast Area" refers to approximately 553.25 acres of property located within Snohomish County and generally bounded by 132nd Street SE (SR 96) to the north, Seattle Hill Road to the southeast, the existing City limits

to the west, and 144th Street SE to the south. Exhibit A identifies the location and boundaries of the Northeast Area.

2.3 The purpose of this Agreement is to supplement the "Interlocal Agreement Between the City of Mill Creek and Snohomish County Concerning the Annexation of Land Known as the Northeast/Area A Annexation," dated October 25, 2005, by specifying certain responsibilities pertaining to maintenance of 35th Avenue SE and two wetland / stream mitigation tracts located within the Northeast Area.

2.4 The City's Northeast Area annexation, as approved by the Mill Creek City Council on October 25, 2005, includes the right-of-way for 35th Avenue SE from 132nd Street SE to 144th Street SE.

2.5 In 2004 the County completed a road widening and improvement project for 35th Avenue SE from 120th Place SE to Seattle Hill Road, including the section of 35th Avenue SE that is located within the Northeast Area.

2.6 The County's design and construction of the 35th Avenue SE improvement project accounted for expected settlement of that road south of 132nd Street SE, but additional road maintenance expenditures within the Northeast Area will be necessary over the next ten (10) years as final settlement occurs.

2.7 The environmental permits for the County's 35th Avenue SE improvement project require a program of wetland restoration and stream bank enhancement on tracts inside and outside the Northeast Area for mitigation of project impacts occurring from 120th Place SE to Seattle Hill Road.

2.8 Approximately one half of the wetland areas impacted by the 35th Avenue SE improvement project are located within the Northeast Area.

2.9 The City and the County desire to coordinate road maintenance and wetland mitigation activities related to 35th Avenue SE and wish to share certain expenses associated with these activities over a certain period of time.

2.10 The scope of this Agreement is limited to the Northeast Area and does not apply to any other annexation or territory.

Section 3. 35th Avenue SE Roadway Maintenance

3.1 Scope of Roadway Maintenance

The road maintenance provisions of this Agreement apply to the section of 35th Avenue SE between the intersection of Silver Crest Drive and the intersection of 144th Street SE, a distance of approximately 2700 feet as illustrated in Exhibit A.

3.2 Geotechnical Report Findings and Recommendation

The Geotechnical Report for the 35th Avenue SE improvement project concluded that relatively uniform, long-term settlements of 2 to 8 inches in the road are expected over a 20-year period. Settlement conditions observed to-date indicate a need for "spot maintenance" to address settlement and drainage at several locations north of 144th Street SE and pavement deterioration south of Silver Crest Drive. The parties acknowledge that these conditions may change over time as to location and severity.

3.3 Preparation of 2006 Work Scope and Cost Estimate

The County shall prepare a work scope and cost estimate for settlement and drainage "spot maintenance" measures to be accomplished by Snohomish County during 2006. Such measures and costs estimates shall be identified and mutually approved by the City's Public Works Director and the County Engineer.

3.4 Spot Maintenance Defined

The "spot maintenance" measures shall include but not be limited to:

Repairs to improve the roadway drivability in the areas near the grouted culvert crossing and Verizon vault as depicted on the County's "as-built" road plans for 35th Avenue SE. The transitions from the hard spots to the roadway experiencing continuing settlement will be evaluated and a remedial measure constructed as appropriate.

Repairs will be made to ensure that water does not pond in the travel lanes of the roadway or the pedestrian walkways. Repairs may include asphalt grinding, thin overlays or installation of new inlets.

The shoulder areas will be repaired to resolve erosion damage.

Surface repairs including chip seals and thin overlays preceded by pavement grinding where appropriate will be undertaken, eliminating all depressions that

affect drainage, safety or the drivability of the roadway. The roadway will be improved to a minimum of a "medium" criterion as established in the Northwest Pavement Management Association "Pavement Surface Condition Field Rating Manual for Asphalt Pavement".

The alligatored pavement in the northbound lane from station 3+490 to 3+600, as identified on the County's "as-built" road plans for 35th Avenue SE, shall be repaired.

3.5 County and City Responsibilities

From January 2006 through December 2015, the City and the County shall proportionally share responsibility for any "extraordinary maintenance" measures caused by settlement of 35th Avenue SE. Such "extraordinary maintenance" measures shall be identified and mutually approved by the City's Public Works Director and the County Engineer. The scope, cost and responsibility for completion of any extraordinary maintenance measure shall be mutually agreed upon by the City Public Works Director and the County Engineer before the measure is undertaken.

3.5.1 Extraordinary Maintenance Defined

Extraordinary maintenance shall be defined as settlement greater than 5 inches in 50 feet. The parties agree that engineering measures other than overlays and repaving will be investigated.

3.6 County and City Proportional Cost Share

The City and the County shall proportionally share the cost of approved "extraordinary maintenance" measures according to the percentage scale below, beginning in 2006. The "year," for purposes of determining percentages, shall be the year in which the costs are incurred by the City or the County. Following the initial five year period (2006 - 2010), the City and the County shall determine whether the payment responsibilities shown below may be reduced or terminated by mutual consent. The City of Mill Creek shall be the lead agency for the purpose of implementation of "extraordinary maintenance" activities.

Cost Share Percentage										
Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Snohomish County	50	45	40	35	30	25	20	15	10	5
City of Mill Creek	50	55	60	65	70	75	80	85	90	95

3.7 Routine Maintenance By the City of Mill Creek

Any "routine maintenance" for 35th Avenue SE inside the Northeast Area, but not in the scope of "spot maintenance" to be accomplished by the County in 2006, shall be the responsibility of the City from the effective date of the annexation.

3.8 Act of Nature Disclaimer

Any damage to 35th Avenue SE caused by flooding, earthquake or other catastrophic event, or by any other cause not related to settlement of organic soils underlying the road, after the effective date of the Northeast Area annexation is not subject to this Agreement.

3.9 Wetland Mitigation

3.9.1 Existing Federal and State Mitigation Permits

The following "Mitigation Permits" (attached as Exhibits B, C and D) have been issued for the County's 35th Avenue SE (120th Place SE to Seattle Hill Road) road improvement project:

- Army Corps of Engineers Permit #1997-4-01982
- Department of Ecology Water Quality Certification #02SEANR-3940
- Washington Department of Fish and Wildlife Hydraulic Project Approval #00-E6394-01

3.9.2 Mitigation Sites

The Mitigation Permits identify three mitigation sites: the "Buffalo Farm," "Penny Creek" and the "Tanaka Trust." The "Tanaka Trust" site is located outside the Northeast Area in the northeast quadrant of the 35th Avenue SE/132nd Street SE intersection and is not subject to the provisions of this agreement. Two sites are located inside the Northeast Area: the "Buffalo Farm" in the southeast quadrant of the intersection of 35th Avenue SE and 132nd Street SE and "Penny Creek" on the east side of 35th Avenue SE, slightly more than one-half mile south of 132nd Street SE. The County shall retain responsibility for plant establishment at the Buffalo Farm and Penny Creek sites through the plant establishment period required by the 35th Avenue SE road improvement construction contract and the Mitigation Permits.

3.9.3 Site Ownership and Title Transfer

The "Penny Creek" stream enhancement area is located within the right-of-way for 35th Avenue SE and ownership will be transferred to the City upon

annexation. The County shall retain ownership of the "Buffalo Farm" mitigation tract until such time that the monitoring term set forth in the Mitigation Permits is concluded (2016). Upon expiration of the monitoring term, the County shall transfer ownership of the Buffalo Farm tract to the City via a statutory warranty deed.

3.9.4 Maintenance Cost Share

The City agrees to reimburse the County 55% of the County's annual maintenance and monitoring costs for the Buffalo Farm and Penny Creek mitigation sites for five (5) years (expected to be February 2006 through January 2011) from completion of the plant establishment period. The City shall be responsible for 100% of the maintenance and monitoring costs after the first five years until completion of the monitoring period set forth in the above described permits. The County shall provide the City its estimated annual budget for these activities no later than September 1 of each year for the following year.

Section 4. Indemnification and Liability

4.1 Each party shall be responsible for the acts, omissions and performance of itself and its elected and appointed officials, officers, employees and agents arising out of this Agreement.

4.2 The County shall protect, hold harmless, indemnify, and defend at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of the County's act, omission, or performance of this Agreement, including claims by the County's employees or third parties.

4.3 The City shall protect, hold harmless, indemnify and defend, at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever arising out of the City's act, omission, or performance of this Agreement, including claims by the City's employees or third parties.

4.4 In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the City and the County, including claims by the City's or the County's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the County and the City, their officers, officials, employees and volunteers, each party's liability shall be only to the extent of that party's negligence as determined by a court of competent jurisdiction.

4.5 No liability shall attach to the City or the County by reason of entering into this Agreement except as expressly provided herein.

Section 5. Dispute Resolution

If the County and City cannot reach agreement regarding the interpretation or implementation of any provision of this Agreement, the County and City agree to use formal dispute resolution through professional mediation. All costs for mediation or other dispute resolution services shall be divided equally between the County and the City, but each jurisdiction will be responsible for its own costs, including legal representation. If mediation is unsuccessful, either party may then take any action it deems necessary in Snohomish County superior court.

Section 6. Contacts for Agreement

The contact persons for the administration of this Agreement are:

Doug Jacobson, City Engineer
City of Mill Creek
15728 Main Street
Mill Creek, WA 98292
(425) 921-5722

Steve Thomsen, County Engineer
Snohomish County
Department of Public Works
3000 Rockefeller Avenue
Everett, WA 98201
(425) 388-3488

Section 7. General Provisions

7.1 Cooperation. The parties shall cooperate with each other in administering this Agreement, and in particular shall jointly draft and execute such documents as may be necessary to effectuate the terms and conditions of this Agreement and/or transfer the land, funds, rights and/or responsibilities allocated in or arising under this Agreement.

7.2 No Third Party Beneficiaries. This Agreement is for the benefit of the City and County only and is not intended to benefit any other person or entity. No person or entity not a party to this Agreement shall have or claim any third-party beneficiary or other rights. This Agreement is not intended to and shall not be construed to benefit a particular class of persons or individuals.

7.3 Honoring Existing Agreements, Standards, and Studies. Unless otherwise specified in this Agreement, the County and City will honor all existing mitigation agreements and interlocal agreements between them.

7.4 Relationship to Existing Laws and Statutes. This Agreement in no way modifies or supersedes existing state laws and statutes. In meeting the

commitments encompassed in this Agreement, the parties will comply with the requirements of the Open Meetings Act, Public Records Act, Growth Management Act, State Environmental Policy Act, annexation statutes, and other applicable state and local laws. The County and City retain the ultimate authority for land use and development decisions within their respective jurisdictions. By executing this Agreement, the County and City do not purport to abrogate the decision-making responsibility or police powers vested in them by law.

7.5 Effective Date. This Agreement shall become effective by the official action of the governing bodies of each party and the signing of the Agreement by each party's authorized representative.

7.6 Termination. This Agreement shall terminate ten (10) years after the effective date of the Northeast Area annexation or upon the resolution of any disputes arising under this Agreement, whichever occurs later.

7.7 Severability. If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

7.8 Exercise of Rights or Remedies. Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation and shall not prevent either party from pursuing that right at any future time.

7.9 Records. Both parties shall maintain adequate records to document obligations performed under this Agreement. Upon reasonable notice, each party shall have the right to review the other party's records with regard to the subject matter of this Agreement.

7.10 Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between the parties with respect to 35th Avenue SE and the subjects covered herein. All amendments shall be in writing and executed in the same manner as provided for the execution of this Agreement.

7.11 Mutual Negotiation. This Agreement has been mutually negotiated by the parties. No ambiguity shall be construed against either party based upon a claim that the party drafted the ambiguous language. The parties each acknowledge, represent, and agree that they have read this Agreement; that they fully understand the terms thereof; that they have been fully advised by their legal counsel; and that the Agreement has been executed with the advice of their legal counsel.

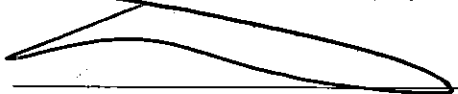
7.12 Governing Law and Stipulation of Venue. This Agreement shall be governed by the laws of the State of Washington. Any action shall be brought in the Superior Court for Snohomish County.

7.13 Contingency. The obligations of the parties are contingent on the availability of funds through legislative appropriation and allocation in accordance with law. In the event funding is withdrawn, reduced, or limited in any way after the effective date of this Agreement, the City or County shall consult and seek appropriate amendment(s) and/or renegotiation in light of the new funding limitations and conditions.

7.14 Recording. This Agreement shall be promptly recorded in the Office of the Snohomish County Auditor.

IN WITNESS HEREOF, the parties have signed this Agreement on the dates indicated below.

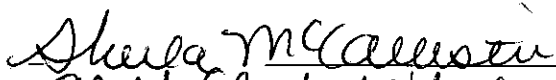
SNOHOMISH COUNTY:



Aaron G. Reardon, County Executive


Date: December 9, 2005
MARK SOINE
Deputy Executive

ATTEST:



Sherrill McCallister
Asst. Clerk of the Council

APPROVED AS TO FORM:
Snohomish County Prosecutor



Deputy Prosecuting Attorney 11/10/05

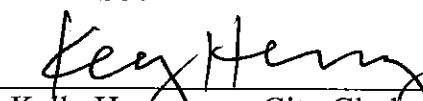
CITY OF MILL CREEK:



Steve Nolen, City Manager

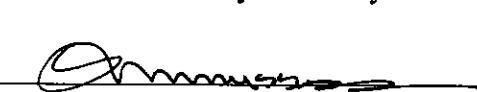
Date: December 14, 2005

ATTEST:



Kelly Hennessey, City Clerk

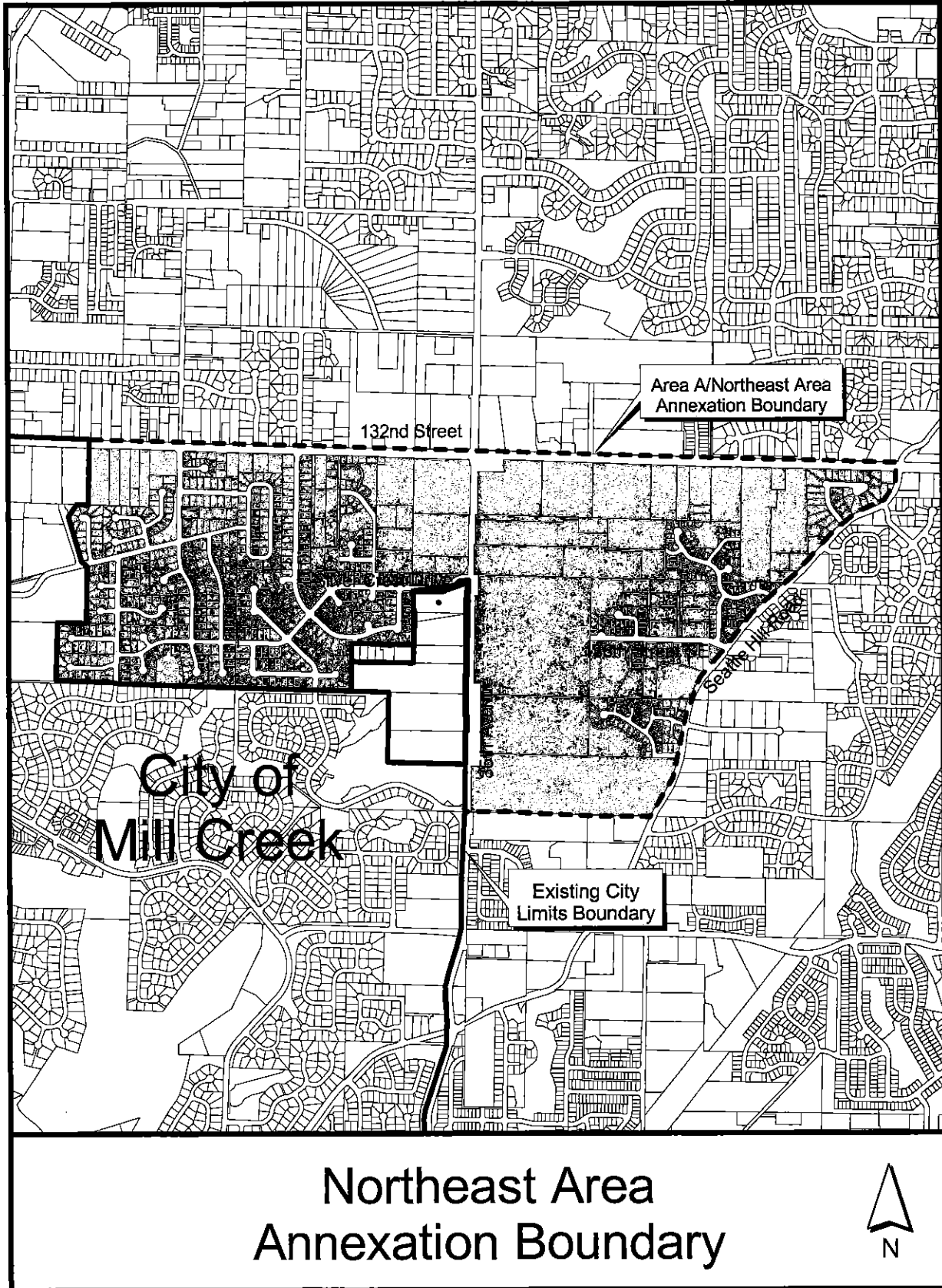
APPROVED AS TO FORM:
Office of the City Attorney



Scott M. Missall
Short Cressman & Burgess PLLC

- Exhibit A:** Location and Boundaries of the Northeast Area
Exhibit B: Army Corps of Engineers Permit #1997-4-01982
Exhibit C: Department of Ecology Water Quality Certification #02SEANR-3940
Exhibit D: Washington Department of Fish and Wildlife Hydraulic Project Approval #00-E6394-01

EXHIBIT A





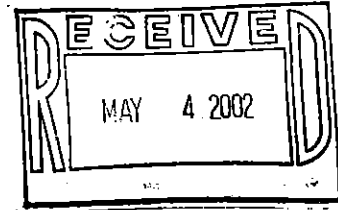
REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

MAY 9 2002

Exhibit B

Regulatory Branch



Snohomish County Public Works
2930 Wetmore Avenue
Everett, Washington 98201-4044

Reference: 1997-4-01982
Snohomish County
Public Works

Enclosed is a Department of the Army permit which authorizes performance of the work described in your referenced application.

You are cautioned that any change in the location or plans of the work will require submittal of a revised plan to this office for approval prior to accomplishment. Deviation from approved plans may result in imposition of criminal or civil penalties.

Your attention is drawn to General Condition 1 of the permit which specifies the expiration date for completion of the work. You are requested to notify this office of the date the work is completed.

Sincerely,

Jonathan Smith

for Thomas F. Mueller
Chief, Regulatory Branch

Enclosure

CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT

Permit Number: 1997-4-01982

Name of Permittee: Snohomish County Public Works

Date of Issuance: MAY 9 2002

Upon completion of the activity authorized by this permit, sign this certification and return it to the following address:

Department of the Army
U.S. Army Corps of Engineers
Seattle District, Regulatory Branch
Post Office Box 3755
Seattle Washington 98125-3755

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers' representative. If you fail to comply with your authorization, your project is subject to suspension, modification, or revocation.

- ☐ The work authorized by the above referenced permit has been completed in accordance with the terms and conditions of your permit.
- ☐ The mitigation required (not including monitoring) by the above referenced permit has been completed in accordance with the terms and conditions of your permit.

Signature of Permittee

DEPARTMENT OF THE ARMY PERMIT

Permittee: Snohomish County Public Works

Snohomish County Public Works
2930 Wetmore Avenue
Everett, Washington 98201-4044

Permit No: 1997-4-01982

Issuing Office: Seattle District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Place fill into 2.83 acres of wetlands to widen a 3.2 mile section of 35th Avenue Southeast from 120th Street Southeast to Seattle Hill Road in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (to increase the traffic capacity and move vehicles through the area more efficiently and improve traffic, pedestrian, and bike safety).

Project Location: In wetlands adjacent to the Marsh Creek Watershed, Snohomish River at Everett, Washington.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on MAY 9 2005. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. After a detailed and careful review of all the conditions contained in this permit, the permittee

acknowledges that, although said conditions were required by the Corps, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

Special Conditions:

a. You must implement the ESA requirements and/or agreements set forth in the Biological Assessment titled "35th Avenue S.E. 120th Place S.E. to Seattle Hill Road - Road Improvement Project", prepared by Parametrix, Inc., dated March 2000, in their entirety. The U.S. Fish and Wildlife Service concurred with a finding of "may affect, not likely to adversely affect" for Coastal/Puget Sound bull trout and "no effect" for Bald eagles based on this document on October 16, 2000 (USFWS Reference Number 1-3-99-TA-0167). The National Marine Fisheries Service concurred with a finding of "may affect, not likely to adversely affect" for Puget Sound chinook and its critical habitat based on this document on June 20, 2001 (NMFS Reference Number WSB-00-245). Both USFWS and NMFS will be informed of this permit issuance and will enforce any known violations of the commitments made in these documents pursuant to the ESA.

b. The Conservation Measures and Best Management Practices as stated in the BA shall be implemented

c. The wetland areas enhanced as mitigation for work authorized by this permit shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purpose of enhancing or restoring the mitigation associated with this permit. In addition, a description of the mitigation areas identified in the final mitigation plan as approved, and any subsequent permit mitigation revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this documentation must be provided to the Corps of Engineers, Seattle District within 30 days of permit issuance and prior to construction.

d. A status report on the mitigation construction, including as-built drawings, must be submitted to the Regulatory Branch, Corps of Engineers, 13 months from the date of permit issuance. Annual status reports are required until the mitigation construction is completed.

e. The Mitigation as stated in the Final Critical Areas Study "35th Avenue S.E. Road Improvement Project 100th Street S.E. to Seattle Hill Road" prepared by Parametrix Inc., and dated November 2000 and the Addendum to the Critical Areas Study prepared by Snohomish County Public Works, and dated March 2002, must be implemented. All monitoring reports must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch.

f. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).
2. Limits of this authorization.
- a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of the permit.
 - b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply

SNOHOMISH COUNTY PUBLIC WORKS

1997-4-01982

with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

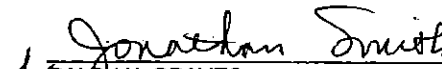
6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

X 
SNOHOMISH COUNTY PUBLIC WORKS

X 5/1/02
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

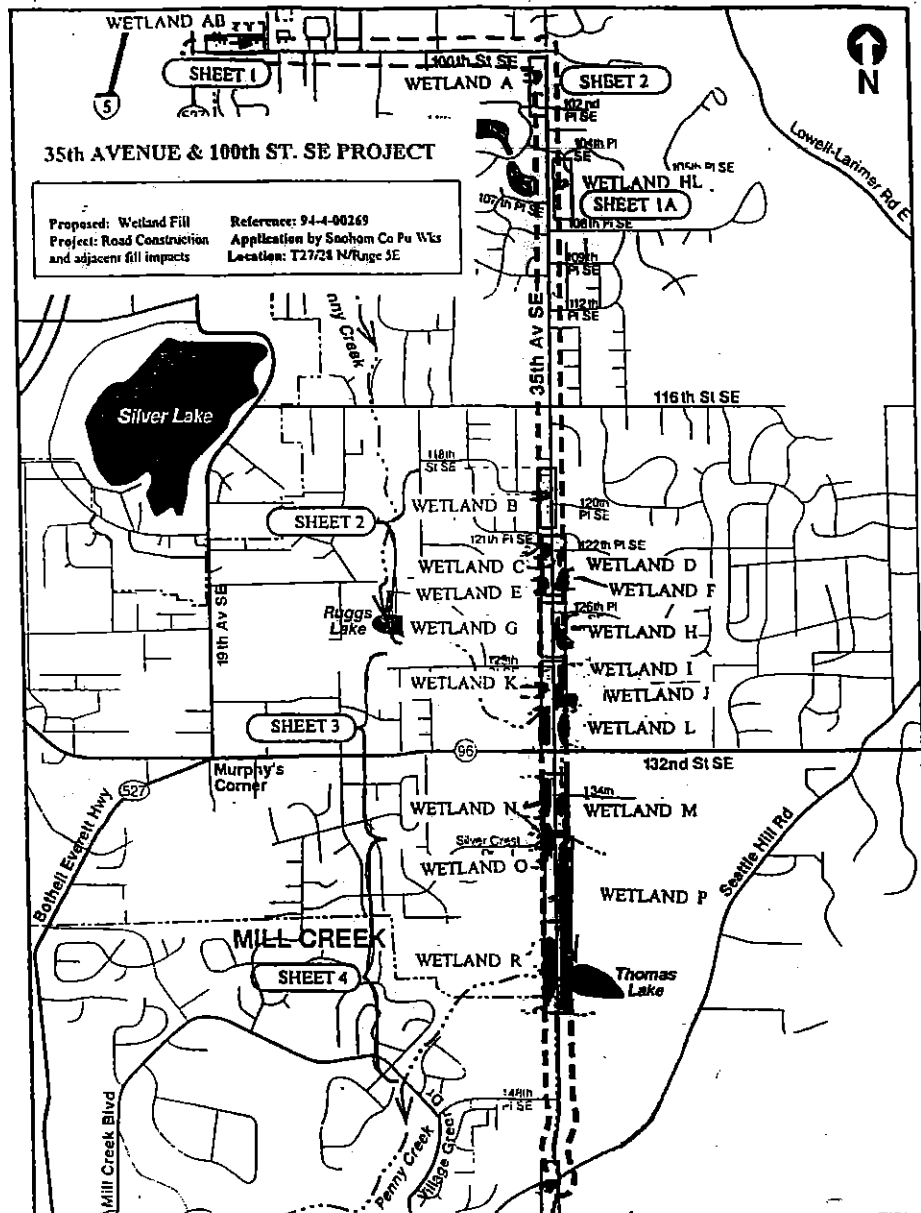

for RALPH H. GRAVES
Colonel, Corps of Engineers
District Engineer

9 May 2002
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE)

(DATE)



PURPOSE: ROAD IMPROVEMENTS

PROPOSED: PLACE FILL INTO 2.83 AC WETLANDS
IN: MARSH CREEK WATERSHED, SNOHOMISH RIVER
AT: EVERETT
COUNTY: SNOHOMISH STATE: WA
APPLICATION BY: SNOHOMISH COUNTY PUBLIC WORKS
SHEET 2 OF 4 DATE: 4/17/2001

REFERENCE: 1997-4-01982

**Summary of Impacts and Mitigation for Wetlands and
Wetland Buffers in the 35th Avenue SE Project Area**

Wetland	Classification ^(a)	County Rating ^(b)	Required Buffer Width ^(c) (ft)	Impacts ^(d)		Ratio	Mitigation ^(e)	
				Wetland Fill (ft ²)	Buffer (ft ²)		Wetland Area (ft ²)	Buffer Area (ft ²)
A	SS	2	25	178	0	1.5	1,317	0
B	SS	2	25	22	0	1.5	1,317	0
AB	FO	2	50	321	2,900	2	6,562	12,400
HL	FO	2	50	12,450	12,500	2	24,900	12,400
C	SS	3	25	4,653	4,065	1.5	6,980	4,065
C-1	EM	4	25	473	1,539	1	473	1,539
C-2	SS	3	25	713	2,328	1.5	1,069	2,328
D	EM	4	25	161	2,095	1	161	2,095
D-1	SS/FO	2	50	0	0	N/A	0	0
E	SS	3	25	1,988	2,747	1.5	2,982	2,747
F	SS/FO	2	50	3,281	5,001	2	6,562	5,001
G	SS	3	25	522	1,727	1.5	783	1,727
G-1	OW	4	25	282	775	1.5	422	775
H	SS	4	25	0	0	N/A	0	0
H-1	SS/EM	2	50	0	538	N/A	0	538
I	SS	2	50	217	6,167	1.5	326	6,167
J	EM	2	50	7,952	3,674	1	7,952	3,674
K	SS/EM/RUB	2	50	213	1,298	1.5	319	1,298
L-1	SS/EM	2	50	11,399	6,258	1.5	17,099	6,258
La	SS/EM/RUB	2	50	43,922	14,506	1.5	65,883	14,506
Lb	EE/SS/RUB	2	50	0	1,302	N/A	0	1,302
M	SS/EM	2	50	0	4,747	N/A	0	4,747
N	EM	4	25	16,203	7,101	1	16,203	7,101
N-1	EM	4	25	838	3,270	1	838	3,270
O	SS/OW	1	75	1,274	9,738	3	3,823	9,738
P	SS/EM	3	25	766	0	1	766	0
P-1	EM	3	25	1,312	8,232	1	1,312	8,232
P-2	SS/EM/OW	1	75	3,934	7,106	3	11,802	7,106
P-3	SS/EM/OW	1	75	7,630	6,404	3	22,890	6,403
Q	EM/OW	1	75	0	13,256	N/A	0	13,256
R	SS/FO/EM/OW	1	75	15,937	8,802	3	47,812	8,802
S	SS	4	25	0	336	N/A	0	336
T	SS	4	25	0	0	N/A	0	0
TOTAL (ft ²)				137,892	136,715		244,176	136,715
TOTAL (ac)				3.17	3.14		5.81	3.14

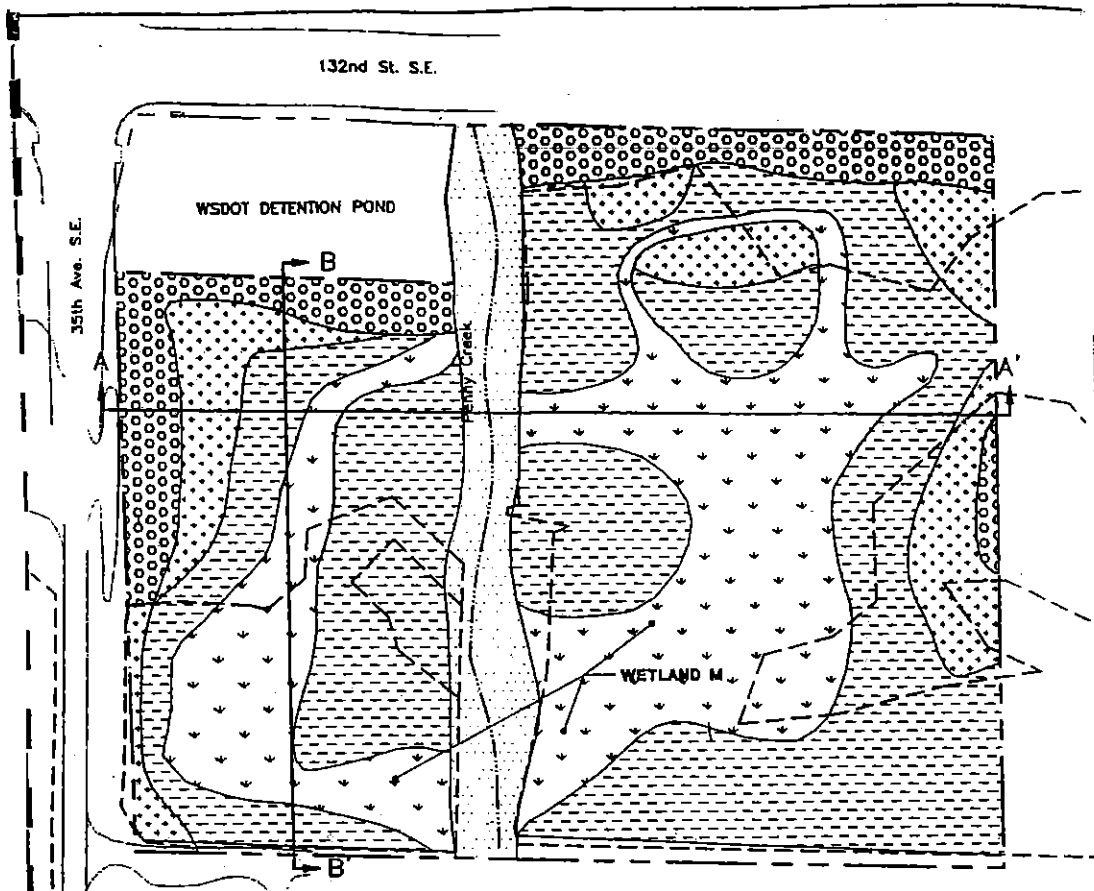
TOTAL FILL = 3.17 AC
Already Authorized - 0.33 AC

TOTAL FILL FOR THIS PUBLIC NOTICE = 2.83 AC

PURPOSE: ROAD IMPROVEMENTS

PROPOSED: PLACE FILL INTO 2.83 AC WETLANDS
IN: MARSH CREEK WATERSHED, SNOHOMISH RIVER
AT: EVERETT
COUNTY: SNOHOMISH STATE: WA
APPLICATION BY: SNOHOMISH COUNTY PUBLIC WORKS
SHEET 3 OF 4 DATE: 4/17/2001

REFERENCE: 1997-4-01982



LEGEND:

—	EXISTING ROADWAY		FORESTED WETLAND		SHRUB WETLAND
- - -	MITIGATION AREA BOUNDARY		EMERGENT WETLAND		LIVE STAKE CUTTINGS
- - -	WETLAND BOUNDARIES		UPLAND BUFFER		



NOTES:
PLANTING ZONE BOUNDARIES ARE APPROXIMATE, SEE FULL SIZE 90% DESIGN PLANS FOR DETAILS AND SPECIFICATIONS. PLANT LOCATIONS WILL BE STAKED BY PROJECT ENGINEER PRIOR TO PLANTING. INFORMATION BASED ON DESIGN BY ENTRANCO, INC.

ROADWAY WIDENING TO
PROVIDE SAFE AND
EFFICIENT MOVEMENT FOR

BUFFALO FARM
MITIGATION SITE

35th Avenue SE Improvements
100th St SE to Seattle Hill Rd

PURPOSE: ROAD IMPROVEMENTS

PROPOSED: PLACE FILL INTO 2.83 AC WETLANDS
IN: MARSH CREEK WATERSHED, SNOHOMISH RIVER
AT: EVERETT
COUNTY: SNOHOMISH STATE: WA
APPLICATION BY: SNOHOMISH COUNTY PUBLIC WORKS
SHEET 4 OF 4 DATE: 4/17/2001

REFERENCE: 1997-4-01982



MAY 9 2002

Place fill into 2.83 acres of wetlands to widen a 3.2 mile
A permit to section of 35th Ave. S.E. from 120th St. S.E. to Seattle Hill Road

at Everett, Washinton

has been issued to Snohomish County Public Works On MAY 9 2002

Address of Permittee 2930 Wetmore Avenue, Everett, WA 98201-4044

Permit Number

1997-4-01982

for Ralph H. Graves
District Commander
Colonel, Corps of Engineers



Exhibit C

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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

April 30, 2002

REGISTERED MAIL – RR 359 892 703 US

Paul Marczin
Snohomish County
Department of Public Works
2930 Wetmore Avenue
Everett, WA 98201

Dear Mr. Marczin:

RE: **Order #02SEANR-3940** -- Corps Reference No. 1997-4-01982
Water Quality Certification for placement of fill to widen 35th Avenue SE, Snohomish County, Washington.

The request for certification for proposed work in wetlands adjacent to Penny Creek and Thomas Lake 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 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 or at akel461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,


Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:AS:SA

Enclosure

cc: Susan Glenn, Corps of Engineers
Yvonne Oliva



IN THE MATTER OF GRANTING A)	ORDER # 02SEANR-3940
WATER QUALITY)	U.S. Army Corps No. 1997-4-01982
CERTIFICATION TO)	Placement of fill into 1.96 acres to widen a 3.2
Snohomish County Department of)	mile segment of 35 th Avenue SE from 120 th
Public Works)	Street SE to Seattle Hill Road; located in
in accordance with 33 U.S.C. 1341)	Sections 28, 29, 32, and 33, T. 28 N., R. 5 E. in
FWPCA § 401, RCW 90.48.260 and)	Snohomish County, Washington.
Chapter 173-201A WAC		

TO: Paul Marczin
Snohomish County Department of Public Works
2930 Wetmore Avenue
Everett, WA 98201

On October 1, 2001, 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 proposed project entails placement of fill to widen 35th Avenue SE to include two travel lanes with a center turn lane, bike and pedestrian lanes and/or a shared bike/pedestrian shoulder. The total surface width will expand from about 22 feet to 55 feet.

The mitigation for wetland fill will consist of wetland restoration, creation, and enhancement at three sites. At the Buffalo Farm Mitigation Site, a 9-acre parcel located at the southeast corner of 132nd Street and 35th Avenue, a minimum of 3.3 acres of wetlands will be restored and 5.6 acres will be enhanced. The mitigation site is a former pasture that was ditched, drained and partially filled for agricultural use, and will be converted to three wetland classes, emergent, shrub, and forest. It was originally part of the fen system that included Thomas Lake.

A section of Penny Creek south of 132nd will be relocated and enhanced to improve conveyance and habitat and provide a greater riparian buffer between the creek and the road. The relocation will move the channel east, away from the road edge. In conjunction with the creek relocation, 0.07 acres of wetland will be restored, and 0.8 acres of existing wetland will be enhanced. At the Tanaka Trust site, 0.79 acres of palustrine wetland will be enhanced, and 0.7 acres will be preserved.

Stormwater treatment will consist of swales and compost filters will improve storm water quality, and three detention ponds will temporarily store and release stormwater generated by the project. Road runoff will be processed through biofiltration prior to discharging to surface waters.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, 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 # 02SEANR-3940 AND WATER QUALITY CERTIFICATION:

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

A. No Impairment of Water Quality:

- A1. Certification of this proposal does not authorize Snohomish County Department of Public Works 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 Snohomish County Department of Public Works 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 aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:

35th Avenue SE Road Improvement Project, 100th Street SE to Seattle Hill Road (CRP#RC 1069 and RC 1071), Final Critical Areas Study, prepared by Parametrix, Inc., October 2001; and Addendum to Critical Areas Study, prepared by Paul Marczin, Snohomish County Department of Public Works, April 2002.

- B2. ✓ **"As-Built" Report:** An "as-built" report documenting the final design of the mitigation project area shall be prepared when site construction and planting is completed. The report shall include the following:

- Vicinity map showing site access;
- Final site topography;
- Drawings that shall clearly identify the boundaries of the mitigation areas;
- The installed planting scheme showing quantities, densities, sizes, and approximate 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 "as-built" report shall be sent to Department of Ecology, Federal Permit Coordinator, 3190 - 160th Avenue SE, Bellevue, WA, 98008-5452, within 60 days of completing construction and initial planting, and in no case later than December 31, 2003.

Deed Restriction: Permanent protection of the wetland mitigation and preservation areas, as described in the Final Critical Areas Study, shall be recorded on the appropriate property deed. The deed shall clearly indicate that the wetland mitigation areas are "waters of the state." Documentation that this requirement has been fulfilled, including copies of permanent restrictive easements, shall be provided to Ecology's Federal Permit Coordinator at the same time as the "as-built" report.

Field Supervision: The wetland mitigation grading activity and enhancement plant installation shall be field-supervised and inspected by a qualified consultant during grading and planting operations as well as after planting has been completed, to ensure proper elevations are achieved and proper placement of plants.

- ✓ Monitoring: Monitoring shall be conducted as identified in the Addendum to the Critical Areas Study. Copies of all monitoring reports shall be submitted to Ecology at 3190 - 160th Avenue SE, Bellevue, WA, 98008-5452, as well as to the U.S. Army Corps of Engineers. If the results of the monitoring indicate that contingency measures are needed, the monitoring report shall include a detailed description of actions taken to rectify deficiencies. If the results of the monitoring at Year 10 show that the mitigation area does not satisfy the performance standards set forth in the mitigation plan, additional monitoring and mitigation may be required (e.g., replanting, soil amendments, selection of alternative species, re-evaluation of the Performance Standards, etc.). Any additional monitoring or mitigation measures are subject to review and approval of the Department of Ecology.

Maintenance: The applicant is responsible for maintenance of the wetland mitigation sites such that the required performance standards are met.

Access: Snohomish County Department of Public Works 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 mitigation is implemented as approved.

Boundary Marking: The boundary of the wetland mitigation site shall be permanently marked with stakes spaced approximately 100 feet apart. The marking shall include signage that clearly indicates that clearing vegetation and fertilizer/pesticide applications are prohibited within the mitigation area and that no material including soils and vegetation shall be dumped within the wetland mitigation areas.

C. Stormwater Management:

- C1. The development shall be designed to conform with Snohomish County's stormwater management requirements and Ecology's Stormwater Management Manual for the Puget Sound Basin.

D. Construction:

D1. Construction Stormwater and Erosion Control:

- a. 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., hay bales, 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.
- b. Prior to clearing and grading in wetlands, the adjacent wetlands shall be protected from construction impacts. Brightly colored mesh construction fencing shall be installed around the wetlands to be protected prior to site clearing. All project staff shall be trained to recognize construction fencing that identifies wetland boundaries and edge of clearing. Equipment shall not be moved into or operated in wetlands that are not authorized to be filled or enhanced.

- 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. Snohomish County Department of Public Works shall provide notice to Ecology's Alice Kelly 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 ake1461@ecy.wa.gov, telephone to (425) 649-7145, fax to (425) 649-7098, or in writing.

D6. Clean Fill Criteria: The 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 the applicant is unable to comply with any of the permit terms and conditions 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 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.

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, streams or wetlands.

F. General Conditions:

F1. For purposes of this Order, the term "Applicant" shall mean Snohomish County Department of Public Works and its agents, assigns, and contractors.

F2. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies. All conditions in the following permits, approvals, and documents are incorporated herein and are specific conditions of this Order:

- Hydraulic Project Approval issued by the Department of Fish and Wildlife Log No. 00-E6394-01 on November 30, 2000.
- NPDES General Permit for Stormwater Discharges Associated with Construction Activities SO3-003186, expiration date November 18, 2005.

- F3. The 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.
- F4. The applicant will be out of compliance with this certification and must reapply with an updated application if five 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.
- F5. The 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.
- F6. 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, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit, and any subsequent revision or Ecology-approved plans.

The applicant shall provide to Ecology a signed statement from each project manager and construction superintendent working at the project and mitigation sites that they have read and understand the conditions of the above-referenced permits, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at each project or mitigation site.

- F7. 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.
- F8. 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

Order #02SEANR-3940, 1997-4-01982 Paul Marczin
April 30, 2002
Page 7 of 7

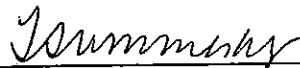
supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

- F9. 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 this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. 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, P.O. 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 4/30/2002 at Bellevue, Washington.



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



DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

REPLY TO
ATTENTION OF

Regulatory Branch

Dear Permittee(s):

Our transmittal letter cites a new Department of the Army administrative appeal rule for permit decisions that went into effect March 9, 1999. In accordance with this rule, we have included in your permit package a Notification of Administrative Appeal Options and Process and Request for Appeal (NAO-RFA) form.

You may decline to accept a permit if you object to any of the terms or conditions, and you believe that these terms or conditions are based on procedural errors; incorrect data; omission of fact; incorrect application of current Federal manual or guidance associated with wetlands; or incorrect application of a law, regulation, or policy that governs our permit program. If you wish to decline the permit, you must complete the NAO-RFA form explaining your objections for not accepting it. You must return this NAO-RFA form and the two permit forms within 60 days from the date on the NAO-RFA form. Once you sign our permit, you waive the right to further appeal unless we later modify the permit. After we receive and evaluate your initial objection letter, we either modify the permit to address some or all of the objections, or elect not to modify the permit. We re-submit it to you for signature. You may either accept the permit, or decline. A diagram entitled "Applicant Options with Initial Proffered Permit," describing applicant options for declining the special conditions of a permit, is enclosed with your package (Appendix B).

If you do decline to accept the permit a second time, you may then formally appeal the permit to our Northwestern Division office (Division Engineer, ATTN: Mores Bergman, Omaha address on NAO-RFA form) by submitting a completed and acceptable NAO-RFA form within 60 days from the date of the letter transmitting the second permit. We will send this form to you again with the modified or non-modified permit. Our Division office has 90 days to resolve the appeal with you once your completed and acceptable NAO-RFA form has been received. Details of the appeal process are outlined in the enclosed diagram entitled "Administrative Appeals Process for Permit Denials and Proffered Permits" (Appendix A).

If you have any questions about your options or the appeal process in general, please contact the project manager indicated on the form.

Enclosure 2
Rev. 12 May 2000

NOTICE OF ACTION OF ADMINISTRATIVE APPEAL TO PERMIT AND PROJECTS AND
REQUEST FOR APPEAL

Applicant: Snohomish County Public Works	File Number: 1997-4-01982	Date: APR 26 2012
Attached is:		See Section below
<input checked="" type="checkbox"/> X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

NOTE (CONT): The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://asac.army.mil/infat/functions/cv/bacwv/eqg> or Corps regulations at 33 CFR Part 311.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II: REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

Susan Glenn, Project Manager
U.S. Army Corps of Engineers, Seattle District
Post Office Box 3755
Seattle, Washington 98124-3755
Telephone: (206) 764-6904

If you only have questions regarding the appeal process you may also contact:

Mores Bergman, Appeal Review Officer
U.S. Army Corps of Engineers, Northwestern Division
12565 West Center Road
Omaha, Nebraska 68144-3869
Telephone (402) 697-2533

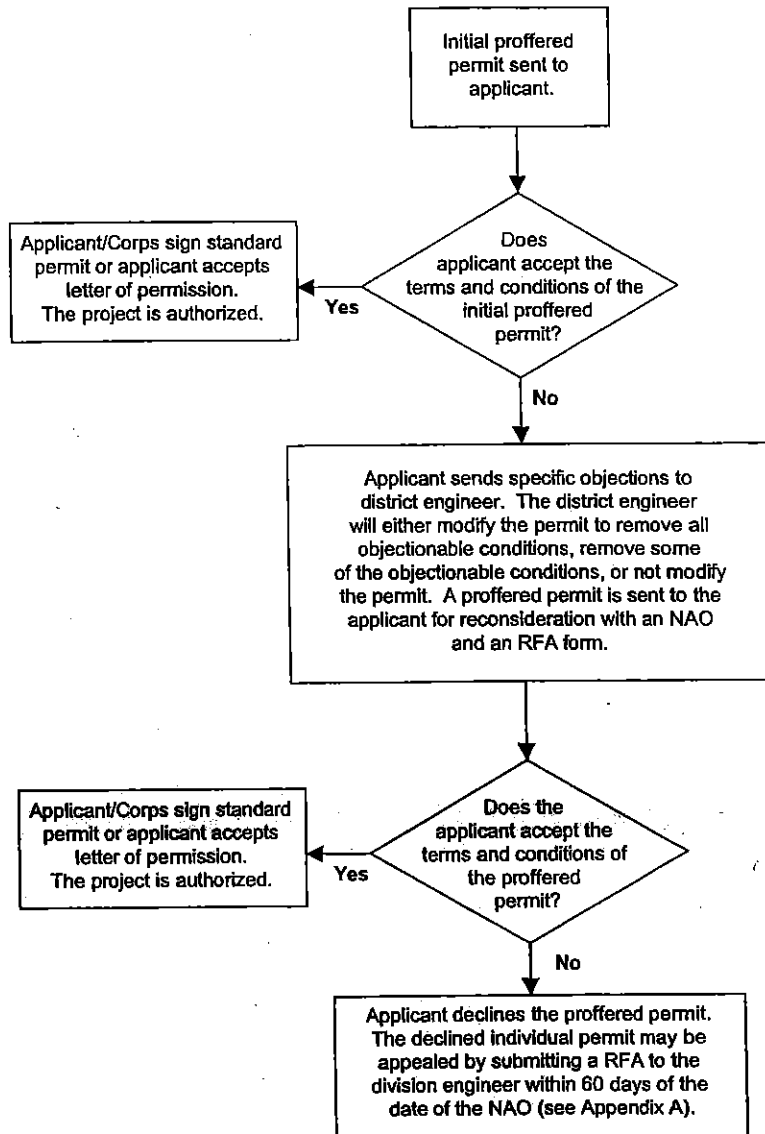
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

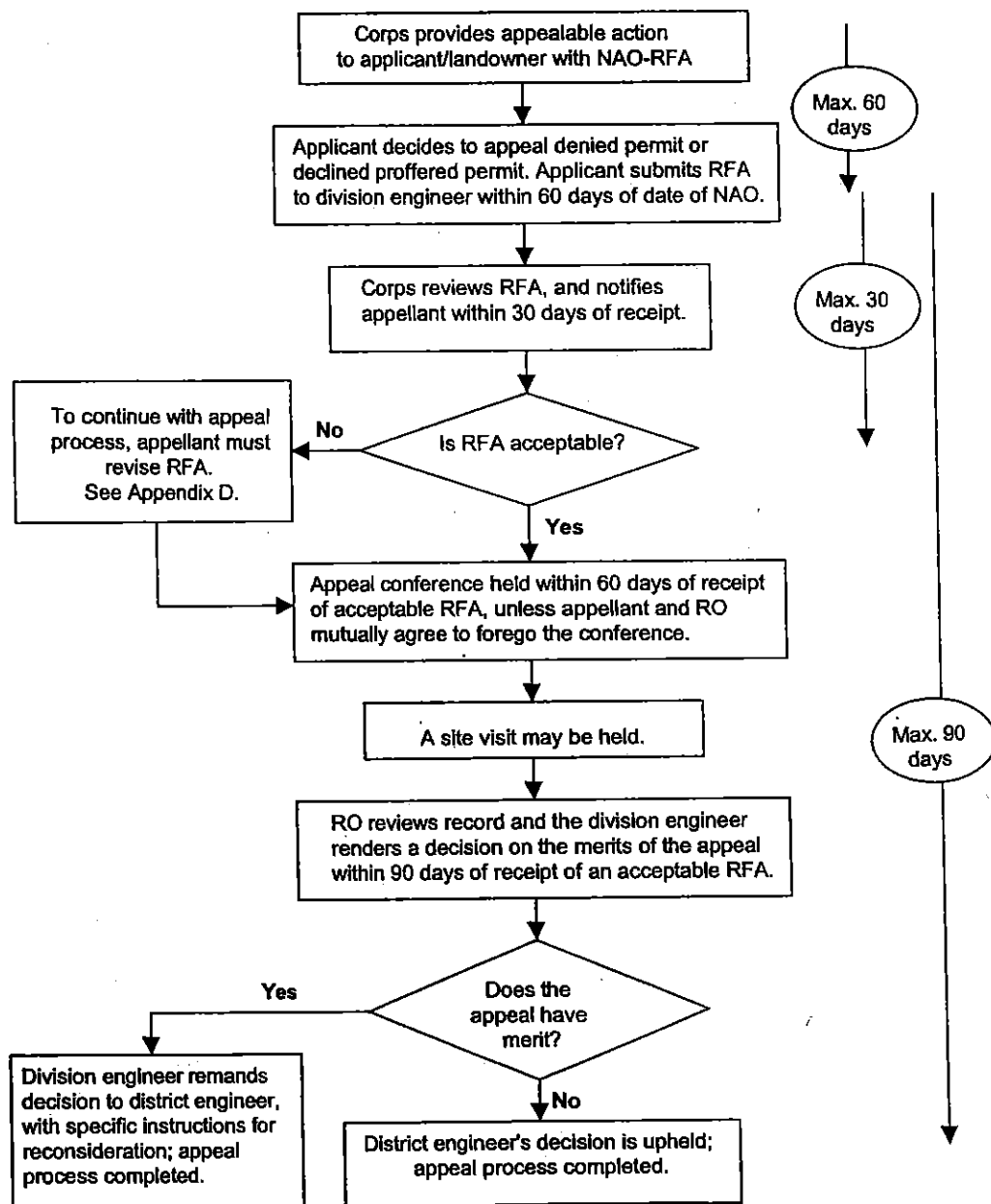
Telephone number:

Applicant Options with Initial Proffered Permit



Appendix B

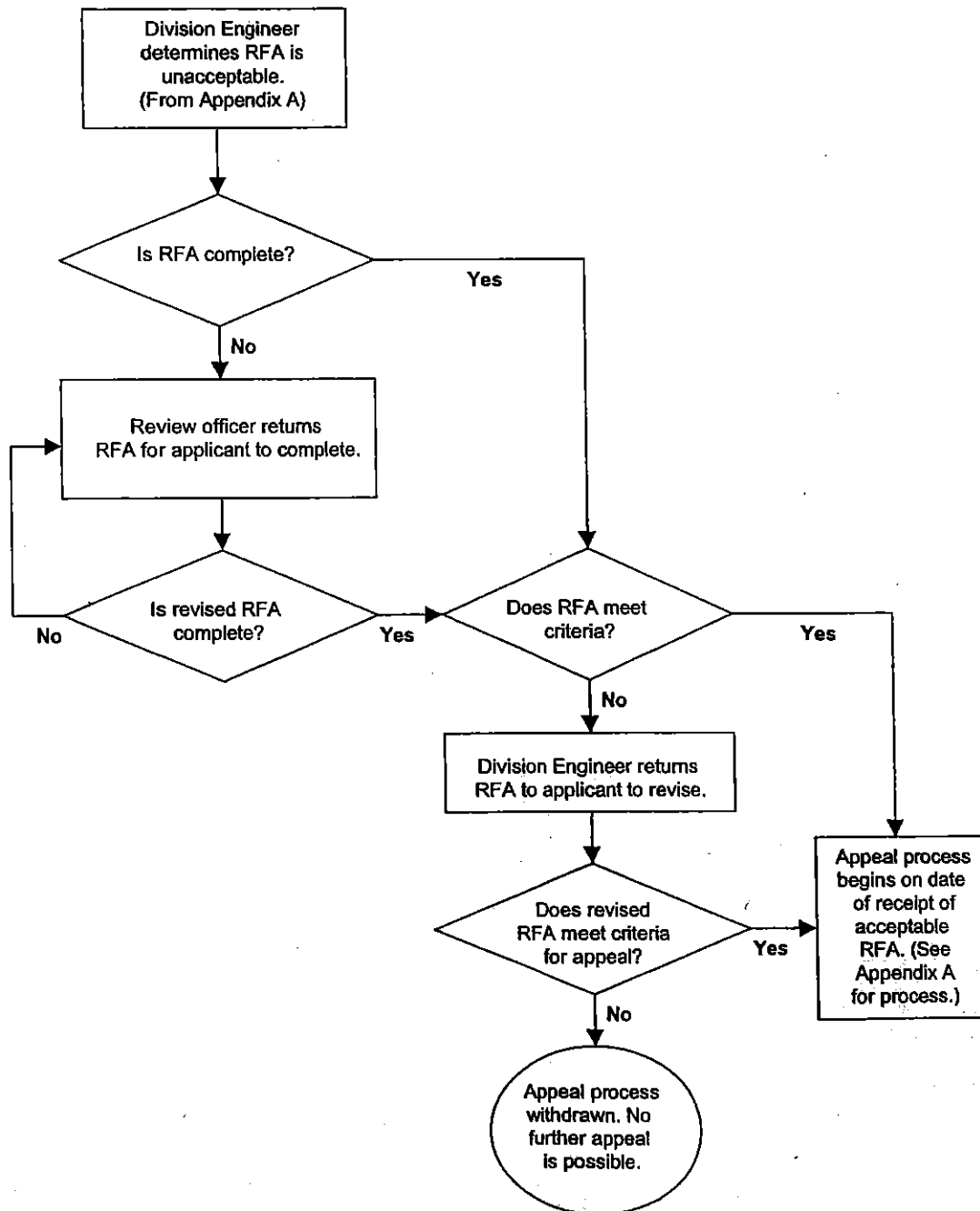
Administrative Appeal Process for Permit Denials and Proffered Permits



NOTE: If new information is provided to the Corps, the applicant will be asked if the applicant wishes to revise the project or record. If so, the appeal will be withdrawn and the case returned to the District for appropriate action. If not, then the Division Engineer will rule on the merits of the appeal based on the administrative record without consideration of the new information. However, the new information may cause the District Engineer to take action under 33 CFR 325.7, independent of the appeal process.

Appendix A

Process for Unacceptable Request for Appeal



Appendix D



HYDRAULIC PROJECT APPROVAL
RCW 77.55.100 - appeal pursuant to Chapter 34.05 RCW

Exhibit D

State of Washington
Department of Fish and Wildlife
Region 4 Office
16018 Mill Creek Boulevard
Mill Creek, Washington 98012

DATE OF ISSUE: November 30, 2000

LOG NUMBER: 00-E6394-01

<u>PERMITTEE</u>	<u>AUTHORIZED AGENT OR CONTRACTOR</u>
Snohomish County Dept. Of Public Works ATTENTION: Jeff Massie 2930 Wetmore Avenue Everett, Washington 98201 425-388-3488 fax: 425-388-6694	<div style="text-align: center;">RECEIVED DEC 04 2000</div> <div>Project Management CRP# _____ Fed Aid# _____</div>

PROJECT DESCRIPTION: Widen 35th Avenue SE from Seattle Hill Road to 120th Place SE. Fill wetlands and compensate by creation of wetlands off site. Change stream flow by altering the quality, timing, pattern of runoff, and point of entry of stormwater; mitigate by constructing stormwater management facilities including a vault in the Tambark Creek watershed, and in the Penny Creek watershed ponds and new wetlands bordering Penny Creek instead of traditional Retention/Detention ponds or vaults. Relocate Penny Creek into a new channel further from the road. Replace two existing culverts for Penny Creek under 35th Avenue SE with longer and bigger culverts. A back-flooded double barrel culvert for the southern crossing is authorized, due to the special requirements of the site caused by construction on deep peat.

PROJECT LOCATION: 35th Ave. SE from Seattle Hill Road to 120th Place SE

#	WRIA	WATER BODY	TRIBUTARY TO	1/4 SEC.	SEC.	TOWNSHIP	RANGE	COUNTY
1	08.0077	Penny Creek	North Creek	32	28	North	05 East	Snohomish
2	08.0076	Tambark Creek	Silver Creek	05	27	North	05 East	Snohomish

PROVISIONS

1. **TIMING LIMITATIONS:** The project may begin Immediately and shall be completed by December 31, 2002.

A. Culvert replacement work and work in the stream channel below the Ordinary High Water Line shall occur only from July 1 through October 15 of the calendar years 2001 and 2002.

2. Work shall be accomplished per plans and specifications entitled Stormwater Facility Plan, dated February, 2000, and blueprints titled 35th Avenue S.E. Seattle Hill Road to 120th Place S.E., dated June 23, 2000, and Final Critical Areas Study, 35th Avenue SE Road Improvement Project, dated November, 2000, and submitted to the Washington Department of Fish and Wildlife, except as modified by this Hydraulic Project Approval. These plans reflect design criteria per Chapter 220-110 WAC. These plans reflect mitigation procedures to significantly reduce or eliminate impacts to fish resources. A copy of these plans shall be available on site during construction.



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RCW 77.55.100 - appeal pursuant to Chapter 34.05 RCW

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3. Retention/Detention (R/D) and water treatment facilities for stormwater runoff shall have been designed, and shall be constructed and maintained to cause this redevelopment project to achieve stormwater runoff at rates no greater than undisturbed forest for an area at least 1.4 times the size of the new impervious surface.

GENERAL PROVISIONS

4. Wastewater from project activities and water removed from within the work area shall be contained to prevent any silt, silt-laden water, or other contaminants from entering the stream or adjacent wetlands.
5. The work on the culverts and in the stream bed shall be done in the dry or in isolation from the stream flow by the installation of a bypass flume or culvert, or by pumping the stream flow around the work area, or during periods of low flow by diverting the stream flow with sand or gravel bags to part of the channel not being worked in. No sand or pea gravel shall be released to the stream; sand bags, pea gravel bags, and all of their sand and/or pea gravel shall be removed from the stream and its flood plain at the end of the project. Release of bag contents into the stream at the end of the project is permitted only if bags are filled with clean round gravel no smaller than 7/8 inch. Gravel bag dams may be sealed with plastic sheeting. Placement and removal of sand or gravel bags shall be done in a manner which minimizes disturbance to the stream. Care shall be taken so that the stream below the project area is never dewatered, even momentarily. At least half the flow of the stream shall be maintained in the downstream reach at all times, even when water is first being impounded with sand bags into the diversion channel, and even when the stream flow is first being restored into the dried channel reach of this project.
6. The permittee shall capture and safely move food fish, game fish and other fish life from the areas of the job site which will be dewatered. The permittee shall have fish capture and transportation equipment ready and on the job site. Captured fish shall be immediately and safely transferred to free-flowing water downstream of the project site. The permittee may request Washington Department of Fish and Wildlife assist in capturing and safely moving fish life from the job site to free-flowing water, and assistance may be granted if personnel are available.
7. Every effort shall be taken during all phases of this project to ensure that sediment-laden water is not allowed to flow downstream. This may be accomplished by installing temporary dams overlain with filter fabric on the upstream side of the dams. Accumulated silt shall be removed from the filter fabric during the project as needed. Dams may be made of hay bales or gravel bags, or in extremely slow-moving water a curtain of filter fabric may be installed from above the water surface to the stream bottom, weighted down continuously along the bottom. Other dam structure techniques may be approved after consultation with the habitat biologist listed below.
 - A. If gravel is used, the gravel bag dams shall consist of burlap bags filled with clean gravel with a minimum diameter of 7/8 inches. Upon completion of the project the burlap bags may be slit to allow the gravel to disperse downstream. Where necessary, hand tools may be used to ensure stream flow and fish passage are not impeded by the gravel. (Pea gravel is not allowed because it can hurt salmonid eggs.)
8. Erosion control methods shall be used to protect exposed earth on the streambanks, and/or further from the stream, to prevent silt-laden water from entering the stream. These may include, but are not limited to, with straw bales, filter fabric, temporary sediment ponds, check dams of burlap bags filled with gravel at least 7/8 inches in diameter and lined with filter fabric, and/or immediate mulching of exposed areas.
9. All waste material such as construction debris, silt, excess dirt or overburden resulting from this project shall be deposited above the limits of flood water in an approved upland disposal site.



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10. If high flow conditions that may cause siltation are encountered during this project, work shall stop until the flow subsides.
11. Extreme care shall be taken to ensure that no petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or deleterious materials are allowed to enter or leach into the stream.
12. Fresh concrete or concrete by-products shall not be allowed to enter the stream at any time during this project. All forms used for concrete shall be completely sealed to prevent the possibility of fresh concrete from getting into the stream.
13. Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to construct the project, or to enhance riparian vegetation. Within seven calendar days of project completion, all disturbed areas shall be protected from erosion using vegetation or other means. During the autumn or winter following the stream channel work, the banks, including riprap areas, shall be revegetated with native or other approved woody species. The minimum requirement for planting is: vegetative cuttings of willow and/or red osier dogwood shall be planted at a maximum interval of three feet (on center) and maintained as necessary for three years to ensure 80 percent survival. A planting plan designed to accomplish better ecological functions than the planting described in the preceding sentence, if approved by a qualified biologist, is permitted provided there is monitoring and mortality replacement to ensure 80 percent survival after three years.

CULVERTS

14. The culverts shall be installed and maintained to ensure unimpeded fish passage.
15. The culverts shall be placed on a flat gradient with the bottom of the culvert placed below the level of the streambed a minimum of 20 percent of the culvert diameter for a round culvert, and 20 percent of the culvert's rise for an elliptical culvert. The 20 percent placement below the streambed shall be measured at the culvert outlet.
16. The culvert width at the streambed shall be equal to or greater than the average width of the streambed.
17. The culverts shall be installed to maintain structural integrity to the 100-year peak flow with consideration of the debris likely to be encountered.
18. Fill associated with the culvert installations shall be protected from erosion to the 100-year peak flow.
19. The culverts shall be installed and maintained to avoid inlet scouring and to prevent erosion of stream banks downstream of the project.
20. The culvert facilities shall be maintained by the owner(s) per RCW 77.55.060 to ensure continued, unimpeded fish passage. If the structures become a hindrance to fish passage, the owner(s) shall be responsible for obtaining an Hydraulic Project Approval and providing prompt repair. Financial responsibility for maintenance and repairs shall be that of the owner(s).
21. The upstream culvert shall consist of a single barrel. The culvert downstream of Thomas Lake may be double barrel due to the need to construct the facility on deep peat where bridge abutments would sink, and where a large culvert



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would create road elevation problems. The double barrel culverts shall be installed at such an elevation that both are constantly flooded with low velocity water at least one foot deep.

22. Approach material to the culverts shall be structurally stable and be composed of material that, if eroded into the stream, shall not be detrimental to fish life.

CHANNEL RELOCATION

23. The permanent new channel shall, at a minimum, be similar in length, width, depth, floodplain configuration, and gradient, as the old channel. The new channel shall incorporate fish habitat components, streambed materials, meander configuration, and native or other approved vegetation equivalent to or greater than that which previously existed in the old channel.
24. During construction, the new channel shall be isolated from the flowing stream by plugs at the upstream and downstream ends of the new channel. These plugs shall be substantial enough to prevent flood flows from entering the new channel during construction.
25. Stream diversion shall be conducted only after inspection and approval of the new channel by the Area Habitat Biologist listed below or his/her representative.
26. 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.
27. Diversion of water from the old channel shall be planned to be accomplished during the period July 1 through October 15. (Extension of this time limit would require a qualified fish biologist to determine that due to the substrate of the old channel there is no chance that cutthroat or coho redds could be present in that channel.)
28. The fish habitat log structures shall be of fir, cedar, or other approved coniferous species.
29. The fish habitat structures shall be placed so that they are within the low flow channel.
30. Where the new channel is cut through peat, no gravel is needed. Where the new channel is built on firm earth a minimum of 12 inches deep of clean, rounded, uniformly-graded gravel shall be installed, with a size composition of:
15 percent of 4.0 to 3.0 inches;
40 percent of 3.0 to 1.5 inches;
45 percent of 1.5 to 0.25 inches, with
fines less than 0.25 inches not exceeding 3.0 percent total volume, shall be placed throughout the channel.
31. The angle of the structure used to divert the stream into the new channel shall allow a smooth transition of stream flow.
32. Diversion of flow into the new channel shall be accomplished by the following:
a. First remove the downstream plug.
b. Face the stream side of the plug with a sandbag revetment or similar approved mechanism.



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- c. Partially remove the upstream plug to allow 1/3 to 1/2 of the flow down the new channel for at least overnight. The old channel shall not be allowed to dewater.
 - d. Transfer fish from the old channel to the new channel.
 - e. Remove the rest of the upstream plug once the new channel has flow throughout its entire length.
 - f. Close the upstream end of the old channel and securely armor the entrance to the old channel to prevent re-entry of any flow. Armor material shall consist of clean, angular rock and shall be installed to withstand the 100-year peak flow.
33. Filling of the old channel shall begin from the upstream closure and the fill material shall be compacted. Water discharging from the fill shall not adversely impact fish life.

SEPA: Supplemental EIS by Snohomish County final on November 9, 1995.

APPLICATION ACCEPTED: November 27, 2000

ENFORCEMENT OFFICER: Lambert 041 [P3]

Douglas G. Hennick
Area Habitat Biologist

(425) 379-2303

Douglas G. Hennick

for Director
WDFW

GENERAL PROVISIONS

This Hydraulic Project Approval (HPA) pertains only to the provisions of the Fisheries Code (RCW 77.55 - formerly RCW 75.20). Additional authorization from other public agencies may be necessary for this project.

This HPA shall be available on the job site at all times and all its provisions followed by the permittee and operator(s) performing the work.

This HPA does not authorize trespass.

The person(s) to whom this HPA is issued may be held liable for any loss or damage to fish life or fish habitat which results from failure to comply with the provisions of this HPA.

Failure to comply with the provisions of this Hydraulic Project Approval could result in a civil penalty of up to one hundred dollars per day or a gross misdemeanor charge, possibly punishable by fine and/or imprisonment.

All HPAs issued pursuant to RCW 77.55.100 or 77.55.200 are subject to additional restrictions, conditions or revocation if the Department of Fish and Wildlife determines that new biological or physical information indicates the need for such action. The permittee has the right pursuant to Chapter 34.04 RCW to appeal such decisions. All HPAs issued pursuant to RCW 77.55.110 may be modified by the Department of Fish and Wildlife due to changed conditions after consultation with the permittee: PROVIDED HOWEVER, that such modifications shall be subject to appeal to the Hydraulic Appeals Board established in RCW 77.55.170.



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APPEALS - GENERAL INFORMATION

IF YOU WISH TO APPEAL A DENIAL OF OR CONDITIONS PROVIDED IN A HYDRAULIC PROJECT APPROVAL, THERE ARE INFORMAL AND FORMAL APPEAL PROCESSES AVAILABLE.

A. INFORMAL APPEALS (WAC 220-110-340) OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.100, 77.55.110, 77.55.140, 77.55.190, 77.55.200, and 77.55.290:

A person who is aggrieved or adversely affected by the following Department actions may request an informal review of:

- (A) The denial or issuance of a HPA, or the conditions or provisions made part of a HPA; or
- (B) An order imposing civil penalties.

It is recommended that an aggrieved party contact the Area Habitat Biologist and discuss the concerns. Most problems are resolved at this level, but if not, you may elevate your concerns to his/her supervisor. A request for an INFORMAL REVIEW shall be in WRITING to the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091 and shall be RECEIVED by the Department within 30-days of the denial or issuance of a HPA or receipt of an order imposing civil penalties. The 30-day time requirement may be stayed by the Department if negotiations are occurring between the aggrieved party and the Area Habitat Biologist and/or his/her supervisor. The Habitat Protection Services Division Manager or his/her designee shall conduct a review and recommend a decision to the Director or its designee. If you are not satisfied with the results of this informal appeal, a formal appeal may be filed.

B. FORMAL APPEALS (WAC 220-110-350) OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.100 OR 77.55.140:

A person who is aggrieved or adversely affected by the following Department actions may request a formal review of:

- (A) The denial or issuance of a HPA, or the conditions or provisions made part of a HPA;
- (B) An order imposing civil penalties; or
- (C) Any other "agency action" for which an adjudicative proceeding is required under the Administrative Procedure Act, Chapter 34.05 RCW.

A request for a FORMAL APPEAL shall be in WRITING to the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091, shall be plainly labeled as "REQUEST FOR FORMAL APPEAL" and shall be RECEIVED DURING OFFICE HOURS by the Department within 30-days of the Department action that is being challenged. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within 30-days of the date of the Department's written decision in response to the informal appeal.

C. FORMAL APPEALS OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.110, 77.55.200, 77.55.230, or 77.55.290:

A person who is aggrieved or adversely affected by the denial or issuance of a HPA, or the conditions or provisions made part of a HPA may request a formal appeal. The request for FORMAL APPEAL shall be in WRITING to the Hydraulic Appeals Board per WAC 259-04 at Environmental Hearings Office, 4224 Sixth Avenue SE, Building Two - Rowe Six, Lacey, Washington 98504; telephone 360/459-6327.

D. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS RESULTS IN FORFEITURE OF ALL APPEAL RIGHTS. IF THERE IS NO TIMELY REQUEST FOR AN APPEAL, THE DEPARTMENT ACTION SHALL BE FINAL AND UNAPPEALABLE.