

CONDITIONS FOR NATIONWIDE PERMITS

National Conditions. The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **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 US during periods of low-flow or no-flow.
4. **Aquatic Life Movements.** No activity may substantially disrupt the movement 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.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **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 or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. **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).
8. **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.

9. **Water Quality.**

- (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).
- (b) For NWP's 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWP's). This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. **Coastal Zone Management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11. **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. 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 is located in the 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 may affect federally-listed endangered or threatened species or designated critical habitat, the 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. As a result of formal or informal consultation with the FWS or NOAA FISHERIES, the District Engineer may add species-specific regional endangered species conditions to the NWP's.

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- (b) Authorization of an activity by a nationwide permit 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 USFWS or the NOAA FISHERIES, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NOAA FISHERIES or their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html> and http://www.nmfs.noaa.gov/prot_res/overview/es.html respectively.
12. **Historic Properties.** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.
13. **Notification.**
- (a) **Timing:** Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the 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:
- (1) Until 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) If notified in writing by the District or Division Engineer that an individual permit is required; or

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- (3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. 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 Notification:** The notification 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) Brief 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. 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) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));
 - (5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;
 - (6) For NWP 14 (Linear Transportation Crossings), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;
 - (7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both

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individually and cumulatively and must notify the project sponsor of this determination in writing;

- (8) For NWP 27 (Stream and Wetland Restoration), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;
- (9) For NWP 29 (Single-Family Housing), the PCN must also include:
 - (i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;
 - (ii) A statement that the single-family housing activity is for a personal residence of the permittee;
 - (iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring $\frac{1}{4}$ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than $\frac{1}{4}$ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));
 - (iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;
- (10) For NWP 31 (Maintenance of Existing Flood Control Projects), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:
 - (i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;
 - (ii) A delineation of any affected special aquatic sites, including wetlands; and,
 - (iii) Location of the dredged material disposal site.

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- (11) For NWP 33 (Temporary Construction, Access), and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;
- (12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;
- (13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;
- (14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. 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 non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- (15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;
- (16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters

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and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

- (17) For activities that may adversely affect federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and
 - (18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, 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.
- (c) **Form of Notification:** The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.
- (d) **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. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. 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. 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 is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. 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 days of receiving a complete PCN and determine whether the conceptual or specific 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

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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 proposal 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 proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

- (e) **Agency Coordination:** 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 NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½-acre of waters of the US, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate Federal or state offices USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NOAA FISHERIES. 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 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

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notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NOAA FISHERIES within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

- (f) **Wetlands Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps. (For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼-acre in size.) The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.
14. **Compliance Certification.** Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:
- (a) A statement that the authorized work was done in accordance with the Corps 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.
15. **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 US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. 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 US for the total project cannot exceed 1/3-acre.)
16. **Water Supply Intakes.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.
17. **Shellfish Beds.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of

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concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. **Suitable Material**. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
19. **Mitigation**. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.
 - (a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US 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 impacts requiring a PCN, 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. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.
 - (d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.
 - (e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

- (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., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers 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 impacts.
 - (g) Compensatory mitigation proposals submitted with the notification may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.
 - (h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.
20. **Spawning Areas.** Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.
21. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions.

Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow. This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. **Adverse Effects From Impoundments**. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.
23. **Waterfowl Breeding Areas**. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
24. **Removal of Temporary Fills**. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.
25. **Designated Critical Resource Waters**. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for federally listed threatened and endangered species, coral reefs, 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.¹ The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.
 - (a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged

¹ On April 30, 2002, the U.S. District Court for the District of Columbia approved a NOAA FISHERIES consent decree withdrawing critical habitat designations for several populations of salmonid species listed as threatened and endangered in Washington, Oregon and California. For Washington State, critical habitat remains designated for spring/summer Chinook, fall Chinook, and sockeye salmon in the Snake River watershed and in the Columbia River from the Snake River downstream to the mouth of the Columbia River. NOAA Fisheries may eventually establish new designated critical habitat areas.

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- or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NOAA FISHERIES has concurred in a determination of compliance with this condition.
- (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 13, 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 he determines that the impacts to the critical resource waters will be no more than minimal.
26. **Fills Within 100-Year Floodplains**. For purposes of this General Condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.
- (a) Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.
- (b) Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.
- (c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.
27. **Construction Period**. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project). For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps. For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

Section 10 Only Condition

Removal, Relocation or Other Alteration to Structures. The permittee understands and agrees that, if future operations by the United States requires 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.

**SEATTLE DISTRICT
REGIONAL GENERAL CONDITIONS**

1. **Mature Forested and Bog and Bog-like Wetlands.** The use of NWP is specifically prohibited in mature forested wetlands or bog and bog-like wetlands or just these components of a wetland system (as defined in the Definition section of this Public Notice), except for projects provided coverage under the following NWP:

- NWP 3(i,ii) – Maintenance
- NWP 20 – Oil Spill Cleanup
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 40(a) – USDA program participant

NOTE: NWP regulations do not allow the regional conditioning of NWP 40(a).

2. **Access.** You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
3. **Commencement Bay.** An individual permit is required in the Commencement Bay Study Area (CBSA) for activities which would have qualified for the following NWP:

- NWP 12 -- Utility Line Activities (substations and access roads)
- NWP 13 -- Bank Stabilization
- NWP 14 -- Linear Transportation Crossings
- NWP 23 -- Approved Categorical Exclusions
- NWP 29 -- Single-Family Housing
- NWP 39 -- Residential, Commercial, and Institutional Developments
- NWP 40 -- Agricultural Activities

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- NWP 41 -- Reshaping Existing Drainage Ditches
- NWP 42 -- Recreational Facilities
- NWP 43 -- Stormwater Management Facilities

The CBSA is located near the southern end of Puget Sound's main basin at Tacoma, Pierce County, Washington. The CBSA extends from Brown's Point around the bay to Point Defiance and includes the commercial waterways, wetlands, and any other jurisdictional waters. From Point Defiance, the line runs southeast to State Route 7 (Pacific Avenue), then south to the centerline of I-5; then east (northbound lanes) along I-5 to the Puyallup River. The boundary extends 200 feet on either side of the Puyallup River southeast to the Clark Creek Road (Melroy) Bridge. From the Puyallup River, the boundary extends east along I-5 to 70th Avenue E. The line then returns to Brown's Point to the northwest, following the 100-foot contour elevation above sea level located east of Hylebos Creek and Marine View Drive.

4. **Mill Creek Special Area Management Plan (SAMP)**. Within the boundaries of the (SAMP), the following NWPs can be used only in those areas designated as "Developable Wetlands":

- NWP 14 -- Linear Transportation Crossings
- NWP 23 -- Approved Categorical Exclusions
- NWP 29 -- Single-Family Housing
- NWP 33 -- Temporary Construction, Access and Dewatering
- NWP 39 -- Residential, Commercial, and Institutional Developments
- NWP 40 -- Agricultural Activities
- NWP 41 -- Reshaping Existing Drainage Ditches
- NWP 42 -- Recreational Facilities
- NWP 43 -- Stormwater Management Facilities

Until the SAMP is approved, the users of these NWPs listed above (except NWP 40a.) must notify the District Engineer in accordance with General Condition 13 for any acreage or volume proposed. Once the SAMP is approved, the "Notification" limits will be as specified in the individual NWPs.

Mitigation requirements for these projects must either be onsite or within the areas designated as "Preferred Mitigation Sites". Mitigation plans must comply with the requirements found within the *Mill Creek Special Area Management Plan, King County, Washington*, dated April 2000.

An individual permit is required for all proposals in "Developable Wetlands" that would have qualified for NWPs other than those listed above.

NWP 27, Stream Restoration and Enhancement Activities, can be used within the SAMP, but, must comply with the requirements found within the *Mill Creek Special Area Management Plan, King County, Washington*.

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The Mill Creek SAMP applies to all areas and tributaries drained by Mill Creek, (Auburn), Mullen Slough, Midway Creek, Auburn Creek, 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.

5. **Prohibited Work Times for Bald Eagle Protection.** For compliance with National General Condition 11, the following construction activity prohibitions apply to protect bald eagles, listed as threatened under the Endangered Species Act:

- (a) No construction activity authorized under a NWP shall occur within 1/4 mile of an occupied bald eagle nest, nocturnal roost site, or wintering concentration area, within the following seasonal work prohibition times.
- (b) No construction activity authorized under a NWP shall occur within 1/2 mile BY LINE OF SIGHT of an occupied bald eagle nest or nocturnal roost site, within the following seasonal work prohibition times.

Work prohibition times:

- (1) Nesting between January 1 and August 15 each year.
- (2) Wintering areas between November 1 and March 31 each year.

Exceptions to these prohibited work times can be made by request to the Corps and approved by the U.S. Fish and Wildlife Service (USFWS).

Contact the USFWS to determine if a bald eagle nest, nocturnal roost, or wintering concentration occurs near your proposed project:

West of Cascades: Olympia Office - (360) 753-9440
East of Cascades: Ephrata - (509) 754-8580
or Spokane - (509) 893-8002
Mainstem of the Columbia River downstream from McNary Dam:
Portland - (503) 231-6179

DEFINITIONS

National

Best Management Practices (BMPs): BMPs are 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. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

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.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as floodway fringe).

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

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 US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills 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 US is the threshold measurement of the impact to existing 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 values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of NWPs 39, 40, 42, and 43. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) 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: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. 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. The term open water includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

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.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

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.

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 (see definition of independent utility). For linear projects, the single and complete project (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is 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.

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 BMPs, 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 channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

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Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) 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 (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWP's result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

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: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Bogs and Bog-like Wetlands: The wetlands protected by this regional condition have been named many different things over the years including bogs, fens, peat lands, sphagnum bogs, minerotrophic wetland communities, floating mat bogs, etc. The wetlands protected by this regional condition can be found throughout Washington and they all contain organic soils in the form of either peat or muck. However, the vegetation communities can vary greatly depending upon the landscape position, climate, hydro-period, nutrients, chemistry, etc. If organic soils are present, the Corps must be contacted for verification of the jurisdictional determination and therefore, the applicability of this regional condition.

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To assist in identifying these areas, the document titled *Preliminary Classification of Native, Low Elevation, Freshwater Wetland Vegetation in Western Washington* dated March 1994 from Washington State Department of Natural Resources can be helpful. The presence of bogs may also be determined by using the following identification key. The identification key below does not always capture the bogs identified as needing protection. Additional keys may be developed in the future which may capture all of the desired systems. The regional condition will be revised if that occurs.

Bog means wetlands which have the following characteristics: hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an 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)}.

<u>Question</u>	<u>Response</u>	<u>Action</u>
1. Area is dominated by mosses, low grass-like or shrubby vegetation.	Yes No	Go to #4 Go to #2
2. Area has a mixture of stunted trees (e.g. sitka spruce, western hemlock, western red cedar, lodgepole pine, Englemann's spruce, western white pine, aspen or crab apple)	Yes No	Go to #4 Go to #3
3. Area is forested with sitka spruce, western red cedar, western hemlock, lodgepole pine, quaking aspen, or western white pine	Yes No	Go to #4 Not a bog.
4. Area has organic soils, either peats or mucks, deeper than 16 inches. Organic soils are defined as follows based on the information in <i>Soil Taxonomy</i> (1992):	Yes No	Go to #6 Go to #5
(1) Soils with an organic carbon content of 18% or more (excluding live roots) if the mineral fraction contains more than 60% clay;		
(2) Soils with an organic carbon content to 12% if the mineral fraction contains no clay;		
(3) Soils with an organic carbon content between 12-18% based on the percentage of clay present (multiply the actual percentage of clay by 0.1 and add to 12%).		

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It is not usually necessary, however, to do a chemical analysis of the soil to determine if a soil is organic. Organic soils are easy to recognize as black-colored mucks or as black or dark brown peats. Mucks feel greasy and stain fingers when rubbed between the fingers. Peats have plant fragments visible throughout the soil and feel fibrous. Many organic soils, both peats and mucks, may smell of hydrogen sulfide (rotten eggs).

- | | | |
|--|-----------|-----------------------|
| 5. Area has organic soils, either peats or mucks, that are less than 16 inches deep over bedrock or hardpan; or, presence of a histic epipedon between 8' and 16" over a mineral soil. | Yes
No | Go to #6
Not a bog |
| 6. More than 30% of the total plant cover is provided by one or more of the characteristic bog species in Washington State listed below. Total cover is estimated by assessing the area of land covered by the shadow of plants if the sun were directly overhead. | Yes
No | IS A BOG
Not a bog |

NOTE: Forests may contain several layers of plant that cover the ground. In arriving at the 30% minimum cover look at plants in the "canopy", the "understory", and the "groundcover". You are trying to determine whether the total "footprint" of the characteristic bog species in Washington State listed below, be they canopy, understory or groundcover, is more than 30%.

Characteristic Bog Species In Washington State:

Scientific Name	Common Name
<i>Andromeda polifolia</i>	Bog rosemary
<i>Betula glandulosa</i>	Bog birch
<i>Carex brunescens</i>	Brownish sedge
<i>Carex buxbaumii</i>	Brown bog sedge
<i>Carex canescens</i>	Hoary sedge
<i>Carex chordorhiza</i>	Creeping sedge
<i>Carex comosa</i>	Breaded sedge
<i>Carex lasiocarpa</i>	Wolly-fruit sedge
<i>Carex leptalea</i>	Bristly-stalk sedge
<i>Carex limosa</i>	Mud sedge
<i>Carex livida</i>	Livid sedge
<i>Carex paupercula</i>	Poor sedge
<i>Carex rostrata</i>	Beaked sedge
<i>Carex sexatilis</i>	Russet sedge
<i>Carex sitchensis</i>	Sitka sedge
<i>Carex interior</i>	Inland sedge
<i>Carex pauciflora</i>	Few-flower sedge

Characteristic Bog Species In Washington State (continued):

<i>Cladina rangifera</i>	Reindeer lichen
<i>Drosera rotundifolia</i>	Sundew
<i>Eleocharis pauciflora</i>	Few-flower spike rush
<i>Empetrum nigrum</i>	Black crowberry
<i>Eriophorum chamissonis</i>	Cottongrass
<i>Eriophorum polystachion</i>	Coldswamp cottongrass
<i>Fauria crista-galli</i>	Deer-cabbage
<i>Gaultheria shallon</i>	Salal
<i>Gentiana douglasiana</i>	Swamp gentian
<i>Juncus supiniformis</i>	Hairy leaf rush
<i>Kalmia occidentalis</i>	Bog laurel
<i>Ledum groenlandicum</i>	Labrador tea
<i>Lysichitum americanum</i>	American skunk cabbage
<i>Malus fusca</i>	Pacific crabapple
<i>Menyanthes trifoliata</i>	Bog bean
<i>Myrica gale</i>	Sweet gale
<i>Pedicularis groenlandica</i>	Elephant's-head lousewort
<i>Picea engelmannii</i>	Engelmann's spruce
<i>Picea sitchensis</i>	Sitka spruce
<i>Pinus contorta</i>	Lodgepole pine
<i>Pinus monticola</i>	Western white pine
<i>Platanthera dilatata</i>	Leafy white orchid
<i>Populus tremula</i>	Quaking aspen
<i>Potentilla palustris</i>	Marsh cinquefoil
<i>Pteridium aquilinum</i>	Bracken fern
<i>Rhynchospora alba</i>	White beakrush
<i>Salix commutata</i>	Under-green willow
<i>Salix eastwoodiae</i>	Mountain willow
<i>Salix farriae</i>	Farr willow
<i>Salix myrtilifolia</i>	Blue-berry willow
<i>Salix planifolia</i>	Diamond leaf willow
<i>Sanquisorba officinalis</i>	Great burnet
<i>Sphagnum spp.</i>	Sphagnum mosses
<i>Spiraea douglasii</i>	Douglas' spiraea
<i>Spiranthes romanzofianna</i>	Hooded ladies'-tresses
<i>Thuja plicata</i>	Western red cedar
<i>Tofieldia glutinosa</i>	Sticky false-asphodel
<i>Tsuga heterophylla</i>	Western hemlock
<i>Vaccinium occidentale</i>	Western huckleberry
<i>Vaccinium oxycoccus</i>	Bog cranberry

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NOTE: This list does not contain all of the plant species found in bog and bog-like wetlands in Washington. Other species may be present and the area may still be identified as a bog or bog-like system. Latin names and spelling are based on the U.S. Fish and Wildlife Service, "National List of Plant Species that Occur in Wetlands: Washington". Biological Report May 1988 NERC-88/18.47.

Coastal Dune: A dune system is characterized by a set of dune forms recurring in a pattern over the dune landscape. Along the Pacific Northwest coast four types of dune systems can be distinguished. The State of Washington has, in most cases, only the parallel ridge system.

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 2 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 are filled with depressional areas supporting wetland habitat and open water. (From Weidemann (1984)).

The landward extent of the dune system is determined by topographic breaks, bluffs, soils developed on the beach or on dunes, etc. The soils series which meet this definition include, but are not limited to, Beaches, Dune lands, Seastrand, Orcas, Yaquina, Westport, Netarts, Ocosta, and Fluvaquents (tidal).

Kettle: A kettle is a particular type of usually deep bowl shaped depression formed by glacial action during periods of glacial retreat. One explanation for their formation is that in some circumstances, a large block of ice broke off from the retreating glacier. Although clay, silt, sand, gravel, or coarser material was generally washing out of the glacier with its melt water, there was not enough to fill the location of the large ice blocks that eventually melted. What remained was a relatively deep "hole" or depression, often shaped like a "kettle". Kettles are almost always permanently ponded. Their hydrology may be epiaquic (wet from the top down) or endoaquic (wet from the bottom up) but, like "prairie potholes", they tend to be endoaquic and intercept the regional water table. Because of their depth, they tend to be vegetated only around their shallower edges. They also tend to be in headwater positions with little or no input of surface runoff. Their soils are usually less fertile than those in prairie potholes. As a result, more acidic soil conditions are not unusual and kettles tend to be in the types of locations in which raised bogs form. Bogs are defined above and are also offered special protection.

Mature Forested Wetland: There are two definitions for mature forested wetlands, one for the west and one for the east side of Washington. The definitions for both are as follows (from Washington State Wetlands Rating System for Western Washington, Second Edition [August 1993, Publication 93-74] and Eastern Washington [October 1991, Publication 91-58]):

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a. Western Washington:

1. Does 50% of the cover of upper forest canopy consist of evergreen trees older than 80 years or deciduous trees older than 50 years?; **or**
2. 50% of the forest canopy consist of trees taller than 50', and the structural diversity is high as characterized by a multi-layer community of trees > 50' tall and trees 20'-49' tall and shrubs and herbaceous groundcover; **and**
3. < 25% of the cover in the herbaceous/ground cover or shrub class are invasive exotic plant species listed in the following table.

b. Eastern Washington:

1. Forested wetlands qualify as mature forested wetlands when the average age of dominant trees in the forested wetland is > 80 years; **or**
2. The average age of dominant trees in the forested wetland is 50 – 80 years, and there is high structural diversity as characterized by a multi-layer community of trees > 50' tall and trees 20' – 49; tall and shrubs and herbaceous groundcover; **and**
3. < 50% of the dominant plants in one or more layers (canopy, young trees, shrubs, herbs) are invasive/exotic plant species listed in the following table.

There has to be at least ¼ acre of the Forested class that meets the size and age criteria. The size of trees is often not a measure of age, and size cannot be used as a surrogate for age. To determine age, the best methods are to use a tree corer, or to gather historical data (e.g. aerial photos, land use records, permits, etc.) to determine when the area was last logged.

List of Invasive/Exotic Plant Species for Mature Forested Wetlands in Western and Eastern Washington

Scientific Name	Common Name
<i>Agropyron repens</i>	Quackgrass
<i>Alopecurus pratensis</i> , <i>A. aequalis</i>	Meadow Foxtail
<i>Arcticum minus</i>	Burdock
<i>Bromus tectorum</i> , <i>B. rigidus</i> , <i>B. Brizaeformis</i> , <i>B. secalinus</i> , <i>B. japonicus</i> , <i>B. mollis</i> , <i>B. commutatus</i> , <i>B. inermis</i> , <i>B. erectus</i>	Bromes
<i>Cenchrus longispinus</i>	Sandbur
<i>Centaurea solstitialis</i> , <i>C. repens</i> , <i>C. cyanus</i> , <i>C. maculosa</i> , <i>C. diffusa</i>	Knapweeds
<i>Cirsium vulgare</i> , <i>C. arvense</i>	Thistles
<i>Cynosurus cristatus</i> , <i>C. echinatus</i>	Dogtail
<i>Cytisus scoparius</i>	Scot's Broom
<i>Dactylis glomerata</i>	Orchardgrass
<i>Dipsacus sylvestris</i>	Teasel
<i>Digitaria sanguinalis</i>	Crabgrass
<i>Echinochloa crusgalli</i>	Barnyard Grass
<i>Elaeagnus augustifolia</i>	Russian Olive
<i>Euphorbia peplus</i> , <i>E. esula</i>	Spurge

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<i>Festuca arundinacea, F. pratensis</i>	Fescue
<i>Hedera helix</i>	English Ivy
<i>Holcus lanatus, H. mollis</i>	Velvet Grass
<i>Hordeum jubatum</i>	Foxtail Barley
<i>Hypericum perforatum</i>	St. John's Wort
<i>Iris pseudacorus</i> †	Yellow Iris
<i>Juncus effusus</i> *	Soft Rush
<i>Lolium perenne, L. multiflorum, L. temulentum</i>	Ryegrass
<i>Lotus corniculatus</i>	Birdsfoot Trefoil
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Matricaria matricarioides</i>	Pineapple Weed
<i>Medicago sativa</i>	Alfalfa
<i>Melilotus alba, M. officinalis</i>	Sweet Clover
<i>Phalaris arundinaceae</i>	Reed Canarygrass
<i>Phleum pratense</i>	Timothy
<i>Phragmites australis</i>	Reed
<i>Poa compressa, P. palustris, P. pratensis</i>	Bluegrass
<i>Polygonium aviculare, P. convolutus, P. cuspidatum, P. lapathifolium, P. persicaria</i>	Knotweeds
<i>Ranunculus repens</i>	Creeping Buttercup
<i>Rubus discolor, R. laciniatus, R. vestitus, R. macrophyllus</i>	Non-native Blackberries
<i>Salsola kali</i>	Russian Thistle
<i>Setaria viridis</i>	Green Bristlegrass
<i>Sisymbrium altissimum, S. loeselii, S. officinale</i>	Tumblemustards
<i>Tanacetum vulgare</i>	Tansy
<i>Trifolium dubium, T. pratense, T. repens, T. arvense, T. subterraneum, T. hybridum</i>	Clovers
Cultivated species:	Wheat, Corn, Barley, rye, etc.

† In Western Washington only * In Eastern Washington only

Riverine Systems: The riverine system includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean derived salts in excess of 0.5 parts per thousand (ppt). A channel is "an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water" (Langbein and Iseri 1960:5). The riverine system is bounded on the landward side by upland, by the channel bank (including natural and man-made levees), or by wetland dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens. In braided streams, the system is bounded by the banks forming the outer limits of the depression within which the braiding occurs.

The system terminates at the down stream end where the concentration of ocean-derived salts in the water exceeds 0.5 ppt during the period of annual average low flow, or where the channel enters a lake. It terminates at the upstream end where tributary streams originate, or where the channel leaves a lake. Springs discharging into a channel are considered part of the riverine system.

a. Lower Perennial Riverine: The gradient is low and water velocity is slow. There is not tidal influence, and some water flows throughout the year. The substrate

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consists mainly of sand and mud. Oxygen deficits may sometimes occur, the fauna is composed mostly of species that reach their maximum abundance in still water, and true planktonic organisms are common. The gradient is lower than that of the Upper Perennial subsystem and the floodplain is well developed.

These definitions are from *Classification of Wetlands and Deepwater Habitats of the United States* published by the U.S. Department of the Interior, Fish and Wildlife Service (USFWS). Approximate locations of these systems are indicated by the R2 classification on the National Wetland Inventory maps published by the USFWS. However, these maps do not represent the actual boundaries of jurisdictional area for any particular project. They should only be used to help determine the relative location of tidal and lower perennial riverine systems versus other identified systems. The Corps will determine the actual location of these systems.

Salt Marsh: The following definition of a salt marsh shall be used in implementing the Nationwide Permit program:

Any area adjacent to salt water where the interstitial soil salinity is greater than or equal to 0.5 parts per thousand at any time of year or where the plant community is comprised of at least 5% total cover of any of the following species occurring singly or in combination:

Scientific Name	Common Name
<i>Abronia latifolia</i>	Yellow sand verbena
<i>Aster subspicatus</i>	Douglas' aster
<i>Atriplex patula</i>	Orache
<i>Cakile edentula</i>	American searocket
<i>Cotula coronopifolia</i>	Brass buttons, Mud-disk
<i>Distichlis spicata</i>	Seashore saltgrass
<i>Eleocharis parvula</i>	Small spike-rush
<i>Glaux maritima</i>	Sea milk-wort
<i>Grindelia integrifolia</i>	Entire-leaved gumweed
<i>Honkenya peploides</i>	Seabeach sandwort
<i>Jaumea carnosa</i>	Fleshy jaumea
<i>Juncus gerardii</i>	Mud rush
<i>Orthocarpus castillejooides</i>	Paintbrush owl-clover
<i>Plantago maritima</i>	Sea plantain
<i>Puccinellia pumila</i>	Dwarf alkali-grass
<i>Salicornia virginica</i>	American glasswort
<i>Scirpus maritimus</i>	Seacoast bulrush
<i>Spartina anglica</i>	Spartina
<i>Spartina alternifolia</i>	Spartina
<i>Spergularia canadensis</i>	Canadian sand-spurry
<i>S. marina</i>	Salt marsh sand-spurry

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<i>Stellaria humifusa</i>	Salt marsh starwort
<i>Triglochin concinnum</i>	Slender arrow-grass
<i>T. maritimum</i>	Sea arrow-grass

In addition, when found in coastal areas adjacent to salt water the following species usually indicate the presence of a salt marsh. All of the species in the second list are found in fresh situations (sometimes well inland) as well as salt/brackish marshes. If there is any doubt that the area is a salt marsh, soil salinity should be established.

Scientific Name	Common Name
<i>Agrostis alba (Agrostis gigantea)</i>	Creeping bentgrass
<i>Carex lyngbyei</i>	Lyngby's sedge
<i>Deschampsia caespitosa</i>	Tufted hairgrass
<i>Festuca rubra</i>	Red fescue
<i>Hordeum brachyantherum</i>	Meadow barley
<i>H. jubatum</i>	Foxtail barley
<i>Juncus balticus</i>	Baltic rush
<i>Lilaeopsis occidentalis</i>	Western lilaeopsis
<i>Potentilla pacifica (Argentina egedii ssp. egedii)</i>	Silverweed
<i>Scirpus acutis (S. validus)</i>	Hard-stemmed bulrush
<i>Scirpus americanus</i>	American bulrush

Specialized Seasonal Wetlands: Generally, the following four types of wetlands are seasonally flooded, palustrine impounded wetlands whose vegetation's life cycle are synchronized with rising and falling water levels. The pools are found in enclosed basins, outflow is rare and groundwater exchanges minimal, standing water is shallow, on top of hard pans or other impervious surfaces, such as basalt, and of brief duration, filled mostly during heavy rain and snow melt. Native plants have been 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. However, they may also occur in some parts of western Washington. Identification of these wetlands can be difficult and should be delineated as "problem areas". A more specific description of each type is as follows:

a. Camas prairie wetlands: These systems are found in seasonally wet areas like seepages, depressions, prairies, meadows, hillsides (where moist), moist forests, and streamside areas which are often dry by late spring. Early spring water is the key. Hydrology is typically perched, but, there may be some groundwater exchange and there may be some slight water flow. The soil surface may be rich in organic matter rather than being clay or hardpan, but, more or less impervious surfaces are found in the soil profile so that water is perched at the surface. Camas prairie meadows are specifically those systems as described above supporting communities of common camas (*Camassia quamash*) and great camas (*C. leichtlinii*). Geographic distribution of

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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, Grant, and Spokane counties).

The presence of camas prairie wetlands **may** also be determined by using the following identification key. The identification key below does not always capture the systems identified as needing protection. Additional keys may be developed in the future which may capture all of the desired systems. The regional condition will be revised if that occurs.

<u>Question</u>	<u>Response</u>	<u>Action</u>
1. Either common or great camas present as a dominant (> 20% cover)	Yes No	Go to #2 Not protected
2. Other species at the site representative of native prairies (see table below)	Yes No	Go to #3 Not protected
3. Site is delineated as a wetland	Yes No	Protected Not protected

Characteristic Native Species present in Camas Prairie Wetlands:

Scientific Name:	Common Name:
<i>Camassia quamash</i>	Common camas
<i>C. leichtlinii</i>	Great camas
<i>Carex inops (C. pennsylvanica)</i>	Long-stoloned sedge
<i>Danthonia spicata, D. californica</i>	Oat grass
<i>Festuca idahoensis</i>	Fescue
<i>Koeleria cristata</i>	Koeleria (June grass)
<i>Luzula campestris</i>	Wood-rush

NOTE: This list does not contain all of the native plant species found in camas prairie wetlands in Washington. Other species may be present and the area may still be identified as a camas prairie wetlands. Latin names and spelling are based on the U.S. Fish and Wildlife Service, "National List of Plant Species that Occur in Wetlands: Washington". Biological Report May 1988 NERC-88/18.47.

b. Playa: A playa is a land form usually found in more arid regions of the west and is usually a large, shallow depression with no outlet that is intermittently ponded during those unpredictable periods of sufficient duration that enable their surface to be wet and water to accumulate. They pond water because either their surface, or a near subsurface horizon, is impervious usually due to high clay content (There may be sand

on the “surface”, but an impervious layer will not be very far below). Playas are typically less vegetated, more alkaline or saline, with typically larger pool sizes and watersheds than “vernal pools”. Conditions tend to be too extreme (too dry, too wet, too high salt concentration, etc.) for dense or vigorous plant growth in the central basin of the playa. When ponded, playas can form large, shallow “lakes” that can be very valuable to migrating waterbirds in otherwise very arid regions. Playas fill from epiaquic (wet from the top down) wetting.

c. Prairie pothole: A prairie pothole is a usually 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. While the shallower of these depressions may dry out during years of extreme drought, unlike “vernal pools” and “playas”, prairie potholes can be permanently ponded. Their plant communities tend to be dominated by perennial rather than annual plants and, depending on depth and the slopes involved, may actually 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 plants rather than emergents). Soils in and surrounding such basins tend to be fertile and unlike “vernal pools” or “playas”, primary productivity tends to be high (i.e. they can produce a lot of plant matter). Often prairie potholes can be important to resting waterfowl if the vegetation “structure” is correct. Many waterfowl species find undisturbed herbaceous upland buffers (i.e. unmowed, ungrazed pasture or prairie) preferred nesting habitat. However, almost all waterfowl species find prairie potholes important brood rearing habitat. Of particular importance are the aquatic invertebrates present which can form up to 70-90% of the high protein diet required by rapidly growing young birds. Prairie potholes can have either epiaquic (wet from the top down) or endoaquic (wet from the bottom up) forms of hydrology.

d. Vernal pool: Vernal pools can be found in both eastern and western Washington. However, they are not as clearly defined and described as the vernal pools of California nor are they the same as those pools found in California. Eastern Washington vernal pools have been studied more and a definition for those found in the Columbia River basin is more developed (first definition below). In other parts of eastern Washington (areas without basalt) and in western Washington, these areas are less defined and the definition is more general (second definition below). Close coordination with the Corps is needed to ensure these systems are not present in the project area.

Columbia Basin. A vernal pool in the Columbia Basin is usually a small depression that ponds water in the colder, lower evaporation periods of winter and loses its standing water either prior to or early in the growing season. These vernal pool depressions within the Columbia Basin are inundated for only a very short time, often less than 90 days of which only 3-4 weeks may be within the growing season. These vernals are often found in a mosaic and are flooded in mid-winter and then during late winter/early spring when they briefly drain into one another or other landscape channels. The regions winters are cold and dry with most precipitation coming in the form of snow.

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During winter time, the pools soils and any standing water will be frozen but usually offer the first open water during late winter. Columbia Basin vernal pools typically have very shallow soils (less than 20 cm) underlain by basalt or impervious subsoil (such as high clay content horizon or ash horizon) which can effectively eliminate downward percolation. Columbia Basin vernals can also have soils deeper than 20 cm and with hydrology supported by interflow early in the growing season. Evaporation and transpiration are the primary source of water loss through some loss to a downgradient interflow zone and underlying basalt fracture zones. Their plant community, if present, is usually dominated by short-lived native wetland annuals; later in the growing season non-wetland annual and biennial species dominate the pool environment. Columbia basin vernal pools may be inhabited with plant and animal species that are especially adapted to this ephemeral environment. When ponded, Columbia Basin vernal pools provide important foraging habitat to various species of migratory birds during the winter. Additional information regarding vernal pools in eastern Washington can be found in *Vernal Pools of the Columbia Plateau* prepared by Curtis R. Björk for the Nature Conservancy dated November 1997.

The vernal pools in the Columbia Basin, however, do not have the same characteristics as vernal pools in California. Field indicators that are specific to the vernal pools in the Basin include:

1. Upland or facultative upland annual and biennial species **are dominant** within the wetland boundary late in the growing season;
2. Average water level is very shallow early in the growing season (<20 cm within first two months of the growing season);
3. Typically very shallow soils, or absence of soils, immediately on top of basalt substrate. However, some vernals have soils deeper than 20 cm and are supported by shallow groundwater flow (interflow);
4. Dominant wetland plants (facultative, facultative-wet, obligate) are annuals and are low growing. If perennial wetland plants are present, they are low growing (<30 cm high) and not dominant.

The typical vegetation patterns found in these depressional wetlands with only very short periods of inundation can be characterized as follows:

If shallow water is present for a sufficient period in the early growing season than vegetation will consist of young, low-growing and often delicate-appearing annual OBL and FACW herbs. As the season progresses, many of these species complete their life cycle (begin fruiting) as water levels diminish. As the ground dries, a second "flush" of annual or biennial vegetation becomes established. This second association is often dominated by weedy UPL, FACU, or FAC species. In some cases, it is possible to observe the dried remains of the first (spring)

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association. In the spring, however, dried remains of the second (fall) association are often observable.

Other vernal pools. 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 (such as high clay content horizon or a durapan, and/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 with plant and animal species which are especially 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) and not endoaquic (wet from the bottom up).