

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: A-7

DATE: February 26, 2009

SUBJECT: Graham-Bunting Contract for LID-97 On-Site Mitigation

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to authorize the Mayor to sign a four-year contract (Attachment A) with Graham-Bunting not to exceed \$8,000.00 for on-site mitigation and monitoring of Tracts L and O of the Hammer PUD.

The on-site mitigation and monitoring is required by the Army Corps of Engineers to satisfy the City's obligation to mitigate for damage associated with the LID-97 sewer extension project.

STAFF RECOMMENDATION:

Authorize the Mayor to sign a four-year contract with Graham-Bunting not to exceed \$8,000 to satisfy the City's obligation to mitigate for damage associated with the LID-97 sewer extension project as outlined in the January 27, 2009 letter from Michelle Walker of the Army Corps of Engineers Regulatory Branch (Attachment B).

SUMMARY:

On August 22, 2008, the City transmitted a wetland mitigation plan (Plan) to Kristina Tong at the Army Corps of Engineers. The Plan addresses impacts to wetlands adjacent to Wagley's Creek which were disturbed during the construction of a sewer extension (LID-97) adjacent to the creek between Sultan Basin Road and Rice Road.

The Mitigation Plan was required in order to address the compliance action brought by the Army Corps of Engineers against the City in 2000.

The City proposed two mitigation measures in the Plan:

1. Purchase mitigation bank credits equivalent to 1.29 acres of wetland at the Snohomish Basin Mitigation Bank owned by Habitat Bank LLC.
2. Enhance 1.26 acres of degraded riparian wetland, wetland buffer and riparian buffer on-site within the LID project area.

Authorizing the Mayor to sign a four-year contract with Graham-Bunting Associates will complete the City's obligation under the second mitigation measure.

The City finalized the purchase of mitigation bank credits on January 27, 2009 and has satisfied the first mitigation measure.

DISCUSSION:

On-site Mitigation

The 1.26 acres of enhanced wetland and riparian areas will be accomplished on-site. The proposed on-site area will enhance wetland buffers and riparian buffers on the Hammer PUD (Tracts L and O) adjacent to Wagley Creek. The City is currently negotiating access easements to improve the site area. The objectives of the on-site mitigation is to:

1. Remove invasive species including reed canary grass and blackberries
2. Install native shrubs and trees
3. Improve water quality functions through shading
4. Enhance wildlife habitat
5. Administer a maintenance and monitoring program to ensure success

The City of Sultan does not have the required in-house experts to provide adequate project management and long-term (5-year) monitoring as required by the Army Corps of Engineers in the January 27, 2009 letter which added "special conditions" to the City's August 19, 1999 authorization.

City staff recommend a 4-year contract with Graham-Bunting and Associates to provide contract management and long-term monitoring. Graham-Bunting and Associates prepared and submitted the Wetland Mitigation Plan approved by the Army Corps of Engineers. The proposed scope of work is \$7,440 for the four-year contract.

Proposed Scope of Work

This proposal is for two years of wetland mitigation monitoring in conjunction with the approved mitigation plan for the LID 97-1 wetland impacts. The approved mitigation site is located in Tracts L and O of the proposed Hammer PUD. Prior to any onsite work, the wetland edge and property boundaries will need to be staked by a surveyor. Based on discussions with maintenance contractors, an ideal schedule would be to start removal of invasive species in the late summer and fall seasons (2009), and plant the new plants in the following Spring (2010). This will also allow for time to order the plants in quantity from plant sales and get reduced prices on plant stock.

Task 1: Scoping meetings with the City and maintenance contractor, transmittal of necessary documents, discuss approved methods for invasive species removal, timing, site preparation, plant installation and maintenance.

5 hours @ 80.00 per hour.....\$400.00

Task 2: Meet on site with maintenance contractor to label and map existing vegetation in the buffers for removal and retention. Set up and stake photo points. Prior to this site meeting, buffers and wetland edges will need to be staked by a surveyor. We will set up a grid (50ft to 100 ft transects) utilizing fence posts .

9 hours @ \$80.00 per hour.....\$720.00

Task 3: Once site is prepared for planting and plants arrive, an inspection meeting with contractor on site to review site conditions, plant stock quantity and quality prior to planting.

6 hours @ \$80.00 per hour.....\$480.00

Task 4: After plants are installed (assume Spring 2010) a site visit will take place to collect data for the "As-Built" or Time "0" monitoring report. A map will be prepared which documents the location and quantity of newly installed plants. Photos will be used for report documentation.

7 hours @ \$80.00 per hour.....\$560.00

Task 5: Prepare Time "0"/As-built Monitoring Report and site plan utilizing the most current Corps format. Deliver copies of report to City and Corps.

10 hours @ \$80.00 per hour.....\$800.00

Task 6: Conduct Year One annual monitoring site visit, (assume fall 2010 before the leaves drop). Each newly planted stem will be counted utilizing the fence post grid. Each plant will be recorded for dead, alive, or alive with problems. Any dead or missing plants will need to be replaced 100% at this time. Invasive specie aerial cover will be recorded.

15 hours @ \$80.00 per hour.....\$1,200.00

Task 7: If needed, an on-site meeting with the City, and the contractor to discuss contingency and adaptive management techniques.

3 hours @ \$80.00 per hour.....\$240.00

Task 8: Prepare Monitoring Report for Year One by January 1, 2011 and submit to the Corps and City of Sultan.

10 hours @ \$80.00 per hour.....\$800.00

Task 9: Conduct Year Two annual monitoring site visit (assume fall 2011 before the leaves drop). Each newly planted stem will be counted utilizing the fence post grid. Each plant will be recorded for dead, alive, or alive with problems. Any dead or missing plants will need to be replaced 100% at this time. Invasive specie aerial cover will be recorded.

15 hours @ \$80.00 per hour.....\$1,200.00

Task 10: If needed, an on-site meeting with the City, and the contractor to discuss contingency and adaptive management techniques for invasive species control, and/or replacement of dead or missing plants. 3 hours @ \$80.00 per hour.....\$240.00

Task 11: Prepare Monitoring Report for Year Two by January 1, 2012 and submit to the Corps and City of Sultan. 10 hours @ \$80.00 per hour.....\$800.00

Task	Estimate
1	\$ 400.00
2	\$ 720.00
3	\$ 480.00
4	\$ 560.00
5	\$ 800.00
6	\$1,200.00
7	\$ 240.00
8	\$ 800.00
9	\$1,200.00
10	\$ 240.00
11	\$ 800.00
Total Estimate	\$7, 440.00

Supplies: Approx. 39 fence posts @ \$4.00 = \$156.00
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The City has contacted the Snohomish Conservation District to discuss potential partnerships to implement the on-site mitigation and long-term maintenance and monitoring. City staff are proposing to use native plants, volunteer groups such as Salmon Keepers and Earth Corps to keep the cost of on-site mitigation at a minimum.

FISCAL IMPACT:

The City will need to use its capital project fund or sewer operating fund for contract management and monitoring. Since the annual costs are under \$5,000, City staff recommend using the sewer operating fund. The are funds available in the professional service line-item available for this work.

- 2009 - \$1,600
- 2010 - \$2,800
- 2011 - \$2,240
- 2012 - \$ 800

Total \$7,440

There will be additional expenses to purchase and install the plants as required by the Plan. City staff will bring alternatives back to the City Council in March/April 2009 for discussion and direction.

BACKGROUND:

During construction of LID-97, permitted wetland impacts were exceeded from .54 acre to 1.82 acres. The unanticipated impacts resulted from discharge of slurry through level spreaders during dewatering construction phase of Wagley's Creek.

The City was contacted by Ms. Kristina Tong of the Army Corps of Engineers on December 7, 2006 requesting that the City submit as built drawings of the mitigation plan. The City responded by hiring Graham-Bunting Associates (GBA) to prepare a mitigation plan that was achievable. GBA contacted Ms. Tong and agreed that the current existing conditions needed to be documented as a starting point for the preparation of a mitigation plan.

Existing recovery conditions and prior to construction conditions have been recorded in a table by GBA during the fall of 2007 and is attached to the Bank Use Plan.

Based upon these recovery conditions, the Corps determined the City must mitigate for the wetland impacts as originally proposed with the exception of a .14 acre enhancement credit to be reduced from the original amount of proposed enhancement acreage.

The amount of mitigation the Corps has requested is 1.29 acres of created wetlands and 1.26 acres of enhanced riparian wetland and buffer areas.

Wetland Mitigation Plan Approved by Council

The City Council reviewed the Executive Summary of the Mitigation Plan at its September 11, 2008 meeting. Staff presented the Plan and recommendation to use a combination of wetland bank credits and on-site mitigation to address the Army Corps of Engineers (Corps) compliance action.

The Council questioned whether the Corps was familiar with the mitigation site and the re-vegetation of the area since the project was completed.

The City is in a difficult position. The Army Corps of Engineers expects the City of Sultan to address the impacts to wetland and riparian buffers resulting from LID-97. The City originally planned to work with adjacent property owners to develop created wetlands. Unfortunately, the relationship between the City and adjacent property owners deteriorated after the sewer extension project was completed.

The City doesn't have much leeway in meeting the Corps' requirements. A combination of on-site and purchasing wetland credits is deemed the most prudent course of action to achieve the required mitigation.

Created Wetlands

At the recommendation of Graham-Bunting Associates, the City proposed a bank use plan to satisfy the 1.29 acres of wetland creation requirement through the purchase of wetland "credits" from the Snohomish County Basin Mitigation Bank (Bank) located south of Monroe. The City of Sultan is located in the service area of the Bank.

The City purchased wetland "credits" for \$154,000 in January 2009 satisfying the Army Corps of Engineers first mitigation measure.

ALTERNATIVES:

1. Authorize the Mayor to sign a contract with Graham-Bunting and Associates.

This action implies the City Council ready is to address the impacts to wetland and riparian buffers resulting from LID-97 and resolve its continued violation of the permit issued by the Army Corps of Engineers for the project.

2. Authorize the Mayor to sign a contract with Graham-Bunting and Associates and direct staff to areas of concern.

This action would allow the Council to identify and resolve any questions or concerns before authorizing the Mayor to sign a contract.

3. Do not authorize the Mayor to sign a contract with Graham-Bunting and Associates and direct staff to areas of concern.

This action would delay the City's compliance requirements. The City has been in violation of the Corps permit since 2002. The 2008 Bank Use and On-site Mitigation Plan was prepared by the City's consultant, Graham-Bunting Associates and approved by the Army Corps of Engineers (Attachment B). A delay in implementing the proposed plan could result in further mitigation requirements.

RECOMMENDED ACTION:

Authorize the Mayor to sign a four-year contract with Graham-Bunting not to exceed \$8,000 to satisfy the City's obligation to mitigate for damage associated with the LID-97 sewer extension project as outlined in the January 27, 2009 letter from Michelle Walker of the Army Corps of Engineers Regulatory Branch

ATTACHMENTS:

A – Contract with Graham-Bunting and Associates

B – Army Corps of Engineer Comment letter – January 27, 2009

**AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SULTAN AND
GRAHAM BUNTING AND ASSOCIATES**

THIS AGREEMENT, is made this 1st day of March, 2009, by and between the City of Sultan (hereinafter referred to as "City"), a Washington Municipal Corporation, and Graham-Bunting and Associates (hereinafter referred to as "Service Provider"), doing business at 3643 Legg Road, Bow, WA 98232.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of contract management and wetland mitigation monitoring, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

- 1. Description of Work.** Service Provider shall perform work as described in Attachment A, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
- 2. Payment.**
 - A. The City shall pay Service Provider as set forth in Attachment A, but not more than a total of eight-thousand dollars (\$8,000) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.
 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
- 3. Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the

City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.

4. **Project Name.** Wetland Mitigation and Monitoring LID97-01
5. **Duration of Work.** Service Provider shall complete the work described in Attachment A on or before January 30, 2013.
6. **Termination.**
 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Attachment A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification / Hold Harmless.** The Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only

to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. Insurance. The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. **Minimum Amounts of Insurance.** Service Provider shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

C. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage

maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.

2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
 - D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - E. **Verification of Coverage.** Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.
 - F. **Subcontractors.** Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
 11. **City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
 12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
 13. **Ownership of Products and Premises Security.**
 - A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.

B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.

- 14. Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
- 15. Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
- 16. Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
- 17. Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
- 18. Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF SULTAN

By: _____
Carolyn Eslick, Mayor

SERVICE PROVIDER

By: _____
Title: _____
Taxpayer ID #: _____

CITY CONTACT

City of Sultan
319 Main Street, Suite 200
Sultan, WA 98294
Phone: 360-793-2231
Fax: 360-793-3344

SERVICE PROVIDER CONTACT

Phone: _____
Fax: _____

ATTEST/AUTHENTICATED

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney



Graham-Bunting Associates
Environmental & Land Use Services

3643 Legg Road, Bow, WA 98232
Ph.360.766.4441 FX 360.766.4443

February 11, 2009

Deborah Knight, Administrator
City of Sultan
P.O. Box 1199
Sultan, WA 98294

Re: Proposal for Monitoring Wetland Mitigation LID 97-1

Dear Deborah;

This proposal is for two years of wetland mitigation monitoring in conjunction with the approved mitigation plan for the LID 97-1 wetland impacts. The approved mitigation site is located in Tracts L and O of the proposed Hammer PUD. Prior to any onsite work, the wetland edge and property boundaries will need to be staked by a surveyor. Based on my discussion with maintenance contractors, an ideal schedule would be to start removal of invasive species in the late summer and fall seasons (2009), and plant the new plants in the following Spring (2010). This will also allow for time to order the plants in quantity from plant sales and get reduced prices on plant stock.

Task 1: Scoping meetings with the City and maintenance contractor, transmittal of necessary documents, discuss approved methods for invasive species removal, timing, site preparation, plant installation and maintenance.
5 hours @ 80.00 per hour.....\$400.00

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7 hours @ \$80.00 per hour.....\$560.00

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recorded for dead, alive, or alive with problems. Any dead or missing plants will need to be replaced 100% at this time. Invasive specie aerial cover will be recorded.
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11	\$ 800.00
Total Estimate	\$7, 440.00

Supplies: Approx. 39 fence posts @ \$4.00 = \$156.00

We propose a not to exceed \$8,000.00. GBA charges \$80.00 per hour and mileage @ \$0.45 per mile plus supplies. This work would be done by Patricia Bunting (Co-Principal/wetland ecologist) and Oscar Graham (Co-Principal wetland ecologist/shoreline planner).

Thank you for the opportunity to submit this proposal. I look forward to working with you on your mitigation plan and completion of your project. Please call me if you have any questions.



REPLY TO
ATTENTION OF

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

RECEIVED
JAN 28 2009

BY:.....

JAN 27 2009

Regulatory Branch

Ms. Deborah Knight, City Administrator
City of Sultan
319 Main Street, Suite 200
Sultan, Washington 98294

Reference: 199900025
Sultan, City of

Dear Ms. Knight:

On August 19, 1999, we verified Nationwide Permit 12 for the City of Sultan's (City) proposal to extend an existing sewer line near Sultan, Snohomish County, Washington. On June 8, 2000, after a compliance inspection, we informed the City that there was a deviation from the approved plans: the width of the work corridor exceeded the 40-foot limit in four wetlands. A stop work order was issued. On August 25, 2000, we required the restoration of the unauthorized wetland impact areas and compensatory mitigation for the temporal losses. On December 7, 2006, it was discovered that the compensatory mitigation was never implemented but the work corridor had been successfully restored.

Subsequently, the City submitted a new compensatory mitigation plan entitled *City of Sultan LID 97-1; Wetland Mitigation Plan* dated December 29, 2008. We have determined that implementation of this plan, in compliance with the special conditions listed below, will resolve the permit deviation.

The following Special Conditions are added to your August 19, 1999 authorization:

monitoring
reports for
next 5 yrs.

a. The permittee shall implement and abide by the mitigation plan *City of Sultan LID 97-1; Wetland Mitigation Plan* dated December 29, 2008. Mitigation monitoring reports will be due annually for 5 years from the due date of the as-built drawings of the mitigation site. All reports must be submitted to the Corps, Seattle District, Regulatory Branch and must prominently display the reference number 199900025. *Coordinate w/ special condition "D"*

b. The permittee shall debit 1.29 credits from the Snohomish Basin Mitigation Bank in compliance with the provisions of *Snohomish Basin Mitigation Bank MBI* dated July 28, 2005. This debit shall compensate off-site for adverse project impacts to 1.29 acres of wetlands that would not be compensated for by on-site mitigation. The permittee shall complete the mitigation bank transaction and provide documentation to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, that the transaction has been completed no later than 60 days from the date of this modification letter.

*completed 1/30/09
Tina checking w/ bank ledger staff*

wetland mitigation permit?

c. The wetland area enhanced on-site as compensatory 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 purposes of enhancing or restoring the mitigation associated with this project. In addition, a description of the mitigation area identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with maintaining records on real property. Proof of recording must be provided to the Corps, Seattle District, Regulatory Branch no later than 60 days from the date of permit issuance.

protected critical area easement

record mitigation on deed?

what permit?

Status rpt & as-built drawings submitted to Corps

d. A status report on the on-site mitigation construction, including as-built drawings, must be submitted to the Corps, Seattle District, Regulatory Branch, no later than 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.

this letter (January 27, 2009)

e. Your responsibility to complete the required on-site compensatory mitigation as set forth in Special Condition "a" will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.

demonstrated mitigation success

The modification of adding special conditions to your authorization resolves the permit deviation. Thank you for working with us to resolve this issue. Please be aware that any future permit deviations or violations will be considered knowing and willful and may be referred to the U.S. Attorney for legal action, which could include appropriate penalties.

A copy of this letter will be sent to your wetland consultant Graham-Bunting Associates, 3643 Legg Road, Bow, Washington, 98232. If you have any questions, please contact Ms. Kristina Tong at telephone (206) 764-6913 or via email at Kristina.G.Tong@usace.army.mil.

"maintenance for 3 years Success" based on last addendum % of invasive species

Sincerely,

Michelle Walker
Chief, Regulatory Branch

C. property owner records drawing to title mitigation area can't be disturbed drawings need to be recorded request extension

e. success equals performance standards in mitigation plan