Oregon
Theodore R. Kulongoski, Governor

Division of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 378-3805
FAX (503) 378-4844
www.oregonstatelands.us.

September 2, 2003

KJ02/25189
METRO-SMITH & BYBEE LAKES
ATTN: ELAINE STEWART
600 NE GRAND AVE
PORTLAND OR 97232-2736

RE: Modification of State Authorization 25189-GA

Dear Ms. Smith:

The Division is in receipt of your request dated August 19, 2003, for modification of State authorization 25189-GA. The requested modification includes improvements to the project site access road that is determined by Division staff to entail approximately 0.005 acres of jurisdictional palustrine emergent wetland impact.

Pursuant to OAR 141-089-0110 (12) the Division finds that this project entails minimal adverse impact to wetlands and approves the additional activity under your authorization 25189-GA.

Please call Kirk Jarvie at extension 320 if you have any questions on this transmittal.

Sincerely,

Lori Warner
Manager
Field Operations-West

Enclosure

Cc: Mary Headley, Corps of Engineers
Jim Grimes, ODFW
Tom Melville, DEQ
Multnomah County Planning
Multnomah SWCD
Historic Preservation
US Fish & Wildlife
National Marine Fisheries Service

LW:jr
J:\AttachmentAwestLAS\GA General Authorizations\25189-GA Modification.doc

600 NOR AST GRAND AVENUE | PORTLAND, OREGON 32 2736
TEL 503 797 1700 | FAX 503 797 1797

REGIONAL SERVICES

METRO

DIVISION OF STATE LANDS
RECEIVED
2003 AUG 22 P 1:19

August 19, 2003

Kirk Jarvie
Division of State Lands
Suite 100
775 Summer Street NE
Salem, OR 97301-1279

Dear Kirk,

I am requesting an amendment to the General Authorization for Fish Enhancement for the Smith and Bybee lakes water control structure project (DSL Application Number 25189-GA). Our project design includes a revised road grade that is needed for sufficient access to the structure, particularly during inclement weather. The attached memo and drawings from Gus Williams, engineer for Ducks Unlimited, detail the need for the road modification and the work that needs to be done, including ~~350~~ 270 cu yd of fill. The existing access road is steep in places, including a 30 percent grade on loose gravel, and is deeply rutted soil (impassable in winter) in other places.

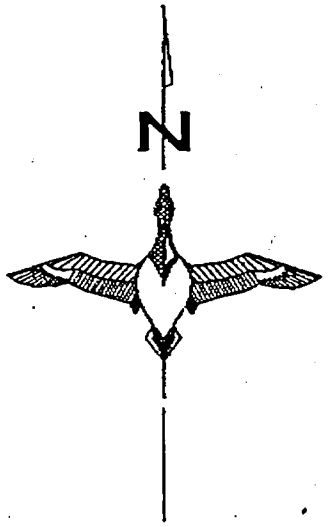
The gentler grade and rut repairs are essential for safe access to the structure year-round, but especially during bad weather. I need to be able to transport stoplogs to and from the structure to manage water levels. Ducks Unlimited and I have worked together to ensure this is the minimum amount of work that is required to provide serviceability to the road. We have also designed these improvements to maintain the existing drainage pattern in wet areas surrounding the access road by extending the drain pipes under the road. These road modifications have been included in submittals to the City of Portland and Corps of Engineers.

Please contact me with any questions or comments, or if you need more information. I can be reached via telephone at 503-797-1515, or via email at stewarte@metro.dst.or.us.

Sincerely,

Elaine

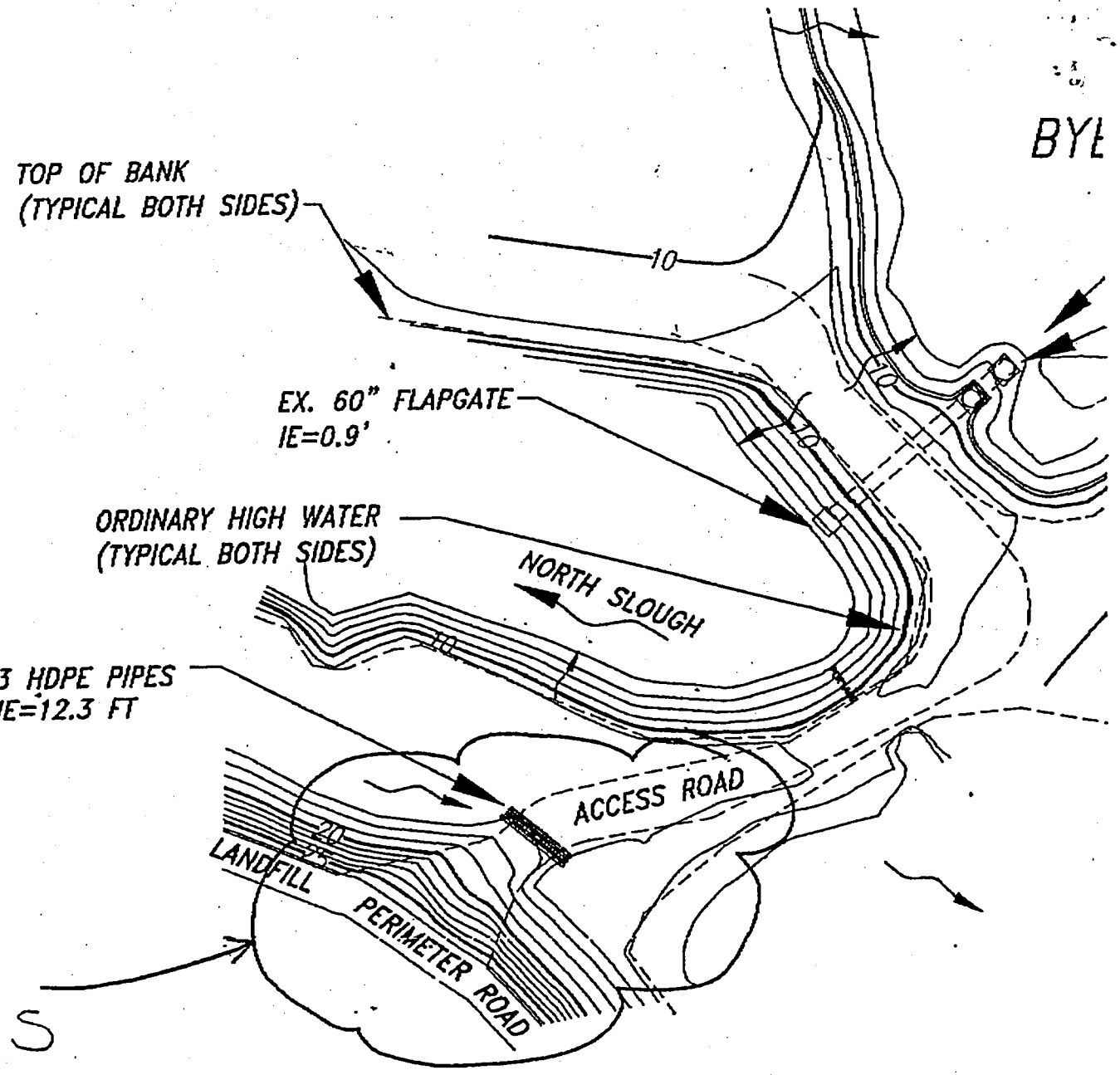
Elaine M. Stewart
Smith and Bybee Lakes Wildlife Area Manager



BAR SCALE

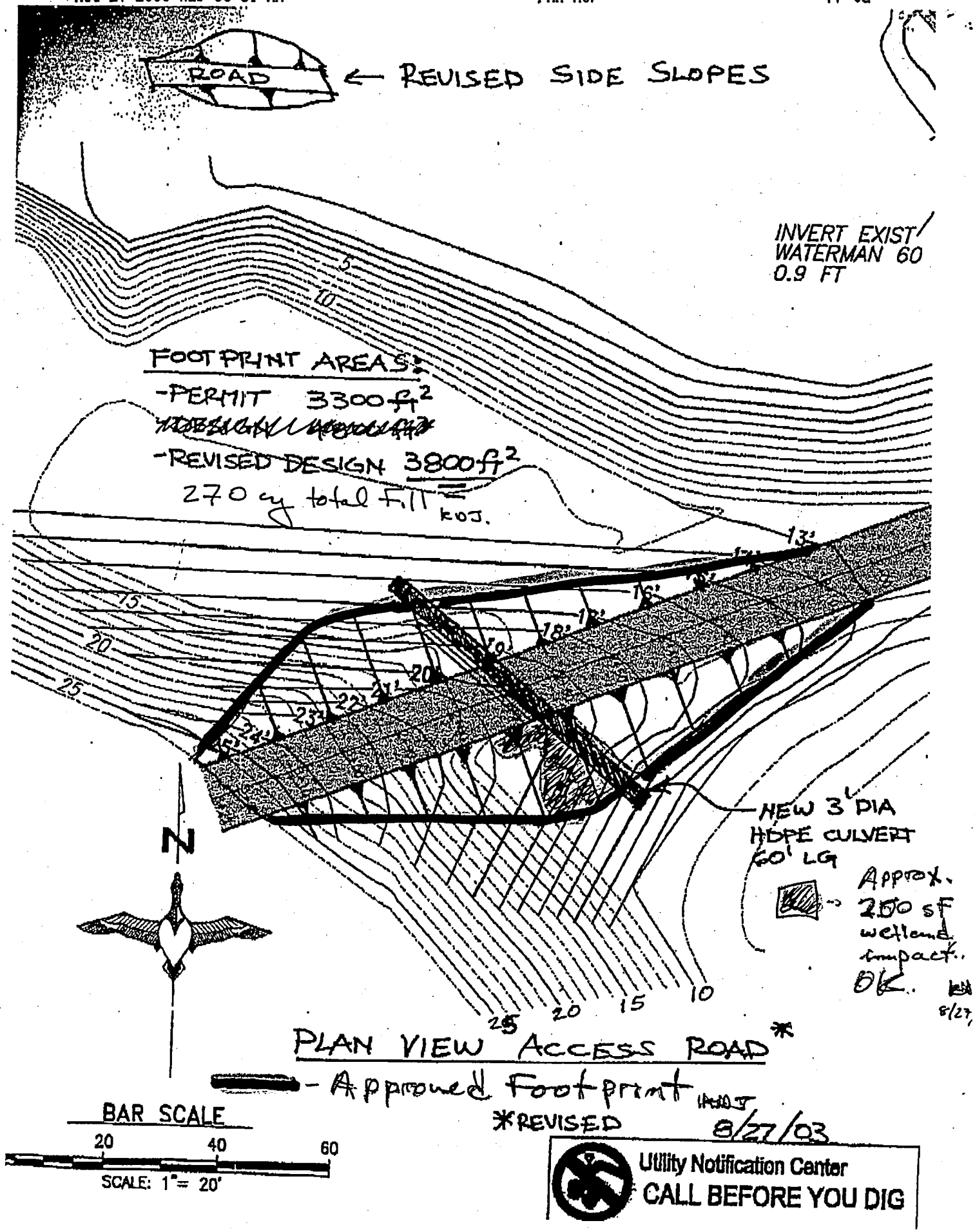
0 50 100 150

SCALE: 1"= 50'



EXISTING CONDITIONS

1. PROJECT SITE IS ENTIRELY WITHIN THE EP ZONE.
2. PROJECT SITE IS ENTIRELY WITHIN 100-YEAR FLOODPAIN.
3. DISTANCE TO NEAREST NON-METRO PROPERTY LINE IS > 1000
4. NO TREES WILL BE DISTURBED BY THIS PROJECT. THERE ARE



PLAN VIEW ACCESS ROAD*

- Approved Footprint

*REVISED 8/27/03

Utility Notification Center
CALL BEFORE YOU DIG

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

August 22, 2003

Mary Headley
U.S. Army Corps of Engineers
ATTN: CENPP-OP-GP
P.O. Box 2946
Portland, OR 97208-2946

Dear Ms. Headley:

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) permit application #2002-00175 [Division of State Lands (DSL) application # 25189-GA]. The applicant, Metro Regional Parks and Greenspaces, proposes to remove an existing dam and flap gate and replace it with a multi-celled water control structure to accommodate fish passage and enhance habitat management in the Smith and Bybee Lakes Wildlife Area. The project is located at the southeast corner of Bybee Lake and the east end of North Slough, a tributary of Columbia Slough in Portland, Multnomah County, Oregon (Section 36, T2N/R1W and Section 31, T2N/R1E).

This project is funded by the U.S. Fish and Wildlife Service through a North American Wetlands Conservation Act grant. Coordination has also occurred with Ducks Unlimited. The primary purpose of this action is to restore, to the maximum extent possible, natural hydrology to this large wetland complex. The project will restore approximately 1,600 acres of seasonal emergent and forested wetland habitat to the Smith and Bybee Lakes system. Water levels will continue to be manipulated during some periods of the year to assist in the control of nonnative plants.

A total of approximately 1,068 cubic yards of material, including the current structure will be removed. About 200 cubic yards of that total may be reused to bed the replacement structure. The remainder will be disposed of at an upland site.

On August 4, 2003 the National Marine Fisheries Service (NOAA Fisheries) completed formal consultation on the proposed project pursuant to the Endangered Species Act (ESA). The biological opinion delivered to the U. S. Fish and Wildlife Service concluded that the proposed action is not likely to jeopardize the continued existence of listed species occurring in the project area, but will adversely effect essential fish habitat (EFH) for starry flounder, and, coho and chinook salmon in the action area. As required by section 7 of the ESA, NOAA Fisheries included discretionary conservation measures, and reasonable and prudent measures with nondiscretionary terms and conditions that they believe are necessary to minimize the potential for incidental take associated with this action.

Smith Lake and Bybee Lake are classified as Water Quality Limited under Section 303 (d) of the Federal Clean Water Act for the following parameters: Aquatic Weeds or Algae, and pH (Summer).

Based on information provided by the applicant, DEQ does not anticipate any long-term violations of State Water Quality standards, including Oregon Administrative Rule (OAR) 340-

041-0026 (1)(a), Antidegradation Policy for Surface Waters, provided the conditions which follow are incorporated into the permit.

1) **Fish protection/ODFW timing:** All in-water work shall occur within the Oregon Department of Fish and Wildlife's (ODFW) preferred time window as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2000. Exceptions to the timing window must be reviewed and approved by the Division of State Lands (DSL), ODFW, and NOAA's National Marine Fisheries Service (NOAA Fisheries).

2) **Aquatic life movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Unobstructed fish passage must be provided at all times during any activity unless otherwise authorized.

3) **Turbidity/erosion controls:** The authorized work shall not cause turbidity of affected waters to exceed 10% over natural background turbidity 100 feet downstream of the turbidity causing activity. For projects proposed in areas with no discernible gradient break (gradient of 2% or less), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This turbidity standard exceedance interval applies only to coastal lowlands, floodplains, and valley bottoms. For projects in all other areas, the turbidity standard can be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects may also be subject to additional reporting requirements.

Turbidity shall be monitored during active in-water work periods. Monitoring points shall be an undisturbed site (representative background) 100 feet upstream from turbidity causing activity (i.e., fill or discharge point), 100 feet downstream from the fill point, and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

Practicable erosion control measures which shall be implemented, as appropriate, include but are not limited to the following:

a) Place fill in the water using methods that avoid disturbance to the maximum practicable extent (e.g. placing fill with a machine rather than end-dumping from a truck);
b) Prevent all construction materials and debris from entering waterway;
c) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, Jersey barriers, or other measures sufficient to prevent movement of soil;
d) Use impervious materials to cover stockpiles when unattended or during rain event;
e) Erosion control measures shall be inspected and maintained daily, to ensure their continued effectiveness;
f) No heavy machinery in a wetland or other waterway;

g) Use a gravel staging area and construction access;
h) Fence off planted areas to protect from disturbance and/or erosion; and,
i) Flag or fence off wetlands adjacent to the construction area.

Turbidity shall be measured (or visually assessed) and recorded at the designated monitoring interval prescribed above during periods of active construction. The designated person attending the monitoring equipment shall be responsible for notifying the project foreman of any exceedance of the turbidity standard. If a 10% exceedance of the background level occurs at 100 feet below the project site, modify the activity causing the problem and continue to monitor at the proper interval. If exceedances occur with two consecutive measurements stop the activity causing the turbidity until the problem is resolved.

4) **Deleterious waste materials:**

a) Petroleum products, chemicals, fresh cement, riprap grout, or other deleterious waste materials shall not be allowed to enter waters of the state;
b) Use only clean fill free of waste and polluted substances to maintain water quality;
c) Best management practices (BMPs) shall be employed in order to prevent discharges of spills to surface or ground water;
d) Machinery refueling and maintenance is to occur off site or in a confined designated area away from all waterways. BMP's shall be employed in order to prevent discharges of spills to surface or ground waters; and,
e) The applicant must remove all foreign materials, refuse, and waste from the area.

5) **Planting/re-vegetation:**

a) Plant new vegetation or replace any existing vegetation in areas which may be disturbed as a result of this project, in order to restore the function and stability of the landscape and habitat;
b) Plant disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control; and
c) The standard for success is 80% cover for native plant species. Temporary fencing off of planted areas may be required to insure success.

6) Every effort must be made to conduct the water control structure replacement construction activities for this project in the "dry", i.e. berms or other structures which isolate the area from flow-through must be left in place on both the upstream and downstream ends during earth moving and construction activities.

7) During construction storm water runoff or wash water from disturbed soils, permanent impervious road surfaces, access lanes, and parking lots shall be first treated by a facility specifically designed to remove storm water contaminants before entering state waterways or wetlands, including mitigation wetlands, so as to minimize contaminants entering those water bodies.

8) Provide a buffer zone, where practicable (minimum width of 50 feet recommended) in order to protect existing riparian areas, and existing and mitigation wetlands.

9) DEQ reserves the option to modify, amend or revoke this water quality certificate (WQC), as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.

10) A copy of this WQC letter shall be kept on the job site and readily available for reference by the Corps of Engineers, DEQ personnel, the contractor, and other appropriate state and local government inspectors.

11) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application.

12) DEQ is to have site access upon reasonable request.

13) If you are dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director of DEQ within 20 days of the mailing of this certification. You may also request written information about alternative dispute resolution services under Oregon Revised Statute 183.502, including mediation or any other collaborative problem-solving process.

The DEQ hereby certifies that this project complies with the Clean Water Act and state water quality standards, if the above conditions are made a part of the Federal permit. The applicant shall notify the DEQ of any change in the ownership, scope, or construction methods of the project subsequent to certification. If you have any questions, please contact Tom Melville at (503) 229-5845.

Sincerely,

(for M.L.)

Michael T. Llewelyn, Administrator
Water Quality Division

T:TM.Certhead.02-175

Cc: Applicant
Kirk Jarvie, DSL
Bob Baumgartner, DEQ
Tim Spencer, DEQ
Wm. Michael Jones, St. Johns Neighborhood Association