



US Army Corps
of Engineers
Seattle District

SPECIAL PUBLIC NOTICE

Regulatory Branch
Post Office Box 3755
Seattle, Washington 98124
Telephone (206) 764-3495

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Final Regional Conditions and Water Quality Certification and Coastal Zone Management Consistency Decisions for the 2007 Nationwide Permits in Washington State

The Seattle District of the U.S. Army Corps of Engineers (Corps) is issuing final regional conditions for the 2007 Nationwide Permits (NWP) and publishing Coastal Zone Management (CZM) Consistency responses from the Washington State Department of Ecology (Ecology) and Section 401 Water Quality Certification decisions from Ecology, Region 10 of the U.S. Environmental Protection Agency (EPA), and the seven Tribes in Washington (Chehalis, Port Gamble S'Klallum, Kalispel, Makah, Puyallup, Spokane, and Tulalip tribes) with Section 401 certification authority.

A Special Public Notice can be downloaded at our website at www.nws.usace.army.mil (click on Regulatory – Regulatory/permits, then scroll down to 2007 Nationwide Permits) or you can request a hard copy by contacting the Regulatory Branch at the address or telephone number above. This public notice provides a complete list of the 2007 NWP and their terms and conditions, as well as national and regional NWP definitions and information about using the 2007 NWP.

The information in this special public notice (SPN) forms the basis by which the NWP program will be implemented in Washington State until the 2007 NWP are revised, rescinded, or revoked. Any such future action affecting the NWP will be announced by public notice.

Prospective permittees are responsible for ensuring that their proposed activities will comply with all applicable NWP terms and conditions, including general and permit-specific conditions issued by the Corps, EPA, Ecology, and Tribes with Section 401 certification authority. If the proposed activity will comply with all applicable national, state, and regional conditions, the permittee may proceed with the work subject to any notification requirements.

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INTRODUCTION

Pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899, the Secretary of the Army, acting through the U.S. Army Corps of Engineers, is responsible for administering a Regulatory Program (33 CFR 320-331) that requires permits for certain activities in waters of the United States, including wetlands. The EPA shares responsibility with the Corps for implementing and enforcing the requirements of Section 404.

Under Section 404, the Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Under Section 10, the Corps regulates structures and/or work in or affecting the course, condition, or capacity of navigable waters of the United States. Activities requiring Corps authorization that are similar in nature and have minimal individual and cumulative environmental impacts may qualify for authorization by general permit, such as a nationwide permit. On January 15, 2002, the Corps issued 43 nationwide permits (the “2002 NWP”) which expired on March 18, 2007.

The 2007 NWP have been issued to replace the expired 2002 NWP. In the September 26, 2006, issue of the *Federal Register* (71 FR 56258), the Corps published its proposal to reissue the 43 existing NWP and issue six new NWP. On October 11, 2006, the Seattle District published a special public notice requesting public comment on proposed regional conditions for the 2007 NWP in Washington State. Seattle District has coordinated closely with Federal, State, and tribal representatives to develop final regional conditions. The public review process helped the Corps develop reasonable and enforceable regional conditions that make sense to the regulated public, provide a reasonable level of resource protection, and are relatively efficient to implement. On March 12, 2007, the Corps published in the *Federal Register* the final notice of issuance of the Nationwide Permits, effective March 19, 2007. The 2007 NWP are scheduled to expire after five years, on March 18, 2012. This public notice publishes the final regional conditions and other requirements for using the 2007 NWP in Washington State.

SECTION 401 WATER QUALITY CERTIFICATION

Under Section 401 of the CWA, an activity involving a discharge into waters of the United States authorized by a federal permit or license must receive certification from the affected certifying agency or tribe. The issuance of a certification means that the activity will comply with the water quality standards and any established effluent limitations of the certifying agency or tribe. Thus, activities in Washington State requiring a Section 404 permit from the Corps also require Section 401 certification from Ecology, EPA, or a 401 certification-authorized tribe. Section 401 certification signifies that the certifying entity has reasonable assurance that the project will comply with all applicable Federal, State, or Tribal effluent limitations and water quality standards, as well as other applicable aquatic resource protection requirements under the certifying entity’s authority. A 401 certification can authorize both construction and operation of a project.

Section 401 certification is not required for projects that do not require Section 404 authorization (i.e., projects that do not involve discharges of dredged or fill material into waters of the United States). Certain NWP, such as NWP 1, 2, 8, 9, 10, 11, 24, 28, and 35, authorize only Section 10 activities. As such, the Section 10-only activities authorized by these NWP do not require 401 certification. Other NWP, such as NWP 3, 12, 14, and 48, can authorize activities under Section 10 and/or

Section 404. For these NWP, 401 certification is required for specific projects that involve a Section 404 discharge.

A Corps NWP verification letter will discuss any 401 certification requirements and provide appropriate agency contact information to the permittee. If the Corps issues a verification for a project that requires 401 certification, the letter will state that the permittee is **not** authorized to conduct the work until the 401 certification has been approved, conditioned, or waived by the appropriate agency or tribe. A permittee who proceeds without the necessary 401 certification could be subject to enforcement action by both the Corps and the certifying agency. It is the permittee's responsibility to contact the certifying entity and obtain 401 certification prior to starting work.

In Washington State, two agencies and seven tribes have 401 certification authority. The EPA has 401 certification authority for activities on most Native American Indian Tribal lands and on Federal lands with exclusive jurisdiction within the State of Washington. To date, the EPA has granted seven tribes (the Chehalis, Port Gamble S'Klallum, Kalispel, Makah, Puyallup, Spokane, and Tulalip tribes) 401 certification authority over activities on their respective tribal lands. Ecology is authorized to make 401 certification decisions for activities on all other public and private lands in the State.

As part of the NWP issuance process, the Corps asks each of Washington's nine certifying entities to review the proposed NWPs and make 401 certification decisions on each NWP involving Section 404 authority. Each 401 certification decision takes one of three forms:

1. "Certified" means the 401 certification has been approved for all actions authorized by that NWP provided the permittee complies with all applicable national and regional NWP conditions and all applicable 401 certification conditions. The permittee is not required to contact the certifying agency for further authorization or approval.
2. "Certified subject to conditions" means the 401 certification has been approved for some but not all actions authorized under that NWP. (The term "partially denied without prejudice" was previously used for this decision.) The certifying agencies and tribes can provide a list of specific conditions that permittees must meet for 401 certification approval. Permit applicants may be required to submit an application (i.e., Joint Aquatic Resource Permit Application (JARPA)) to the certifying agency for review. After review, the certifying agency will either issue a written verification ("letter of verification") that the project complies with the 401 certification conditions or will notify the permit applicant that an individual 401 certification is required. For example, State 401 Certification for NWP 12 requires permit applicants to contact Ecology for review if the utility line project or activity would impact more than one-half acre of wetlands.
3. "Denied without prejudice" means the 401 Certification has been denied for all activities authorized by that NWP. All NWP applicants must submit an application (i.e., JARPA) to the certifying agency to obtain an individual 401 certification before the NWP authorization is valid. NWP 17 (Hydropower Projects) is an example of a NWP where 401 certification has been denied without prejudice by the State, EPA, and most tribes.

A 401 certification decision of "certified subject to conditions" or "denied without prejudice" does not necessarily mean a proposed project cannot be authorized by NWP. Rather, it means the proposed project requires individual review and approval by the certifying agency (i.e., State, EPA, or 401 certification-authorized tribe) on a case-by-case basis. Individual 401 certification may result in additional conditions and/or mitigation requirements.

401 Certification Decisions: On March 26, 2007, the Corps requested the State (through Ecology), EPA, and the seven 401 certification-authorized tribes to review the final NWP published in the *Federal Register* on March 12, 2007 and provide their 401 Certification decisions by the effective date of the 2007 NWPs. Their responses to the Corps' request are as follows:

1. State of Washington. On May 11, 2007, Ecology, acting on behalf of the State of Washington, issued its 401 Certification decisions on the 2007 NWPs as follows:

Certified: NWPs 4, 5, 7, 15, 18, 19, 20, 22, 25, 30, 31

Certified, subject to conditions: NWPs 3, 6, 12, 13, 14, 16, 23, 27, 29, 32, 33, 34, 36, 38, 39, 40, 42, 45, 46, 48

Denied without prejudice: NWPs 17, 21, 37, 41, 43, 44, 47, 49, 50

Ecology's requirements and timelines for water quality determinations and decisions are currently being discussed between the Corps and Ecology. The Corps will provide the detailed information in a revised public notice when the agencies agree to the process and timelines.

For further information or to apply for individual 401 Certification, contact Ecology's Federal Permit Coordinator at (360) 407-6068 or mail to: Department of Ecology, Attn: SEA Program Federal Permit Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600 or e mail: ecyrededpermits@ecy.wa.gov.

2. EPA. On May 10, 2007, the EPA issued its 401 Certification decisions on the 2007 NWPs as follows:

Certified: NWPs 4, 5, 15, 19, 20, 22, 24, 25, 30, 31

Certified, subject to conditions: NWPs 6, 7, 12, 23, 27, 32, 34, 36, 38, 45

Denied without prejudice: NWPs 3, 13, 14, 16, 17, 18, 21, 29, 33, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50

For further information or to apply for individual 401 Certification from the EPA, contact the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue ECO-083, Seattle, Washington 98101-1128, telephone (206) 553-6686.

3. Confederated Tribes of the Chehalis Reservation. On May 12, 2007, the Confederated Tribes of the Chehalis Reservation denied without prejudice all 401 Certifications for Corps-regulated discharges of dredged or fill material on its tribal lands. To apply for individual 401 Certification from this tribe, contact the Director, Department of Natural Resources, Confederated Tribes of the Chehalis Reservation, Post Office Box 536, Oakville, Washington 98568, telephone (360) 273-5911.

4. Kalispel Tribe of Indians. On May 10, 2007, the Kalispel Tribe of Indians denied without prejudice all 401 Certifications for Corps-regulated discharges of dredged or fill material on its tribal lands. To obtain individual 401 Certification from this tribe, contact the Director, Department of Natural Resources, Kalispel Tribe of Indians, Post Office Box 39, Usk, Washington 99180-0039, telephone (509) 445-1147, ext. 1276.

5. Makah Tribe. On April 11, 2007, the Makah Tribe denied without prejudice all 401 Certifications for Corps-regulated discharges of dredged or fill material on its tribal lands. To obtain individual 401 Certification from this tribe, contact the Director of Natural Resources, Makah Tribe, Post Office Box 115, Neah Bay, Washington 98357-0115, telephone (360) 645-3263.

6. Port Gamble S'Klallam Tribe. On May 14, 2007, the Port Gamble S'Klallam Tribe denied without prejudice all 401 Certifications for Corps-regulated discharges of dredged or fill material on its tribal lands. To obtain individual 401 Certification from this tribe, contact the Director, Department of Natural Resources, Port Gamble S'Klallam Tribe, 31912 Little Boston Road Northeast, Kingston, Washington 98346, telephone (360) 297-2646

7. Puyallup Tribe of Indians. On May 16, 2007, the Puyallup Tribe of Indians denied without prejudice all 401 Certifications for Corps-regulated discharges of dredged or fill material on its tribal lands. To obtain individual 401 Certification from this tribe, contact the Director of Natural Resources, Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404, telephone (253) 573-7850.

8. Spokane Tribe of Indians. On May 21, 2007, the Spokane Tribe of Indians certified, subject to conditions, discharges of dredged or fill material authorized by NWP's on its tribal lands. The Tribe's 401 general conditions require project proponents to submit their NWP applications to the Tribe for review and approval. Submit applications to the Water Control Board, Spokane Indian Tribe of Indians, Post Office Box 480, Wellpinit, Washington 99040; telephone (509) 626-4409.

9. The Tulalip Tribes. On May 15, 2007, The Tulalip Tribes denied without prejudice all 401 Certifications for Corps-regulated discharges of dredged or fill material on its tribal lands. To obtain individual 401 Certification from this tribe, contact the Tulalip Tribes Natural Resource Department, 6700 Totem Beach Road, Tulalip, Washington 98271-9894, telephone (360) 651-4495.

COASTAL ZONE MANAGEMENT ACT CONSISTENCY

The Coastal Zone Management Act (16 USC §1451 et seq.) requires states to review all federal permits and licenses for consistency with the state's coastal management (CZM) program. In Washington, Ecology is the agency responsible for CZM review in Washington's 15 coastal counties:

Clallam	Kitsap	Skagit
Grays Harbor	Mason	Snohomish
Island	Pacific	Thurston
Jefferson	Pierce	Wahkiakum
King	San Juan	Whatcom

A Federal agency involved in conducting, licensing, or permitting, or funding an activity in a coastal county must prepare and submit to Ecology a determination of whether or not the proposed activity is consistent with Washington's Coastal Zone Management Program.

State CZM requirements most commonly applicable to activities authorized by NWP's include:

- State Environmental Policy Act, (SEPA)
- Federal Clean Water Act (CWA)

- State Shoreline Management Act, (SMA)

The State's CZM Program also requires compliance with the Federal Clean Air Act (CAA), State Energy Facility Site Evaluation Council (EFSEC), and Ocean Resource Management Act (ORMA).

Ecology reviews proposed projects for consistency with the above laws and generally includes its CZM Consistency Response with its 401 Certification. The CZM Consistency Response must be made within 6 months from Ecology's receipt of a Certification of Consistency or it is considered waived and the applicant may proceed provided the NWP and 401 Certification requirements are met.

Ecology has reviewed the Corps' determination that the 2007 NWPs are consistent with the State's CZM Program and made the following concurrence decisions:

Concurs for NWPs: 1, 2, 4, 5, 7, 9, 10, 11, 15, 18, 19, 20, 22, 25, 28, 30, 31

Concurs subject to conditions for NWPs: 3, 6, 12, 13, 14, 16, 23, 27, 29, 32, 33, 34, 36, 38, 39, 40, 42, 45, 46, 48

Objects for NWPs: 8, 17, 21, 35, 37, 41, 43, 44, 47, 49, 50

ENDANGERED SPECIES ACT

The National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) (collectively, the Services) have listed or proposed for listing 56 species of plants, fish, birds, and other species in or near Northwest waters as endangered or threatened under the Endangered Species Act (ESA) of 1973. In addition, the habitat for some of these species has been designated as critical for their conservation.

In accordance with Section 7 of the ESA, the Corps consults with the Services on any work proposed in an application for a Department of the Army permit – including nationwide permits – that may affect a federally listed species or its designated critical habitat. Specifics of this consultation process are set forth in the Federal regulations implementing the ESA (50 CFR Part 402). To expedite the consultation process and comply with this law, the Seattle District Engineer requests applicants to prepare a biological evaluation (BE) of the work they propose. (The District Engineer is authorized by Federal regulation (33 CFR 325.1(e)) to obtain from permit applicants additional information deemed essential to making a public interest determination.) A BE is an assessment of the impacts a proposed project will have on listed and/or proposed-for-listing species and designated and/or proposed critical habitat. More detailed ESA related information including how to prepare and submit BE information is posted at Seattle District's web page, <http://www.nws.usace.army.mil> (click on Regulatory/Permits, then Endangered Species Act.) Applicants may also contact the Seattle District at telephone (206) 764-3495 for assistance.

The ESA procedures discussed above are required for all work affecting or potentially affecting ESA-listed species or designated critical habitat. These procedures apply regardless of the nature, scope, or environmental impact of the work. Please refer to General Condition 17 (Endangered Species) in the *Corps National General Conditions* section of this public notice for specific requirements.

Pre-Approved Section 7 Consultations and NWP: The majority of NWP verifications require preparation of a BE and individual consultation with one or both Services. However, in some cases the Corps and one or both of the Services may have already consulted on certain activities allowing a NWP applicant with a qualifying project to be able to use one of these “pre-approved” ESA consultations to expedite the ESA consultation process for the applicant’s own project. As of the date of issuance of this public notice, at least one pre-approved consultation is available to expedite qualifying activities authorized by the following NWPs: 1, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18, 20, 23, 27, and 33. Potential applicants are strongly encouraged to learn about the pre-approved programmatic consultations and design their projects so a pre-approved consultation can be used. Projects that may affect listed species or designated critical habitat but do not qualify to use a pre-approved consultation will require individual consultation. Please visit Seattle District’s regulatory program website at <http://www.nws.usace.army.mil> for further information.

RELATED LAWS AND REQUIREMENTS

National Historic Preservation Act: Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to determine how a proposed project may affect recorded or undiscovered cultural resources and/or historic properties within the permit area. Section 106 directs Federal agencies with jurisdiction over a proposed federal undertaking to take into account the effect of the undertaking on any historic property listed, or eligible for listing, in the National Register of Historic Places. Compliance with Section 106 is a requirement of all NWP verifications pursuant to General Condition 18 (Historic Properties), listed in the *Corps National General Conditions* section of this public notice.

A cultural resource/historic property survey, conducted by a professional archaeologist, may be necessary before a NWP verification can be completed. The federal agency involved in the project determines whether or not a survey is necessary. Based on the results of the survey, the lead federal agency will conduct the appropriate Section 106 consultation with the State Historic Preservation Officer or Tribal Historic Preservation Officer. Applicants should be aware that Section 106 coordination and/or consultation may add substantial time to the permit application review process.

Magnuson-Stevens Act: The Magnuson-Stevens Fishery Conservation and Management Act (16 USC § 1801 et seq.) governs marine fisheries management in the United States. The Act mandates the identification of **Essential Fish Habitat** (EFH) for federally managed species as well as the development of measures to conserve and enhance the habitat necessary for fish to carry out their life cycles. The Act requires federal agencies to consult with NMFS before authorizing, funding, or conducting an activity that may adversely affect EFH. When consulted, NMFS provides guidance, in the form of conservation recommendations, to help federal agencies minimize the impact of their actions on EFH. Compliance with the Magnuson-Stevens Act is a requirement of all NWP verifications in Washington State pursuant to Seattle District regional general condition 6 (Essential Fish Habitat), listed in the *Seattle District Regional General Conditions* section of this public notice.

Shoreline Management Act: The Shoreline Management Act (SMA) of 1971 was enacted to protect the State’s shorelines and the reasonable uses of those shorelines. Any work or activity authorized by a NWP and undertaken within shorelines of the State is subject to review under the Shoreline

Management Act. Such work or activity must be conducted in accordance with the requirements of the shoreline master program of the applicable local government.

Hydraulic Project Approval: Pursuant to Washington's Hydraulic Code, the Washington State Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) for any work that would affect the bed or flow of state waters including all work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, which often includes wetlands. For more information, please visit <http://wdfw.wa.gov/hab/hpapage.htm> or contact the WDFW at:

Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
(360) 902-2200

Activities On State-Owned Aquatic Lands: Projects proposed to occur on State-owned aquatic lands may require separate authorization from the Washington Department of Natural Resources (WDNR). The WDNR is the manager of state-owned aquatic lands. Work, including mitigation projects, that would use state-owned aquatic lands, requires prior authorization from the WDNR. The WDNR's administrative rules (WAC 332-30-107(6)) require that substantial and/or irreversible impacts to state-owned aquatic lands be fully mitigated. For further information contact the WDNR's Aquatic Resources Division or visit <http://www.dnr.wa.gov/htdocs/aqr/>.

Migratory Bird Treaty Act: The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712 et seq.) prohibits individuals, government agencies, or corporations from taking a migratory bird, whether the taking is intentional or unintentional. The U.S. Fish and Wildlife Service is the primary Federal agency responsible for the conservation and management of migratory bird resources. Please see <http://www.fws.gov/laws/lawsdigest/treaties.htm> for additional information about Migratory Bird Treaty Act requirements.

Conservation measures to minimize potential harm to migratory birds from overhead power lines include the installation of aviation balls or similar devices with state-of-the-art color patterns. Areas most susceptible to these injuries are aerial crossing of rivers, estuaries, open-waterbodies such as rivers, lakes, estuaries, expansive wetlands, or over linear geomorphologic features such as canyons, valleys, etc. where migratory birds, especially waterfowl, shorebirds, and raptors are likely to migrate. Vegetation removal in waters of the U.S. associated with a permitted activity should not occur in migratory bird breeding areas during the nesting season for migratory birds. The primary avian nesting season in Washington State is generally March through August.

Injury is more likely to occur when birds are nesting, usually during spring and early summer. For additional information, applicants may contact USFWS at the following addresses:

Western Washington: Ken S. Berg, Manager
Western Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service
510 Desmond Dr. Suite 102
Lacey, Washington 98503
(360) 753-9440

Central Washington: Jessica Gonzales, Division Manager
Central Washington Field Office
U.S. Fish and Wildlife Service
215 Melody Lane, Suite 119
Wenatchee, Washington 98801
(509) 665-3508

Upper-Columbia River: Rick Donaldson, Branch Manager
Upper Columbia Fish and Wildlife Office
U.S. Fish and Wildlife Service
11103 E. Montgomery Drive
Spokane, Washington 99206
(509) 893-8009

Fish and Wildlife Coordination Act: The Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 USC § 661 et seq.), authorizes the Secretary of the Interior, through the U.S. Fish and Wildlife Service, to assist and cooperate with federal, state, and public or private agencies and organizations in the conservation and rehabilitation of wildlife whenever the waters of a stream or other waterbody would be impounded, diverted, deepened, or otherwise controlled or modified. The act requires proponents to also consult with the state wildlife resources agency and, when appropriate, National Marine Fisheries Service. This coordination helps conserve our wildlife resources by preventing or reducing the loss of those resources and, whenever possible, improving those resources.

Marine Sanctuaries and Estuarine Reserves: Applicants with projects occurring within federally designated Marine Sanctuaries or Estuarine Reserves must first contact the agency responsible for managing that sanctuary or reserve. Washington has one marine sanctuary, the Olympic Coast National Marine Sanctuary, located along the Pacific coast in Clallam, Jefferson, and Grays Harbor counties. Washington also has one estuarine reserve, Padilla Bay National Estuarine Research Reserve, located at the mouth of the Skagit River in Skagit County. For further information please contact:

Olympic Coast National Marine Sanctuary
115 Railroad Ave. East, Suite 301
Port Angeles, WA 98362
Phone: (360) 457-6622

Padilla Bay National Estuarine Research Reserve
10441 Bayview-Edison Road
Mount Vernon, Washington 98273-9668
Phone: (360) 428-1558

State Clean Up Sites: Any activity or work authorized under these NWP's will not preclude the permittee from cleanup-related liabilities where this work is undertaken at a cleanup site designated under the Model Toxics Control Act (MTCA).

OTHER IMPORTANT INFORMATION

Mill Creek Special Area Management Plan: The Mill Creek Special Area Management Plan (SAMP) is located in south King County at Auburn, Washington. The Mill Creek SAMP area encompasses the Mill Creek (Auburn), Mullen Slough, Midway Creek, and Auburn Creek drainage areas and the area bounded by 4th Street Northeast in Auburn on the south, and the Ordinary High Water mark of the Green River on the east and north.

The Corps will carefully evaluate any NWP application for an activity proposed to occur in the Mill Creek SAMP area in light of the provisions of the *Mill Creek Special Area Management Plan, King County, Washington*, dated April 2000. The Corps will support the Mill Creek SAMP by recommending the District Engineer take discretionary authority over any proposed work that would not comply with the provisions of this plan. By taking discretionary authority, the proposed project will require authorization through the standard individual permit process, which provides the Corps authority to deny a permit if the proposed work would be contrary to the public interest or not comply with the 404(b)(1) Guidelines.

The Corps recommends that compensatory mitigation for any authorized work in the Mill Creek SAMP area occur either onsite or in the areas designated as "Wetlands to be Protected and/or Restored" or "Wetlands with Restricted Development Status". Creation of wetlands for compensatory mitigation may occur in suitable upland sites within the Mill Creek SAMP area. Mitigation plans must comply with the provisions of *Mill Creek Special Area Management Plan, King County, Washington*.

Wetland Delineations: Wetland delineations are an important component of any jurisdictional determination involving wetlands. Wetland delineations must be conducted in accordance with the 1987 *Corps of Engineers Wetlands Delineation Manual* and all applicable supplements and guidance, including the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* issued in December 2006.

While being delineated, a wetland should also be assessed using the *Washington State Wetland Rating System*, which assigns a wetland into one of four categories based on the type and extent of functions it performs, sensitivity to disturbance, rarity, and practicability of being replaced. A wetland assessment can provide important information to regulatory agencies reviewing permit applications. Documents and forms for both the eastern and western Washington rating systems are available at <http://www.ecy.wa.gov/programs/sea/wetlands/ratingsystems/index.html>.

Mitigation: In situations where a State agency requires compensatory mitigation over and above that required by the Corps for a project requiring authorization by NWP, the Corps generally considers the additional compensatory mitigation to be authorized by the same NWP pursuant to National General Condition 20 (Mitigation). Examples include additional compensatory mitigation required by a city or county for a building or shoreline substantial development permit, by the WDFW as part of an

approved HPA, or by Ecology as part of a 401 Certification. The discharge of dredged or fill material necessary for compensatory mitigation does not count against any volume or area limits of the NWP.

For information regarding wetland mitigation requirements and guidelines please refer to *Wetland Mitigation in Washington State, Part 1 – Agency Policies and Guidance* and *Wetland Mitigation in Washington State, Part 2 – Developing Mitigation Plans*. These documents are available at <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/index.html>. For information regarding suitable mitigation in other aquatic resources, such as rivers, creeks, lakes or coastal inlets, please contact a Corps project manager.

Navigable Waters of the United States: Section 10 of the Rivers and Harbors Act of 1899 requires Department of the Army authorization for most structures and/or work in or affecting navigable waters of the United States (33 CFR 322.3(a)). A list of navigable (i.e., Section 10) waters in Washington State is available on the Seattle District's Regulatory homepage at:

http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/Navigable_waters.pdf.

Abbreviations and Acronyms Used in this Special Public Notice:

401 Certification	–	Section 401 Water Quality Certification
BE	–	Biological Evaluation
Corps	–	U.S. Army Corps of Engineers
CBSA	–	Commencement Bay Study Area
CZM	–	Coastal Zone Management
Ecology	–	Washington State Department of Ecology
EPA	–	U.S. Environmental Protection Agency
ESA	–	Endangered Species Act
HPA	–	Hydraulic Project Approval
JARPA	–	Joint Aquatic Resource Permit Application
NMFS	–	National Marine Fisheries Service
NPDES	–	National Pollution Discharge Elimination System
NRCS	–	Natural Resources Conservation Service
NWP	–	Nationwide Permit
PCN	–	Pre-Construction Notification
SPN	–	Special Public Notice
SPIF	–	Specific Project Information Form (ESA)
State	–	State of Washington
TMDL	–	Total Maximum Daily Load
USFWS	–	U.S. Fish and Wildlife Service
WDFW	–	Washington State Department of Fish and Wildlife
WDNR	–	Washington Department of Natural Resources
WDOT	–	Washington State Department of Transportation

2007 NATIONWIDE PERMITS

- NWP 1** Aids to Navigation
- NWP 2** Structures in Artificial Canals
- NWP 3** Maintenance
- NWP 4** Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5** Scientific Measurement Devices
- NWP 6** Survey Activities
- NWP 7** Outfall Structures and Associated Intake Structures
- NWP 8** Oil and Gas Structures on the Continental Shelf
- NWP 9** Structures in Fleeting and Anchorage Areas
- NWP 10** Mooring Buoys
- NWP 11** Temporary Recreational Structures
- NWP 12** Utility Line Activities
- NWP 13** Bank Stabilization
- NWP 14** Linear Transportation Projects
- NWP 15** U.S. Coast Guard Approved Bridges
- NWP 16** Return Water from Upland Contained Disposal Areas
- NWP 17** Hydropower Projects
- NWP 18** Minor Discharges
- NWP 19** Minor Dredging
- NWP 20** Oil Spill Cleanup
- NWP 21** Surface Coal Mining Activities
- NWP 22** Removal of Vessels
- NWP 23** Approved Categorical Exclusions
- NWP 24** Indian Tribe or State Administered Section 404 Programs
- NWP 25** Structural Discharges
- NWP 26** [Reserved]
- NWP 27** Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28** Modifications of Existing Marinas
- NWP 29** Residential Developments
- NWP 30** Moist Soil Management for Wildlife
- NWP 31** Maintenance of Existing Flood Control Facilities

- NWP 32** Completed Enforcement Actions
- NWP 33** Temporary Construction, Access, and Dewatering
- NWP 34** Cranberry Production Activities
- NWP 35** Maintenance Dredging of Existing Basins
- NWP 36** Boat Ramps
- NWP 37** Emergency Watershed Protection and Rehabilitation
- NWP 38** Cleanup of Hazardous and Toxic Waste
- NWP 39** Commercial and Institutional Developments
- NWP 40** Agricultural Activities
- NWP 41** Reshaping Existing Drainage Ditches
- NWP 42** Recreational Facilities
- NWP 43** Stormwater Management Facilities
- NWP 44** Mining Activities
- NWP 45** Repair of Uplands Damaged by Discrete Events
- NWP 46** Discharges in Ditches
- NWP 47** Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- NWP 48** Existing Commercial Shellfish Aquaculture Activities
- NWP 49** Coal Remining Activities
- NWP 50** Underground Coal Mining Activities

NATIONWIDE PERMIT CONDITIONS

Corps National General Conditions (applicable to all NWP)

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification
28. Single and Complete Project

Seattle District Regional General Conditions (applicable to all NWP authorizations in Washington State)

1. Aquatic Resources Requiring Special Protection
2. Access
3. Commencement Bay
4. Bank Stabilization
5. Cultural Resources and Human Burials
6. Essential Fish Habitat
7. Vegetation Protection and Restoration

State 401 Certification General Conditions (applicable to all NWP authorizations in Washington State requiring 401 Certification from Ecology)

1. For in-water construction activities
2. Projects or Activities Discharging to Impaired Waters
3. Notification
4. Aquatic resources requiring special protection
5. Mitigation
6. Temporary Fills
7. Mill Creek Special Area Management Plan
8. State Certification for PCNs not receiving 45-day response.

EPA 401 Certification General Conditions (applicable to all NWP authorizations in Washington State requiring 401 Certification from EPA)

- A. Special Aquatic Sites
- B. Soil Erosion and Sediment Controls
- C. Compliance with Stormwater Provisions
- D. Compliance with requirements of the National Pollutant Discharge Elimination System
- E. Projects or Activities Discharging to Impaired Waters
- F. Notification
- G. Mitigation
- H. Temporary Fills

Spokane Tribe of Indians 401 Certification General Conditions (applicable to all authorizations in Washington State requiring 401 Certification from the Spokane Tribe of Indians)

1. Compliance with Spokane Tribal Water Quality Standards
2. Spokane Tribal Water Control Board review and approval
3. Compliance with Spokane Tribe Integrated Resource Management Plan guidelines
4. Inspection of project site by Spokane Tribal Water Control Board
5. Monitoring of discharges

2007 NATIONWIDE PERMIT DEFINITIONS

National Definitions

1. Best Management Practices (BMPs)
2. Compensatory Mitigation
3. Currently Serviceable
4. Discharge
5. Enhancement
6. Ephemeral Stream

7. Establishment (creation)
8. Historic Property
9. Independent Utility
10. Intermittent Stream
11. Loss of Waters of the United States
12. Non-tidal Wetland
13. Open Water
14. Ordinary High Water Mark
15. Perennial Stream
16. Practicable
17. Pre-construction notification
18. Preservation
19. Re-establishment
20. Rehabilitation
21. Restoration
22. Riffle and Pool Complex
23. Riparian Areas
24. Shellfish Seeding
25. Single and Complete Project
26. Stormwater Management
27. Stormwater Management Facilities
28. Stream Bed
29. Stream Channelization
30. Structure
31. Tidal Wetland
32. Vegetated Shallows
33. Waterbody

Seattle District Definitions

1. Alkali Wetlands
2. Aspen Wetland Forests
3. Bogs and Bog-like Wetlands
4. Coastal Dune
5. Essential Fish Habitat
6. Forage fish
7. Kettle
8. Marine Waters with Eelgrass beds
9. Mature Forested Wetland
10. Native Species
11. Permanent Adverse Impacts
12. Riparian Corridors
13. Salt Marsh
14. Special Aquatic Sites
15. Specialized Seasonal Wetlands
 - a. Camas Prairie Wetlands
 - b. Playa
 - c. Prairie Pothole
 - d. Vernal Pool

2007 NATIONWIDE PERMIT TERMS AND PERMIT-SPECIFIC CONDITIONS

The 2007 Nationwide Permits are listed below. For each NWP, we include: (1) a summary of pre-construction notification (PCN) requirements, (2) Seattle District's regional permit-specific conditions, (3) State, EPA, and Tribal 401 Certification decisions, including any permit-specific 401 Certification conditions, and (4) the State's CZM consistency responses, including any permit-specific CZM consistency conditions. Please note that only one agency or tribe will have 401 Certification authority over a given project, depending on the location of the project. Please refer to *Section 401 Water Quality Certification*, beginning on page 3 of this public notice, for further information.

In addition to complying with the terms and permit-specific conditions listed below, permittees must comply with all applicable National, Regional, State, and Tribal general conditions listed in the following section, *Nationwide Permit General Conditions*, beginning on page 15 of this public notice.

The vast majority of NWP verifications in Washington State involve specific **Endangered Species Act** (ESA) requirements, such as individual consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service. Compliance with all applicable ESA requirements is necessary for a valid NWP authorization. All prospective NWP permittees should refer to the *Endangered Species Act* section, beginning on page 7 of this public notice, for additional information about ESA requirements and to national general condition 17 (Endangered Species) on page 71 of this public notice before submitting an application to the Corps. The applicant must notify the Corps if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. In many cases, pre-approved consultations are available to expedite the permit process for qualifying activities.

1. **Aids to Navigation**. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not Applicable (Section 10 only).

CZM Consistency Response – Concur.

2. **Structures in Artificial Canals.** Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not Applicable (Section 10 only).

CZM Consistency Response – Concur.

NOTE: *Designated Artificial Canals in Seattle District are Birch Bay Village at Birch Bay, Lagoon Point Association at Whidbey Island, Mariners Cove at Whidbey Island, Newport Shores at Lake Washington, Sandy Point at Lummi Bay, Shelter Bay at Swinomish Channel, Twin Bridge Marine Park at Swinomish Channel, and Willow Grove Boat Launch Basin at Willow Grove Island in the Columbia River.*

3. **Maintenance.**

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland

area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

NOTE: Applicants proposing culvert crossings in fish-bearing streams should follow design guidance provided in “Fish Passage Technical Assistance, Design of Road Culverts for Fish Passage” (see www.wdfw.wa.gov/hab/engineer/cm).

State 401 Certification – Certified, subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activities are below the OHWM with new work being proposed outside the original footprint.

2. The proposed project or activity increases the original footprint of the structure by more than 10 percent in wetlands.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

4. **Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-Construction notification required for work that results in a discharge of dredged or fill material (see Regional Condition 1). Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with National General Condition 27 (Pre-Construction Notification) for grading, berm construction, placement of substrate, and other activities involving a discharge of dredged or fill material.

2. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

NOTE: *Shellfish seeding activities are not authorized by NWP 4. The discharge of shells, shell fragments, gravel, etc. may be authorized by NWP 48.*

NOTE: *This NWP does not apply to fish hatcheries, net pens, or other structures for aquaculture activities to propagate non-motile species such as mussels and oysters.*

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

5. **Scientific Measurement Devices.** Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for weirs and flumes that do not meet WDFW fish passage design criteria. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. *Temporary devices must be completely removed within 30 days of project completion and the site restored to its original condition.*

2. *The permittee must submit a pre-construction notification to the District Engineer in accordance with National General Condition 27 (Pre-Construction Notification) for the construction of weirs and flumes that do not meet Washington Department of Fish and Wildlife fish passage design criteria (see http://www.wdfw.wa.gov/hab/engineer/cm/culvert_manual_final.pdf).*

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

6. **Survey Activities.** Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil

surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for exploratory trenching. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with National General Condition 27(Pre-Construction Notification) for exploratory trenching activities.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves oil or natural gas exploration.
2. The project or activity requires trenching in wetlands.

EPA 401 Certification – Partially denied without prejudice. Individual 401 certification is required for projects authorized under this NWP if:

1. The project or activity includes exploratory trenching, or
2. The project or activity includes oil or natural gas exploration.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

NOTE: An applicant must apply for a "Permit for Oil or Natural Gas Exploration Activities Conducted from State Marine Waters" pursuant to Chapter 173-15 WAC. This permit is required for CZM consistency.

7. **Outfall Structures and Associated Intake Structures.** Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Partially denied without prejudice. Individual 401 certification required for projects authorized under this NWP if:

1. Project or activities requires construction below OHWM, or
2. Project or activities have associated outfall to a wetland, or
3. Receiving waters cannot be diverted.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

8. **Oil and Gas Structures on the Outer Continental Shelf.** Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

401 Certification – Not Applicable (Section 10 only).

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

9. **Structures in Fleeting and Anchorage Areas.** Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19) , if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not Applicable (Section 10 only).

CZM Consistency Response – Concur.

NOTE: Anchorage and fleeting areas in Seattle District are listed in the Coast Guard anchorage regulations, 33 CFR 110.228-230 (http://www.access.gpo.gov/nara/cfr/waisidx_05/33cfr110_05.html).

10. **Mooring Buoys.** Non-commercial, single-boat, mooring buoys. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not Applicable (Section 10 only).

CZM Consistency Response – Concur.

11. **Temporary Recreational Structures**. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not Applicable (Section 10 only).

CZM Consistency Response – Concur.

12. **Utility Line Activities**. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility Lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility Line Substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access Roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent

access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required when the activity involves mechanized land clearing in a forested wetland for a utility line right-of-way or for the construction of a substation; a Section 10 permit is required; the utility line exceeds 500 feet in waters of the U.S.; the utility line is in waters of the U.S. and runs parallel to a stream bed; the discharge will result in the loss of greater than 1/10 acre of waters of the U.S; a permanent access road is constructed above grade for a distance of more than 500 feet; or permanent access roads are constructed in waters of the United States with impervious materials. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. When backfilling trenches in wetlands, no more than 10 percent of the soil used to backfill the top 12 inches of the trench may consist of subsurface soil.
2. The permittee must submit a pre-construction notification to the District Engineer in accordance with National General Condition 27 (Pre-Construction Notification) for mechanized landclearing in a forested wetland for the construction of a substation.
3. A pre-construction notification must include drawings and/or a description of the measures that will be used to prevent permanent drainage of adjacent areas by the backfilled trench and/or along the buried utility line.

NOTE: *In waters subject to scour, permittee may be required to determine the scour level for the watercourse the utility line will cross and may be required to place the line below the scour level of the watercourse.*

NOTE: *The National Ocean Service (NOS) must be notified when the Corps authorizes a submerged utility line. The applicant must notify the NOS and the Corps in writing, at least 2 weeks before work begins and upon completion of the activity authorized by this permit. The notification of completion must include a drawing which certifies the location and configuration of the completed activity. Notifications to NOS should be sent to: NOAA/NOS, Office of Coast Survey, N/CS261, 1315 East-West Highway, Silver Spring, Maryland 20910-3283.*

State 401 Certification – Certified subject to conditions. Individual 401 review required for projects or activities authorized under this NWP if:

1. The entire utility line project or activity impacts more than ½ acre of wetlands.

NOTE: *Applicants must also apply for and obtain coverage under Ecology's Construction Stormwater General Permit for all utility line construction projects which disturb cumulatively one acre or more.*

EPA 401 Certification – Partially denied without prejudice. Individual 401 certification required for projects authorized under this NWP if:

1. There are any permanent access roads, temporary structures or fill associated with the Utility Line activity, or
2. The entire scope of the project is greater than ½ acre of impacts to wetlands

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

13. **Bank Stabilization.** Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer.
- (e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(g) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required in all instances. See Regional General Condition 4 and National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

NOTE: *Fills for bank stabilization in special aquatic sites, including pool and riffle complexes, wetlands, and mudflats are discouraged.*

NOTE: *The length of a bank protection project, especially in the case of barbs, is measured as the total length of shoreline/bank to be protected by the structure(s).*

State 401 Certification – Certified subject to conditions. Individual 401 review required for projects or activities authorized under this NWP if:

1. The project or activity is greater than 500 feet in length.
2. The project or activity exceeds an average of one cubic yard per running foot below the Ordinary High Water Mark or High Tide Line.
3. The project or activity involves discharges of dredged or fill material into special aquatic sites.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

14. **Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank

stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acres; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required when loss of waters of the United States is greater than 1/10 acre; when the discharge is in a special aquatic site; for all bank stabilization proposals in accordance with Regional General Condition 4; and for crossings in tidal waters. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. Private linear transportation crossings placed in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-Construction Notification) for linear transportation crossing activities in tidal waters.

NOTE: Applicants must provide information in the PCN about changes in base and peak flows, and water quality impacts that would result directly or indirectly from the proposed linear transportation crossing as required by NWP General Conditions 9 (Management of Water Flows), 27 (Notification), and 21 (Water Quality).

NOTE: *Culverts in fish-bearing streams should comply with the design guidance provided in “Fish Passage Technical Assistance, Design of Road Culverts for Fish Passage” (see www.wdfw.wa.gov/hab/engineer/cm).*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The entire linear transportation project or activity impacts more than ½ acre of wetlands.
2. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

15. **U.S. Coast Guard Approved Bridges.** Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

NOTE: *A list of the navigable waters of the United States in Washington State is available at:*

http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/Navigable_waters.pdf.

State 401 Certification – Certified.

NOTE: *An Individual 401 Certification will be required for the Coast Guard permit.*

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

16. **Return Water from Upland Contained Disposal Areas**. Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if the project or activity is not covered by an NPDES permit.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

17. **Hydropower Projects**. Discharges of dredged or fill material associated with hydropower projects having: (a) less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the

Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional conditions – None.

State 401 Certification – Denied without prejudice.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

18. **Minor Discharges**. Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required when discharge or excavation volume exceeds 10 cubic yards below the plane of ordinary high water or high tide line or when the discharge occurs in a special aquatic site. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis Tribes, Port Gamble S'Klallum Tribe, Kalispel Tribe, Makah Indian Tribe, Puyallup Tribe, and Tulalip Tribe. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

19. **Minor Dredging.** Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-Construction Notification) for dredging proposed to occur in riffle and pool complexes or mudflats.

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

20. **Oil Spill Cleanup.** Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR Part 761. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

21. **Surface Coal Mining Operations.** Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Notification) for specific requirements.

Regional conditions –

1. Reclamation to OSM standards must be completed within 5 years of the completion of mining in individual mining pits.

2. Permittees must provide compensatory mitigation for temporal losses of aquatic ecosystem functions in waters of the U.S. (see NWP General Condition 20 for mitigation requirements).

State 401 Certification – Denied without prejudice. Individual 401 Certification is required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response — Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

22. **Removal of Vessels.** Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Section 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, a separate Department of the Army authorization will be required.

Note 2: Compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required if the vessel is listed or eligible for listing in the National Register of Historic Places or the activity is conducted in a special aquatic site. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

23. **Approved Categorical Exclusions.** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rqlsindx.htm>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Notification) for specific requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-Construction Notification) in all instances. The notification must include a statement/form verifying the proposed work is categorically exempt. The statement/form must be signed by an official of the Federal agency that issued the categorical exemption.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if the project or activity has fill impacts to waters of the state greater than ½ acre.

EPA 401 Certification – Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if the project or activities have fill impacts greater than 1/10 acre.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

24. **Indian Tribe or State Administered Section 404 Programs**. Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

NOTE: *This NWP is not used in Washington State.*

25. **Structural Discharges**. Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form

prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a section 10 permit if located in navigable waters of the United States. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

26. **[Reserved]**

27. **Aquatic Habitat Restoration, Establishment, and Enhancement Activities**. Activities in waters of the United States associated with the restoration, enhancement and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;

(2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required as discussed in “Notification” above. Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. For projects subject to pre-construction notification and involving work that would result in any loss of waters of the U.S. in a special aquatic site (e.g., mudflat, wetland or riffle and pool complex), the notification must explain why the loss is necessary and show how it would be fully offset by the beneficial impacts of the project. The notification must describe pre-project site conditions (including photographs), general wetland and other aquatic functions the site provides, and proposed maintenance and monitoring plans

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-construction Notification) for any proposed project located in a Department of the Army permit compensatory mitigation site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund) site, Resource Conservation and Recovery Act hazardous waste clean-up site, or Washington State Model Toxics Control Act clean-up site.

NOTE: *The restoration of former waters may occur in either tidal or non-tidal waters. However, NWP 27 may not be used for the enhancement or creation of tidal waters other than wetland and riparian areas. (See the NWP definition section for more information.)*

NOTE: *Conversion of wetlands dominated by native vegetation to open water habitat is typically not viewed as environmentally beneficial and would typically not be authorized under NWP 27.*

NOTE: *Restoration projects involving shellfish seeding must use shellfish naturally present within the watershed (native shellfish) to be considered a restoration proposal under NWP 27.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves fill in tidal waters.
2. The project or activity has impacts to wetlands.

EPA 401 Certification – Partially denied without prejudice. An individual 401 review is required for projects authorized under this NWP if:

1. The project or activities impact greater than ½ acre, or
2. Any project that involves shellfish seeding activities.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

28. **Modifications of Existing Marinas**. Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-Construction Notification) in all instances.

401 Certification – Not applicable (Section 10).

CZM Consistency Response – Concur.

29. **Residential Developments**. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence or a multiple unit residential development or a residential subdivision. This NWP authorizes the construction of building

foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2 acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

NOTE: *The Seattle District is concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. Seattle District will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than 0.5 acre of waters of the United States, including wetlands, to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.*

NOTE: *Compensatory mitigation plans for development projects should normally include protected vegetated buffers (riparian areas) to protect wetlands, streams, and other aquatic areas. Buffers should consist of native herbaceous, scrub-shrub, and/or tree species and be at least 100 feet wide, unless otherwise approved by the District Engineer.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The residential development has impacts to waters of the state greater than ¼ acre.
2. The project is a subdivision. (NOTE: “Subdivision” is the division or redivision of land into lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.)
3. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.
4. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

30. **Moist Soil Management for Wildlife**. Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or disking to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments or other open water bodies. (Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

31. **Maintenance of Existing Flood Control Facilities.** Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse

environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 27). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

State 401 Certification – Certified.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur.

32. **Completed Enforcement Actions.** Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the

terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – None.

Regional Conditions – None.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity has impacts to waters of the state greater than ¼ acre.

EPA 401 Certification – Partially denied without prejudice. Individual 401 review required for projects authorized under this NWP if the project or activities impact greater than ½ acre.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

33. **Temporary Construction, Access, and Dewatering.** Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. Temporary fills may be left in place no longer than six months unless the permittee requests and receives an extension from the District Engineer.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity has temporary fills left in place for more than 90 days. The 90 day period begins when fill is initially placed in wetlands or other waters of the state.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S’Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

34. **Cranberry Production Activities.** Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10 acre limit is not exceeded. (See general condition 27.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

NOTE: *The boundaries of an “existing cranberry production operation” are verified by the Corps on a case-by-case basis. In most cases, these boundaries coincide with the boundaries of the existing contiguous cranberry operation property. A cranberry operator may modify up to 10 acres of waters of the U.S. during the lifetime of a cranberry operation provided there is no net loss of wetland acreage. An operator may continue to manipulate those 10 acres of wetlands to produce cranberries during each 5-year period the NWP is valid; however the operation may not be expanded beyond those 10 acres without authorization by standard individual permit.*

NOTE: *Mitigation may be required to compensate for temporal losses of wetland functions. Please refer to Seattle District’s 1998 public notice “Guidelines for Implementation of Compensatory Mitigation Requirements for Conversion of Wetlands to Cranberry Bogs” for additional information.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP unless the proposed project meets 1 or 2 below:

1. The proposed expansion area:
 - a. Does not include forested wetland with trees of 8" diameter or greater at Breast Height or provide 30% or greater of the areal canopy coverage of that wetland;
 - b. Is not within 50 feet of the Pacific County Drainage Ditch 1; and
 - c. Is located within the geographic area as described below (see attached map, based on USGS maps 46124-G1-TF-024 (Grayland, WA – revised 1984) and 46124-F1-TB-024 (North

Cove, WA – revised 1984): Beginning at the intersection of Smith Road (aka Smid and/or Cranberry Road) and State Route 105 and running thence south and southeast along SR 105 to the intersection of SR 105 and Smith Anderson Road; thence north to the intersection of Smith Anderson Road and Lungren Road; thence north 1320.0 feet along Smith Anderson Road; thence west 450.0 feet; thence north 1690.0 feet; thence 13 degrees west of the northerly direction approximately 11,280.0 feet to the intersection of the east section line of Section 6 and the west section line of Section 5 (Township 15 North, Range 11 West Meridian) and Smith Road; thence west on Smith Road to the point of beginning.

2. Anywhere in Washington, the proposed expansion area has previously been used for cranberry production. Ecology will verify the expansion for these areas upon receipt of appropriate documentation that adequately demonstrates prior cranberry production in the proposed expansion area. Documentation may include one or more of the following:

- a. Evidence of the presence of old dikes around the boundary of the proposed expansion (dated photographs, dated video, topographic surveys);
- b. Old aerial photographs showing cranberry bogs within the proposed expansion area;
- c. Old maps drawn by registered engineers/surveyors showing the presence of cranberry bogs in the proposed expansion area; or
- d. Evidence that established plants of cultivated (not native) cranberry varieties are present within the proposed expansion area.

NOTE: *Applicants who do not meet the above criteria may still apply for 401 Certification. Certification will be granted by Ecology if it is determined that the proposed expansion will not cause significant degradation of wetland functions, or where adequate mitigation is proposed.*

EPA 401 Certification – Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if the project or activities impact greater than ½ acre.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S’Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

35. **Maintenance Dredging of Existing Basins.** Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an upland site and proper siltation controls are used. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required, in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-Construction Notification) in all cases. The notification shall include the results of any required sediment testing and identify the location of the upland disposal area(s). Applicants are strongly encouraged to contact the Seattle District’s Dredged Material Management Office (telephone 206-764-3768) for specific sediment testing requirements early in the project planning process.

401 Certification – Not Applicable (Section 10).

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

36. **Boat Ramps.** Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;

(b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for ramps wider than 12 feet, discharges greater than 50 cubic yards, or ramps located on beaches forage fish use for spawning. Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) for boat ramps wider than 12 feet or located on smelt, herring, sand lance, candlefish, or salmon spawning beaches. Spawning beach location information can be obtained from the StreamNet database (see <http://www.streamnet.org>), Washington Department of Fish & Wildlife, and other sources.
2. For contiguous properties under the same ownership, no more than one boat ramp per ownership may be authorized by this NWP.
3. The construction of poured-in-place concrete boat ramps is not authorized by this NWP.

NOTE: *Applicants should site boat ramps to avoid impacting native woody riparian vegetation when possible.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity results in a discharge greater than 50 cubic yards into waters of the state.
2. The boat ramp exceeds 20 feet in width.

EPA 401 Certification – Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if:

1. The project or activities have impacts to riparian areas, or
2. Exceeds 20 feet in width.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

37. **Emergency Watershed Protection and Rehabilitation.** Work done by or funded by:

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR Subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues NWP verification before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

38. **Cleanup of Hazardous and Toxic Waste.** Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if the project or activity is not authorized through a Model Toxics Control Act (MTCA) order or a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) order.

EPA 401 Certification – Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if the project or activities are not part of an EPA ordered cleanup.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

39. **Commercial and Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

NOTE: *The Seattle District is concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. Seattle District will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than 0.5 acre of waters of the United States, including wetlands, to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.*

NOTE: *Compensatory mitigation plans for development projects should normally include protected vegetated buffers (riparian areas) to protect wetlands, streams, and other aquatic areas. Buffers should consist of native herbaceous, scrub-shrub, and/or tree species and be at least 100 feet wide, unless otherwise approved by the District Engineer.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.
2. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

40. **Agricultural Activities**. Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves fill or mechanized clearing impacting more than 1/10 acre of wetlands.
2. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

41. **Reshaping Existing Drainage Ditches.** Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required if more than 500 linear feet of drainage ditch would be reshaped or if permanent sidestepping would occur. Pre-construction notification is also required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with NWP General Condition 27 (Pre-Construction Notification) for activities that involve the permanent sidestepping of excavated material into waters of the U.S.

2. Upon completion of the work, all exposed soil surfaces shall either be hydro-seeded or planted with appropriate native herbaceous species.

NOTE: *The applicant should plant native woody vegetation along excavated ditches that provide salmonid habitat.*

NOTE: *This NWP does not authorize the conversion of waters of the U.S. to other uses such as impoundments or recovery areas for irrigation water.*

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

42. **Recreational Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

NOTE: *The Seattle District is concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. Seattle District will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than 0.5 acre of waters of the United States, including wetlands, to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.*

NOTE: *Compensatory mitigation plans for development projects should normally include protected vegetated buffers (riparian areas) to protect wetlands, streams, and other aquatic areas. Buffers should consist of native herbaceous, scrub-shrub, and/or tree species and be at least 100 feet wide, unless otherwise approved by the District Engineer.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.
2. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

43. **Stormwater Management Facilities**. Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does

not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required for construction of new or expansion of existing stormwater management facilities. Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The pre-construction notification must include a maintenance plan if periodic maintenance dredging is proposed.

NOTE: *The Seattle District will consider allowing compensatory mitigation in a stormwater management facility if: (1) hydrology is sufficient to support permanently vegetated wetlands; (2) sinuous edges, islands, vegetation class and open water interspersions are incorporated into the design; and (3) water quality treatment is incorporated outside of the compensatory mitigation area.*

NOTE: *NWP 43 may not be appropriate in areas of seasonal high groundwater that will interfere with a stormwater management facility's ability to retain/detain stormwater.*

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

44. **Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. Reclamation, when required by the Washington State Department of Natural Resources (DNR), must be achieved with 2 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal losses of aquatic ecosystem functions in waters of the U.S. unless waived by the District Engineer. (See NWP General Condition 20 for additional mitigation requirements).
3. This NWP may only be used for aggregate mining activities in lower perennial streams that meet the following criteria:
 - a. Aggregate may not be excavated from a vegetated bar or flowing water, or pushed across a wetted channel.
 - b. A 5-foot (horizontal) buffer must be left in a natural state along the river edge of the aggregate bar during excavation. After aggregate material is removed, the area must be graded to restore a natural appearance and not trap fish.
 - c. Aggregate material may be temporarily stockpiled within the channel above the plane of the water surface for up to 7 days. Aggregate material may not be stockpiled in wetlands or flowing water.
 - d. Aggregate material may not be disposed in the channel or where it could re-enter a water of the United States.

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

45. **Repair of Uplands Damaged by Discrete Events.** This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

NOTE: *Applicant should avoid fills in wetlands, mudflats, and pool and riffle complexes. Pool and riffle complexes are frequently created when erosion occurs. These pools provide important spawning, rearing and predator avoidance habitat.*

NOTE: *The length of a bank protection project, especially in the case of barbs, is measured as the total length of shoreline/bank to be protected by the structure.*

NOTE: *The Washington State Department of Fish and Wildlife also has jurisdiction over restoration of recently destroyed uplands. Work authorized under this NWP may also require approval from the Washington Department of Fish and Wildlife if the work will use, divert, obstruct, or change the natural flow or bed in salt or fresh waters of the state.*

NOTE: *On April 6, 2006, the Corps of Engineer's Northwestern Division issued guidance on determining whether Department of the Army (DA) authorization may be necessary to replace upland areas lost as the result of storms, floods, and other discrete events. This guidance states in part:*

a. If the post event (new) Ordinary High Water Mark (OHWM) or High Tide Line (HTL) remains at the same location as the pre-event (old) OHWM/HTL, no DA authorization is required for work to occur above (landward of) the OHWM/HTL. If work is proposed to occur below (waterward of) the OHWM/HTL, a DA authorization will likely be required for the work in this area.

b. If the new OHWM/HTL establishes below the old OHWM/HTL, no DA authorization is required for work to occur above (landward of) the new OHWM/HTL. If work is proposed to occur below (waterward of) the new OHWM/HTL, a DA authorization will likely be required for work in this area.

c. If the new OHWM/HTL establishes above (landward of) the old OHWM/HTL, no DA authorization is required for work to occur above the new OHWM/HTL. If work is proposed to occur below (waterward of) the new OHWM/HTL, a DA authorization will likely be required for work in this area.

This guidance is available on the Internet at: <http://www.nws.usace.army.mil>, (select Regulatory and then Regulatory/Permits, News and Updates)

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity will involve the placement of more than 25 cubic yards of dredged or fill material into waters of the United States.
2. The project or activity involves impacts to waters of the state greater than ½ acre.

EPA 401 Certification – Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if:

1. The project or activity is greater than ½ acre, or
2. The project or activity requires restoration beyond the OHWM before the event occurred.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

46. **Discharges in Ditches.** Discharges of dredged or fill material into non-tidal ditches that are: (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions – None.

NOTE: *Ditches constructed in and/or connecting waters of the U.S. may provide essential fish habitat for anadromous fish in Washington State. For information about EFH in Washington State, please refer to: <http://wdfw.wa.gov/mapping/salmonscape/index.html>.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if the project or activity discharges dredged or fill material into a ditch that receives water or discharges water to a wetland within ½ mile of project site.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

47. **Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.** Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration’s Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:

(a) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work and discharges, including cofferdams, are necessary for construction activities or access fills or dewatering of construction sites;

(b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect);

(c) Temporary fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated as appropriate;

(d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;

(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;

(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;

(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,

(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).

Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. (Section 10 and 404)

Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

Summary of National and Regional Pre-Construction Notification Requirements – None.

Recommended Best Management Practices –

1. Avoid placing new pipeline in different alignment than original pipeline. When pipeline must be placed in different location, remove original pipeline unless removal will result in more environmental damaging than leaving pipeline in place.
2. When backfilling trenches in wetlands, no more than 10 percent of the material used to backfill the top 12 inches of the trench may consist of subsurface soil.
3. Incorporate measures such as plugs and collars to prevent permanent drainage of waters from the bottom of the backfilled trench or along the pipe.
4. In waters subject to scour, determine the scour level for the watercourse that the utility line will cross. Consider placing the utility line below the scour level if flood events may damage the line. Use caution, however, to not break an impermeable layer in the stream substrate, which could result in drainage.

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

48. **Existing Commercial Shellfish Aquaculture Activities**. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) the size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) the project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or (4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) (Sections 10 and 404)

Note: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required as noted above under “Notification”. Pre-construction notification is required for work that would impact aquatic resources requiring special protection (see Regional General Condition 1) or designated critical resource waters (see National General Condition 19), if any listed species or designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project, or if there will be effects to any historic properties (see National General Condition 17, Regional General Condition 6, and National General Condition 18). See National General Condition 27 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

NOTE: *The location, size and density of beds of eelgrass (Zostera spp.) and other submerged aquatic vegetation can vary over time. Please contact WDFW Area Habitat Biologists to determine the appropriate protocols for determining the presence and extent of eelgrass beds. Due to site variability (eelgrass density, patchiness, depth of growth, etc.), site specific characteristics may need to be considered to determine the most suitable survey protocol. More information regarding eelgrass surveys will be posted on the Corps web site when available.*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if the project or activity is an existing geoduck operation.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S’Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Concur, subject to the following condition:

1. Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

49. **Coal Remining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –

Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. Reclamation to OSM standards must be completed within 5 years of completion of mining in individual mining pits.

2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. (See NWP General Condition 20 for additional mitigation requirements).

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

50. **Underground Coal Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification required in all instances. See National General Condition 27 (Pre-Construction Notification) for specific requirements.

Regional Conditions –

1. Reclamation to OSM, DOI or state agency standards must be completed within 5 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. (See NWP General Condition 20 for additional mitigation requirements).

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied without prejudice. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by the Chehalis, Kalispel, Makah, Port Gamble S'Klallum, Puyallup, and Tulalip tribes. Certified subject to general conditions by the Spokane Tribe.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

NATIONWIDE PERMIT GENERAL CONDITIONS

Corps National General Conditions

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species.

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where

the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR

330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN

review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any

proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

Further Information:

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

Seattle District Regional General Conditions

Permittees must comply with all applicable Seattle District regional general conditions in order for their NWP authorization to be valid.

1. Aquatic Resources Requiring Special Protection. The following restrictions apply to activities in Washington State requiring Department of the Army authorization:

a. Activities resulting in a loss of waters of the United States in a mature forested wetland, bog, bog-like wetland, aspen-dominated wetland, or alkali wetland are not authorized by NWP, except the following NWPs:

- NWP 3 – Maintenance
- NWP 20 – Oil Spill Cleanup
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 47 – Pipeline Safety Program Designated Time Sensitive Inspections and Repairs

b. For activities in or affecting a mature forested wetland, bog, bog-like wetland, wetland in a dunal system along the Washington coast, vernal pool, aspen-dominated wetland, alkali wetland, camas prairie wetland, or marine water with eelgrass beds (except for NWP 48) *and not prohibited by the preceding general regional condition 1.a.*, the permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification).

2. Access. You must allow representatives of this office to inspect the authorized activity at any time deemed necessary to ensure that the work is being, or has been, accomplished in accordance with the terms and conditions of your permit.

3. Commencement Bay. Activities requiring Department of the Army authorization and located in the Commencement Bay Study Area are not authorized by the following NWPs:

- NWP 12 – Utility Line Activities (substations)
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 23 – Approved Categorical Exclusions
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities

4. Bank Stabilization. All bank stabilization projects require pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification). Each notification must include a planting plan using native riparian plant species unless the applicant demonstrates that a planting plan is not appropriate or not practicable. Each notification must also include the following information, except as waived by the District Engineer:

a. Need for the work, including the cause of the erosion and the threat posed to structures, infrastructure, and/or public safety.

b. Current and expected post-project sediment movement and deposition patterns in and near the project area.

c. Current and expected post-project habitat conditions, including the presence of fish, wildlife and plant species in the project area.

d. Demonstration that the proposed project incorporates the least environmentally damaging practicable bank protection methods. These methods include, but are not limited to, the use of bioengineering, biotechnical design, root wads, large woody debris, native plantings, and beach nourishment in certain circumstances. If rock must be used due to site erosion conditions, explain how the bank stabilization structure incorporates elements beneficial to fish.

e. Assessment of the likely impact of the proposed work on upstream, downstream and cross-stream properties (at a minimum the area assessed should extend from the nearest upstream bend to the nearest downstream bend of the watercourse). Discuss the methodology used for determining effects.

NOTE: Information on designing bank stabilization projects can be found in the Washington Department of Fish and Wildlife's *Integrated Streambank Protection Guidelines* (<http://www.wdfw.wa.gov/hab/ahq/ispqdoc.htm>); King County's *Reconnaissance Assessment of the State of the Nearshore Ecosystem* (<http://dnr.metrokc.gov/wlr/watersheds/puget/nearshore/sonr.htm>); and three technical (white) papers – *Marine and Estuarine Shoreline Modification Issues*, *Ecological Issues in Floodplains and Riparian Corridors*, and *Over-Water Structures: Marine, Freshwater, and Treated Wood Issues* (<http://wdfw.wa.gov/hab/ahq/ahgwhite.htm>).

5. Cultural Resources and Human Burials. Permittees must immediately stop work and notify the District Engineer within 24 hours if, during the course of conducting authorized work, human burials, cultural resources, or historic properties, as identified by the National Historic Preservation Act, are discovered and may be affected by the work. Failure to stop work in the area of discovery until the Corps can comply with the provisions of 33 CFR 325 Appendix C, the National Historic Preservation Act, and other pertinent laws and regulations could result in a violation of state and federal laws. Violators are subject to civil and criminal penalties.

6. Essential Fish Habitat. An activity which may adversely affect essential fish habitat, as identified under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), may not be authorized by NWP until essential fish habitat requirements have been met by the applicant and the Corps. Non-federal permittees shall notify the District Engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the District Engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available at <http://www.nwr.noaa.gov/>

7. Vegetation Protection and Restoration. Permittees must clearly mark all construction area boundaries before beginning work and minimize the removal of native vegetation in riparian areas and wetlands to the maximum extent practicable. Areas subject to temporary vegetation removal in wetlands or riparian areas during construction shall be replanted with appropriate native species by the end of the first planting season following the disturbance except as waived by the District Engineer.

State 401 Certification General Conditions

In order for any NWP authorization involving Section 404 activities to be valid in Washington State, permittees must comply with all applicable State 401 Certification general conditions.

1. **For in-water construction activities.** Individual 401 review is required under this condition for projects or activities authorized under NWPs that will cause, or be likely to cause or contribute to an exceedence of a State water quality standard (WAC 173-201A) or sediment management standard (WAC 173-204).

State water quality standards can be located on Ecology's website:

<http://www.ecy.wa.gov/programs/wq/swqs/>.

Sediment management standards can be located on Ecology's website:

<http://www.ecy.wa.gov/biblio/wac173204.html>.

Information is also available by contacting Ecology's Federal Permit staff.

2. **Projects or Activities Discharging to Impaired Waters.** Individual 401 review is required by this condition for projects or activities authorized under NWPs if the project or activity may result in further exceedences of a specific parameter the waterbody is listed for on the state's list of impaired waterbodies (the 303(d) list).

The current 303(d) listed waterbodies can be identified using search tools available on Ecology's website: <http://www.ecy.wa.gov/programs/wq/303d/2002/2002-index.html> or by contacting Ecology's Federal Permit staff.

3. **Notification.** For projects or activities that will require individual 401 review, applicants must provide Ecology with the written documentation provided to the Corps (as described in Corps Nationwide Permit General Condition 27, Pre-Construction Notification), including, when applicable:

a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.

b. Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. *Note: Forms are available at Ecology's Wetlands website: <http://www.ecy.wa.gov/programs/sea/wetlands/index.html> or by contacting Ecology's Federal Permit staff.*

c. Coastal Zone Management Program "Certification of Consistency" Form if the project is located within a coastal county (Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties).

Note: Forms are available at the Army Corps of Engineers website: <http://www.nws.usace.army.mil> or by contacting Ecology's Federal Permit staff.

d. Other applicable requirements of Corps Nationwide Permit General Condition 27, Corps Regional Conditions, or notification conditions of the applicable NWP.

Ecology's review time shall not begin until the applicable documents noted above have been provided to Ecology and Ecology has received a copy of the final Nationwide Permit verification letter from the Corps.

4. Aquatic resources requiring special protection. Certain aquatic resources are unique, difficult-to-replace components of the aquatic environment in Washington State. Activities that would affect these resources must be avoided to the greatest extent possible. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings.

Individual 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Regional Condition 1), except for:

- NWP 20 – Oil Spill Cleanup
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous Waste
- NWP 47 – Pipeline Safety Program Repair

a. Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publication #s04-06-025 and #04-06-015):

- estuarine wetlands
- Natural Heritage wetlands
- Bogs
- old-growth and mature forested wetlands
- wetlands in coastal lagoons
- interdunal wetlands
- vernal pools
- alkali wetlands

b. Bog-like wetlands, aspen-dominated wetlands, camas prairie wetlands, and marine water with eelgrass beds (except for NWP 48).

c. Category I wetlands

d. Category II wetlands with a habitat score >29 points.

5. Mitigation. 401 Certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects or activities authorized under the NWP Program.

Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (Ecology Publication #s06-06-011a and #06-06-011b) and shall, at a minimum, include the following:

(a) A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.

(b) The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded)

(c) The rationale for the mitigation site that was selected

(d) The goals and objectives of the compensatory mitigation project

(e) How the mitigation project will be accomplished, including proposed performance standards for measuring success and the proposed buffer widths

(f) How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.

(g) How the compensatory mitigation site will be legally protected for the long-term.

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) for guidance on developing mitigation plans.

Ecology encourages the use of alternative mitigation approaches, including advance mitigation and other programmatic approaches, such as mitigation banks and programmatic mitigation areas at the local level. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. (see <http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>)

For information on the state wetland mitigation banking program go to:
<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/index.html>

6. Temporary Fills. Individual 401 review is required for any project or activity with temporary fill in wetlands or other waters of the State for more than 90 days, unless the applicant has received written approval from Ecology.

7. Mill Creek Special Area Management Plan. This condition applies to all NWP's within the boundaries described in the Mill Creek Special Area Management Plan (SAMP), King County, Washington, dated April 2000 (SAMP). The boundaries of the SAMP encompass all sub-basins and tributaries drained by Algona Creek, Auburn Creek, Bingaman Creek, Midway Creek, Mill Creek, and Mullen Slough. The area is bounded roughly on the south by 8th Avenue N in Algona and 4th Street NE in Auburn, on the east and north by the Ordinary High Water Mark of the Green River, and on the west by the plateau that parallels Interstate 5 above the Green River valley.

Individual 401 review is required for projects or activities authorized under the NWP's unless:

a. The project or activity will result in fill-related impacts to only wetlands designated as developable under Alternative #8, as shown on Figure 4-8 of the SAMP.

b. Compensatory mitigation for such impacts is onsite and/or within the areas designated on Figure 3-3, "Maximum Areas for Restoration by Target Habitat Type," in the SAMP Aquatic Resources Restoration Plan (April 2000).

c. Mitigation plans comply with the requirements of the SAMP and, in general, with the guidance in the interagency Wetland Mitigation in Washington State (March 2006; Ecology publications #06-06-011a and #06-06-011b). Note: You can download the SAMP and Aquatic Resources Restoration Plan at http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?siteName=REG&pageName=Mill_Creek_SAMP.

8. State Certification for PCNs not receiving 45-day response. In the event the U.S. Army Corps of Engineers does not respond to a complete pre-construction notification within 45 days, the applicant must contact Ecology for Individual 401 review.

EPA 401 Certification General Conditions

In order for any NWP authorization to be valid in Washington State, permittees must comply with all applicable 401 Certification general conditions. EPA 401 Certification general conditions apply to all NWP authorizations involving Section 404 activities on Native American Indian Tribal lands (excluding the tribal lands of the Chehalis Tribes, Port Gamble S’Klallum Tribe, Kalispel Tribe, Makah Indian Tribe, Puyallup Tribe, Spokane Tribe, and Tulalip Tribe) and Federal land with exclusive jurisdiction within Washington State.

A. Special Aquatic Sites. Any activities in the following types of wetlands and waters of the U.S. will need to apply for an individual 401 certification: Mature forested wetlands; bogs; bog-like wetlands; wetlands in dunal systems along the Washington coast; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; salt marshes; or marine water with eelgrass beds.

B. Soil Erosion and Sediment Controls. An individual 401 certification is based on the project or activity meeting established turbidity levels. EPA will be using as guidance the state of Washington’s water quality standards [WAC 173-201a] and sediment quality standards [WAC 173-204]. Projects or activities that are expected to exceed these levels or that do exceed these levels will require an individual 401 certification.

C. Compliance with Stormwater Provisions. Individual 401 certification is required for projects or activities not designed in accordance with Ecology’s most recent stormwater manual or Ecology approved equivalent manual.

D. Compliance with requirements of the National Pollutant Discharge Elimination System. For projects and activities requiring coverage under an NPDES permit, certification is based on compliance with the requirements of that permit. Projects and activities not in compliance with NPDES requirements will require individual 401 certification.

E. Projects or Activities Discharging to Impaired Waters. Individual 401 certification is required for projects or activities authorized under NWPs if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) *and* the discharge may result in further exceedence of a specific parameter the waterbody is listed for.

EPA may issue 401 certification for projects or activities that would result in further exceedence or impairment if mitigation is provided that would result in a net decrease in listed contaminants or less impairment in the waterbody. This determination would be made during individual 401 certification review.

F. Notification. For projects requiring individual 401 certification, applicants must provide EPA with the same documentation provided to the Corps (as described in Corps National General Condition 27, Pre-Construction Notification), including, when applicable:

(a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.

(b) Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps.

(c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.

(d) Other applicable requirements of Corps National General Condition 27, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request for individual 401 review is not complete until EPA receives the applicable documents noted above and EPA has received a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program.

G. Mitigation. An individual 401 certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects or activities authorized under the NWP Program. Mitigation plans submitted shall be based on the Joint Agency guidance provided in *Wetland Mitigation in Washington State, Parts 1 and 2* (Ecology Publication #06-06-011a and #06-06-011b) and shall, at a minimum, include the following:

1. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
2. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).
3. The rationale for the mitigation site that was selected.
4. The goals and objectives of the compensatory mitigation project.
5. How the mitigation project will be accomplished, including proposed performance standards for measuring success and the proposed buffer widths.
6. How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
7. How the compensatory mitigation site will be legally protected for the long-term.

H. Temporary Fills. An individual 401 certification is required for any activity where temporary fill will remain in wetlands or other waterbodies for more than 90 days. The 90 day period begins when filling activity starts in the wetland or other waterbody.

Spokane Tribe of Indians 401 Certification General Conditions

Specific to the Reservation and the Tribal Water Quality Standards, the applicant must comply with the following when there could be a discharge to waters of the Spokane Indian Reservation:

1. The applicant shall be responsible for achieving compliance with the Spokane Tribal Water Quality Standards.
2. The applicant shall submit copies of applications materials to the Spokane Tribal Water Control Board for review and approval at the same time they are submitted to Army Corps of Engineers and prior to any disturbance activities.

3. The applicant shall comply with all Spokane Tribal Integrated Resource Management Plan (IRMP) guidelines for land use activities and disturbances.
4. The applicant shall allow the Tribal Water Control board and Interdisciplinary Team to inspect the area in question and adopt recommendations made throughout its operation.
5. Monitoring of the discharge shall occur at a level indicated by EPA and the Tribe, are subject to change, and shall be submitted to both entities.

2007 NATIONWIDE PERMIT DEFINITIONS

National Definitions (in alphabetical order)

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term “discharge” means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project: The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a “single and complete project” is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands

contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP's, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

Seattle District Definitions (in alphabetical order)

Alkali Wetlands: Alkali wetlands are characterized by the occurrence of shallow saline water. In eastern Washington these wetlands contain surface water with specific conductance that exceeds 3000 micromhos/cm. These wetlands provide the primary habitat for several species of migrant shorebirds and are heavily used by migrant waterfowl. They also have unique assemblage of plants and animals not found anywhere else in eastern Washington.

Aspen Wetland Forests: A wetland where quaking aspen (*Populus tremuloides*) is a dominant or co-dominant species among the "woody" vegetation. Aspen stands in a forest provide important habitat. Aspens regenerate through an underground root system; regeneration of aspen stands by sexually produced seeds is an unusual phenomenon.

Bogs and Bog-like Wetlands: Wetlands with the following characteristics: hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; overstory of spruce, western hemlock, lodgepole pine, cedar, white pine, crabapple, or aspen; and may be associated with open water. [Adapted from the Forest Practices Board Manual dated July 1995 that implements WAC 222 (Forest Practices Rules) and as adopted in WAC 173-202 (Washington Forest Practices Rules and Regulations to Protect Water Quality).]

Coastal Dune: A coastal dune system is characterized by a set of dune forms recurring in a pattern over the landscape. In general, only the parallel ridge system occurs in the State of Washington. The parallel ridge system is characterized by several ridges arranged in a parallel series starting from the waterward fore dune and extending inland up to two kilometers. The fore dune is a ridge of sand parallel to the beach just above the limit of ordinary wave action. Often, the fore dune is not completely stabilized by vegetation. Swales occur between the closely spaced ridges. Some of these swales include depressional areas supporting wetland habitat and open water. The landward extent of the dune system is determined by topographic breaks, bluffs, soils developed on the beach or on dunes, etc.

Essential Fish Habitat: Waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

Forage Fish: Small fish that breed prolifically and serve as food for predatory fish.

Kettle: A deep, bowl-shaped depression formed by glacial action during periods of glacial retreat. Kettles are almost always permanently ponded.

Marine Waters with Eelgrass Beds: Eelgrass (*Zostera sp.*) beds are one of the "Saltwater Habitats of Special Concern" in Washington State (WAC 220-110-250(3)(a)). They serve essential functions in the developmental life history of fish and shellfish.

Mature Forested Wetland: There are two definitions for mature forested wetlands, one for western and one for eastern Washington. In western Washington, 50% of the cover of the upper forest canopy must consist of evergreen trees older than 80 years or deciduous trees older than 50 years, or 50% of the forest canopy must consist of trees taller than 50'. Structurally, mature forested wetlands in western Washington must include a multi-layer community consisting of trees greater than 50' tall, trees between 20' and 49' tall, shrubs, and an herbaceous groundcover. Less than 25% of the cover in the herbaceous/ground cover or shrub class can be invasive exotic plant species. In Eastern Washington the average age of dominant trees in a mature forested wetland must be greater than 80 years or the average age of dominant trees in the forested wetland must be between 50 and 80 years. The same structural diversity requirements for western Washington apply to eastern Washington. Less than 50% of the dominant plants in one or more layers (canopy, young trees, shrubs, herbs) can be invasive exotic plants.

Native Species: Species that historically occur in a particular ecosystem and are not introduced.

Permanent Adverse Impacts: Resource losses that are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment and which result in an irreversible or irretrievable commitment of resources. Filling a wetland and covering it with a parking lot is an example of a permanent adverse impact; temporarily stockpiling excavated soil in a wetland is an example of a temporary adverse impact. In addition, a permanent adverse impact could be one

where the magnitude and type of action and its resulting impact, even if short-term and temporary, results in specifically identifiable irreversible or irretrievable commitment of resources.

Riparian Corridors: Riparian corridors are the ecologically defined areas adjacent to flowing waters. They contain moist soils and plants adapted to wetter conditions. A riparian habitat area (RHA) is defined by the Washington State Department of Fish and Wildlife as the area adjacent to aquatic systems with flowing water (e.g., rivers, perennial or intermittent streams, seeps, springs) containing elements of both aquatic and terrestrial ecosystems that mutually influence each other. Riparian habitat encompasses the area beginning at the ordinary high water line and extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

Salt Marsh: Aquatic areas adjacent to salt water where the interstitial soil salinity is ≥ 0.5 parts per thousand at any time of year or where the plant community is comprised of at least 5% total cover of saline adapted plant species.

Special Aquatic Sites: Special aquatic sites include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges as defined in 40 CFR 230.40 through 230.45 (*Guidelines for Specification of Disposal Sites for Dredged or Fill Material*).

Specialized Seasonal Wetlands: Generally, the following four types of wetlands are seasonally flooded, palustrine, impounded wetlands characterized by vegetation adapted to rising and falling water levels. These wetlands are found in enclosed basins set on impervious soil layers where outflow is rare, groundwater exchanges minimal, depth of inundation shallow, and duration of inundation brief. Native plants have adapted to take advantage of the brief appearance of water to flower, fruit, and seed and may appear to be dead in the summer. In the State of Washington, these wetland types are predominately found in the eastern portion of the state. Identification of these wetlands can be difficult and should be delineated as “problem areas”.

a. Camas prairie wetlands: Aquatic systems found in seasonally wet areas such as seepages, depressions, prairies, meadows, hillsides (where moist), moist forests, and streamside areas which are often dry by late spring. The soil surface may be rich in organic matter but relatively impervious layers in the soil profile result in a perched hydrology. Camas prairie meadows support communities of common camas (*Camassia quamash*) and great camas (*C. leichtlinii*). Geographic distribution of these systems include Thurston, Lewis, Clark, Skamania, Klickitat, Island, and San Juan counties, and the Columbia plateau and prairie pothole regions (including the Moses Lake area and Grant and Spokane counties).

b. Playa: A large, shallow depression with no outlet that is intermittently ponded due to surface water ponding over a relatively impervious (usually high clay content) soil layer. Playas are typically less vegetated, more alkaline or saline, and larger than vernal pools. When ponded, playas can form large, shallow lakes that are valuable to migrating birds in otherwise arid regions.

c. Prairie pothole: A prairie pothole is normally a closed, shallow to medium depth, bowl-shaped depression formed during periods of ice age floods or glacial retreat by glacial action in areas subsequently dominated by prairie or “grassland” vegetation types. Prairie potholes, unlike vernal pools and playas, can remain permanently ponded. Plant communities tend to be dominated by perennial rather than annual species and, depending on depth and slope, may feature one or more of the following plant communities: sweet meadow, shallow marsh, deep marsh, and/or vegetated shallows (i.e., dominated by submerged aquatic species rather than emergent species).

d. Vernal pool: A vernal pool is usually a closed depression that ponds water in the cool, low evaporation periods of winter and spring in regions with cool moist winters, and dries out during the hot dry summers. Vernal pools are underlain with an impervious subsoil or near-surface parent material (e.g., high clay content horizon, durapan, or basalt) which effectively eliminates downward percolation. Evaporation and transpiration are the only significant source of water loss. Short-lived native annuals usually dominate this plant community. Vernal pools are typically inhabited by plant and animal species that are especially well-adapted to this ephemeral environment. Some of the plant species may be considered rare. When ponded, vernal pools can provide foraging habitat to various species of migratory birds. “Classic” vernal pools are epiaquic (wet from the top down).

Note: Please see <http://www.nws.usace.army.mil>, Regulatory – Regulatory/Permits – Scroll down to 2007 Nationwide Permits, NWP Definitions, for expanded definitions, including keys and plant lists.