

LEGEND

NATIONWIDE PERMITS (NWP) AND THEIR SPECIFIC REGIONAL CONDITIONS

NWP Number. Name of NWP. National requirements and conditions of this nationwide. Words in parenthesis following each national NWP wording refer to the authorizing legislation as follows: (Section 10 [of the Rivers and Harbors Act - pertains to structures and work in navigable waters] and/or Section 404 [of the Clean Water Act - pertains to the discharge of dredged or fill material into waters of the US.]

NWP Notification Requirement – *Helps identify requirements for applicants to notify Corps under this NWP. Form of notification: JARPA application form. See expanded notification discussion in National General Conditions 13 and 25 for notification procedures.*

Agency Coordination – *Identifies when the Corps must notify Federal and State agencies.*

Endangered Species Act (ESA) Compliance – *Reminds applicants to check the Corps' ESA compliance requirements. All projects require a detailed description of the proposed work. Some types of projects may require an applicant to submit a biological evaluation before beginning a project. Other types of work have already been determined to comply with ESA requirements under certain conditions. In these cases, a pre- or post construction "ESA Notification Tracking Form" is required to confirm compliance. To find out about specific ESA requirements, visit the ESA section of Seattle District's Regulatory Branch web page at www.nws.usace.army.mil or call telephone (206) 764-3495. Direct web page links to ESA information related to the specific nationwide permit may be located in this space under each nationwide permit. More explanatory information is also presented at page 18 of this Special Public Notice.*

Regional Conditions – *Restrictions placed on the use of this NWP in the State of Washington.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification – *Status of the Clean Water Act Section 401 Water Quality Certification. (See previous 401 Certification discussion)*

CZM Consistency Response -- *Status of the CZM consistency response. (See previous CZM Consistency discussion)*

NATIONWIDE PERMITS (NWP) AND THEIR SPECIFIC REGIONAL CONDITIONS

- 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 (USCG). (See 33 CFR, chapter I, subchapter C, part 66). (Section 10)

NWP Notification Requirement – *None except ESA.*

Agency Coordination – *None.*

ESA Compliance – *Pre-approved ESA compliance may apply. Submit a Specific Project Information Form (SPIF). See website for specific conditions and details. In particular see the Programmatic Consultation for Aids to Navigation.*

Regional Conditions – *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Not Applicable (Section 10).*

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 US has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

NWP Notification Requirement – *None except ESA.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions – *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Not Applicable (Section 10).*

CZM Consistency Response – *Concur.*

3. Maintenance. Activities related to:

(i) 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 which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. 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.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove 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, provided the permittee notifies the District Engineer in accordance with General Condition 13. 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. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) **REVOKED**

This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (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 Section 404(f) exemption for maintenance.

Notification Requirement – *Yes. Notification required for any work proposed under NWP 3 in designated critical resource waters or any work under NWP 3(ii). See National General Condition 13 (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – *For NWP 3(ii) only.*

ESA Compliance – *Pre-approved ESA compliance may apply. Submit a Specific Project Information Form (SPIF). See website for specific conditions and details. In particular see the Programmatic Consultations for replacement of up to eighteen (18) piling, culverts and bridges, tide gates, installation or replacement of one (1) boatlift, scientific measuring devices, and minor bank stabilization repair activities.*

Regional Condition for NWP 3(i) – Maintenance, Repair

The repair or replacement of existing permitted bank protection must incorporate the least environmentally damaging practicable methods. These methods include but are not limited to the use of bioengineering, biotechnical design, root wads, large woody debris, native plantings, and fish friendly riprap designs.

Regional Condition for NWP 3(ii) – Sediment Removal, Riprap Placement

1. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition. To enable the Corps in making this determination, the notification must include the following assessments:*
 - a. *Why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*
 - b. *How the proposed project incorporates 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 fish friendly riprap designs.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –
Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
 - c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise*

comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.

- 3. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/wrias/1998_water_seqs.pdf or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

- 4. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

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 authorizes shellfish seeding provided this activity does not occur in wetlands or 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). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US 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)

NWP Notification Requirement – *Yes. Notification required for discharges of fill material for constructing new and expanding existing shellfish cultivation areas. See National General Condition 13 (Notification) for specific requirements.*

Agency Coordination – *None*

ESA Compliance – *Pre-approved ESA compliance may apply. See website for specific conditions and details. In particular see the Programmatic Consultation for Fish and Wildlife Harvesting.*

Regional Conditions –

1. *The commercial harvest of subtidal hardshell clams or intertidal softshell clams by means of a mechanical/hydraulic escalator type of equipment is not authorized by this NWP.*
2. *The permittee must notify the District Engineer in accordance with General Condition 13 for grading, berm construction (if allowed by national conditions), placement of substrate and other activities involving a discharge of fill material for constructing new and expanding existing shellfish cultivation areas.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Approved.*

CZM Consistency Response – *Concur.*

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.*

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 and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. (Sections 10 and 404)

NWP Notification Requirement – *Yes. Notification required for discharges between 10 and 25 cubic yards. See National General Condition 13 (Notification) for specific requirements.*

Agency Coordination – *None*

ESA Compliance – *Pre-approved ESA compliance may apply. See website for specific conditions and details. In particular see the Programmatic Consultation for Scientific Measuring Devices.*

Regional Conditions –

1. *For the installation of temporary devices, the devices must be completely removed and the site restored to original condition upon completion of the study.*
2. *The PCN must also include a delineation of affected special aquatic sites.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Approved.*

CZM Consistency Response – *Concur.*

- 6. Survey Activities.** Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. 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 is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling muds and cuttings may require a permit under Section 402 of the CWA. (Sections 10 and 404)

NWP Notification Requirement – *None except ESA.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions – None.

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –
Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – Approved.

CZM Consistency Response – Partially denied without prejudice. *An individual CZM Consistency Response must be obtained for Oil or Natural Gas Exploration Activities located within counties in the coastal zone.*

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 Maintenance. Activities related to:

- (i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and
- (ii) Maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided the activity meets all of the following criteria:
 - a. The permittee notifies the District Engineer in accordance with General Condition 13;
 - b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);
 - c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

- d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

NWP Notification Requirement – *Yes, in all instances. See National General Condition 13(b) (Notification) for specific requirements*

Agency Coordination – *Loss of greater than 1/2 of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional Conditions – *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Partially denied without prejudice.*

1. *The NWP authorizes outfall construction only and does not authorize the discharge of effluent from the outfall. No effluent shall be discharged until the applicant has received a National Pollutant Elimination System permit, waiver, or other applicable approval from the appropriate Federal State or local authority.*
2. *An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*
 - a. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are*

presumed to comply with state water quality standards including state sediment management standards:

- (1) Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
- (2) For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

- b. For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
- c. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/wrias/1998_water_segs.pdf or by contacting Ecology's Federal Permits staff.*

NOTE: *An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge*

containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

- d. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 8. Oil and Gas Structures.** 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 DOI, Minerals Management Service (MMS). 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). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit 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. (Section 10)

NWP Notification Requirement – *Yes, in all instances. See National General Condition 13 (Notification) for specific requirements*

Agency Coordination – *Loss of greater than 1/2 of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional Conditions – *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Not Applicable (Section 10).*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

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 USCG has established such areas for that purpose. (Section 10)

NWP Notification Requirement – *None except ESA.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions – *None.*

State, EPA, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable (Section 10).*

CZM Consistency Response – *Concur.*

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

NWP Notification Requirement – *Yes. Notification required for any work proposed in designated critical resource waters. See National General Condition 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – *None.*

ESA Compliance – *Pre-approved ESA compliance may apply. Submit a Specific Project Information Form (SPIF). See website for specific conditions and details. In particular see the Programmatic Consultation for Mooring Buoys.*

Regional Conditions – *None.*

State, EPA, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable (Section 10).*

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)

NWP Notification Requirement – *None except ESA.*

Agency Coordination – *None.*

ESA Compliance – *Pre-approved ESA compliance may apply. Submit a Specific Project Information Form (SPIF). See website for specific conditions and details. In particular see the Programmatic Consultation for Temporary Recreational Structures.*

Regional Conditions – *None.*

State, EPA, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable (Section 10).*

CZM Consistency Response – Concur.

- 12. Utility Line Activities.** Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the US as follows:

- (i) *Utility lines:* 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 US, 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 (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the US, 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 not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling

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- with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.
- (ii) *Utility line substations*: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½ acre of non-tidal waters of the US.
 - (iii) *Foundations for overhead utility line towers, poles, and anchors*: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, 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.
 - (iv) *Access roads*: 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 US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the US, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs (i) through (iv) may not exceed a total of ½-acre loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

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Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

- (a) Mechanized land clearing in a forested wetland for the utility line right-of-way;
- (b) A Section 10 permit is required;
- (c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;
- (d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;
- (e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10-acre of waters of the US;
- (f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet;
- (g) Permanent access roads constructed in waters of the US with impervious materials. (Sections 10 and 404)

NOTE 1: 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; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the US Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

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 and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

NOTE 3: Where the proposed utility line is constructed or installed in navigable waters of the US (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA) and National Ocean Service (NOS) for charting the utility line to protect navigation.

NWP Notification Requirement — *Yes. Refer to notification requirements above, regional conditions below. See National General Conditions 13b (Notification) for specific requirements.*

NOTE: *Also review information in Migratory Bird section above (page 21).*

Agency Coordination — *Yes, in all instances.*

ESA Compliance — *Individual BE required.*

Regional Conditions for NWP 12 — *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification," when required, must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*

Regional Conditions for NWP 12(i) — Utility Lines —

1. *This NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

These systems are defined in the Definition section of this SPN.

2. *When trenching through wetlands, the approximate upper 12 inches of topsoil shall be removed and stockpiled separately from subsurface soils. Alternatively, topsoil can be imported to comply with this condition. Care shall be taken to avoid compaction when stockpiling hydric soils. Once the utility line has been installed, and armored as necessary, subsurface soils shall first be placed in the trench as backfill, followed by the topsoil as the final layer to restore the site to preconstruction contours. No more than 10 percent of the subsurface soils may be mixed in with the topsoil.*

Regional Conditions for NWP 12(ii) – Utility Line Substations–

1. *In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Wetlands adjacent to lower perennial riverine systems (See Note below); or*
 - b) *Coastal dunal wetland systems along the coast of Washington; or*
 - c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*

Note: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

2. *The permittee must notify the District Engineer in accordance with General Condition 13 for mechanized landclearing in a forested wetland for the construction of a substation(s).*

Regional Conditions for NWP 12(iii) – Foundations for Overhead Utility Line Towers, Poles, and Anchors –

1. *This NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
 - b) *Coastal dunal wetland systems along the coast of Washington; or*
 - c) *Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*

NOTE: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

NOTE: *This NWP cannot be used to authorize work for wireless communication towers.*

Regional Conditions for NWP 12(iv) – Access Roads –

1. *In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
 - b) *Coastal dunal wetland systems along the coast of Washington; or*
 - c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

NOTE: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

2. *For the construction of access roads, the permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:*
 - a) *the loss of greater than 1/10th of an acre;*
 - b) *footprints wider than 12 feet;*
 - c) *mechanized land clearing in a forested wetland*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*

- b. Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
- c. For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

- 2. For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
- 3. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/wrias/1998_water_seg.pdf or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

- 4. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 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 bank stabilization activity is less than 500 feet in length;
 - 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;
 - d. No material is placed in any special aquatic site, including wetlands;
 - 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 wetland area;
 - 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 part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

NWP Notification Requirement – Yes, in all instances.

Agency Coordination – *Loss of greater than 1/2 of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *The permittee must notify the District Engineer in accordance with National General Condition 13 for all bank stabilization projects.*
2. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition. To enable the Corps in making this determination, the notification must include the following assessments:*
 - a. *The cause(s) and mechanism(s) of any existing or imminent bank failure in the project area;*
 - b. *Sediment movement and deposition patterns in and near the project area, with and without the proposed project;*
 - c. *Existing and with-project habitat conditions including use of the project area by animal and plant species.*
 - d. *Why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*
 - e. *How the proposed project incorporates 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, beach nourishment in certain circumstances, and fish friendly riprap designs.*
3. *The permittee shall minimize the disturbance of existing vegetation in the project area and, following construction, revegetate disturbed areas with native plant species.*

NOTE: *Information useful in preparing the assessments required above are:*

- *the Washington State Department of Fish & Wildlife's Integrated Streambank Protection Guidelines, <http://www.wa.gov/wdfw/hab/ahg/ispqdoc.htm#toctop>, (especially for fresh waters);*

- *King County's Reconnaissance Assessment of the State of the Nearshore Ecosystem,*
<http://dnr.metrokc.gov/wlr/watersheds/puget/nearshore/sonr.htm>;
- *the White Papers, Marine and Estuarine Shoreline Modification Issues, and Ecological Issues in Floodplains and Riparian Corridors, Over-Water Structures: Freshwater Issues*
<http://www.wa.gov/wdfw/hab/ahg/marnsrc.htm>

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

NOTE: *This nationwide permit does not authorize discharges of fill for bank protection in special aquatic sites including wetlands, mudflats, and pool and riffle complexes waterward of the ordinary high water line.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *Proposed projects using any upright structures (e.g., retaining walls, concrete or timber bulkheads, etc.).*
2. *Projects that are greater than 500 feet in length.*
3. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 4 through 5 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

4. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/wrias/1998_water_segs.pdf or by contacting Ecology's Federal Permits staff.

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

5. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US; or

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- (2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3-acre of waters of the US.
- b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:
 - (1) The discharge causes the loss of greater than 1/10-acre of waters of the US; or
 - (2) There is a discharge in a special aquatic site, including wetlands;
- c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;
- d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;
- e. The width of the fill is limited to the minimum necessary for the crossing;
- f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);
- g. This permit 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; and
- h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

NWP Notification Requirement — *Yes, if any one of the following applies: permanent adverse impacts greater than 1/10th of an acre in waters of the US; discharges in special aquatic sites; expansion and modification of road crossings within 100 feet of specialized seasonal wetlands and pools; and crossings in tidal waters. See the regional conditions below and National General Conditions 13(b) (Notification) for specific requirements.*

Agency Coordination — *For public linear transportation projects only.*

ESA Compliance — *Individual BE required except for replacement or modification of culverts or bridges including the following directly related activities: construction of fish passage weirs, bed control structures, placement of stream bed substrate and woody debris, and installation of bank protection on roadway fill prism. Submit a Specific Project Information Form (SPIF) for these activities. See website for specific conditions and details on Programmatic Consultations for these activities.*

Regional Conditions for NWP 14 –

1. *For private linear transportation crossings, fill placed in waters of the US for footprints greater than 22 feet wide or greater than 200 feet in length are not authorized. An individual permit application must be submitted for proposed private linear transportation crossings in excess of these limits.*

NOTE: *Private linear transportation crossings are crossings whose use is restricted to an individual or a specific group of individuals.*

2. *The construction of new or additional bank protection or the repair or replacement of existing permitted bank protection must incorporate least environmentally damaging practicable methods. These methods include but are not limited to the use of bioengineering, biotechnical design, root wads, large woody debris, native plantings, and fish friendly riprap.*
3. *Construction of new linear transportation crossing are not allowed in playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system. Expansions and modifications to existing linear transportation crossings in these systems require notification to the District Engineer in accordance with General Condition 13.*
4. *Linear transportation crossings activities in tidal waters may be authorized if the permittee notifies the District Engineer in accordance with General Condition 13.*

NOTE: *Changes in base and peak flows, and water quality impacts that would result directly or indirectly from linear transportation crossings must be addressed in the pre-construction notification as required by National General Conditions 9 (Water Quality), 13 (Notification), and 21 (Management of Water Flows).*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –
Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 certification, in addition to an approved mitigation plan, is required prior to starting work for any fill-related impacts to tidal waters or to non-tidal wetlands adjacent to tidal waters.*

NOTE: *Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals (Ecology Publication 94-29 or as revised).*

For projects proposing mitigation at an Ecology-approved mitigation bank, applicants shall provide a copy of the bank credit withdrawal transaction recorded at the county auditor's office.

An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*

- c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/wrias/1998_water_segs.pdf or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.).*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency*

Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.

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

NWP Notification Requirement – *Yes. Notification required for any work proposed in designated critical resource waters. See National General Condition 25(b) (Designated Critical Resource Waters) for specific requirements*

Agency Coordination – *Loss of greater than 1/2 of an acre of waters of the US.*

ESA Compliance – *Individual BE required. The USCG may be the lead agency if it determines the proposed project requires a bridge permit.*

Regional conditions – *None.*

NOTE: *A list of water bodies considered navigable under the Rivers and Harbors Act of 1899 is posted on Seattle District's regulatory web page at <http://www.nws.usace.army.mil> . For more information about U.S. Coast Guard bridge permit requirements, call the 13th Coast Guard District at telephone (206) 220-7282.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Approved*

CZM Consistency Response – *Concur.*

- 16. Return Water from Upland Contained Disposal Areas.** Return water from an upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. 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 thus 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. (Section 404)

NWP Notification Requirement – *None except for ESA*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional conditions – *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

17. Hydropower Projects. Discharges of dredged or fill material associated with:

- (a) Small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the District Engineer in accordance with the "Notification" General Condition; or
- (b) Hydropower projects for which the FERC has granted an exemption from licensing 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; provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Section 404)

NWP Notification Requirement – *Yes, in all instances.*

Agency Coordination – *Loss of greater than 1/2 of an acre of waters of the US.*

ESA Compliance – *Individual BE required. Federal Energy Regulatory Commission may be the lead agency for projects for which it issues a license.*

Regional conditions – *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

- a. The quantity of discharged material and the volume of area excavated does not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- b. The discharge, including any excavated area, will not cause the loss of more than 1/10-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;
- c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and
- d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

NWP Notification Requirement — *Yes. Notification is required for fills greater than 10 cubic yards, in special aquatic sites, or in designated critical resource waters. See national General Conditions 13(b) (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *None.*

ESA Compliance — *Submit a Specific Project Information Form (SPIF) for replacement or modification of culverts, bridges and tide gates including the following directly related activities: construction of fish passage weirs, bed control structures, placement of stream bed substrate and woody debris, and installation of bank protection on a roadway fill prism. Also submit a SPIF for debris jam removal and removal of up to 25 cubic yards of sediment within 50 feet of the mouth of a stream including any directly related stream bed and stream bank grading, and the temporary use of sandbags for fish passage. See website for specific conditions and details on Programmatic Consultations for these activities. An individual BE is required for all other types of activities.*

Regional conditions — *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification — *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification — *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

3. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.).*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

- 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 US (i.e., Section 10 waters) as part of a single and complete project. 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 US (see 33 CFR 322.5(g)). (Sections 10 and 404)

NWP Notification Requirement — *Yes. Notification is required for fills in designated critical resource waters. See national General Conditions 13(b) (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *None.*

ESA Compliance — *Individual BE required.*

Regional conditions — *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification — *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification — *Approved*

CZM Consistency Response — *Concur.*

- 20. Oil Spill Cleanup.** Activities required for the containment and cleanup of oil and hazardous substances which 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 Part 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. (Sections 10 and 404)

NWP Notification Requirement — *None except for ESA.*

Agency Coordination — *None.*

ESA Compliance — *Pre-approved ESA compliance may apply. See website for specific conditions and details. In particular see the Programmatic Consultation for Oil Spill Contaminants.*

Regional conditions — *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –
Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Approved*

CZM Consistency Response – *Concur.*

21. Surface Coal Mining Activities. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the 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 and provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. In addition, 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 individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e)) Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404. (Sections 10 and 404)

NWP Notification Requirement – *Yes, in all instances. See National General Conditions 13(b) (Notification) for specific requirements.*

Agency Coordination – *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional conditions – *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

- 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 the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" general condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

NWP Notification Requirement – *Yes. Notification is required for work with Historic Registered vessels and proposed work in designated critical resource waters. See National General Condition 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional conditions – *None.*

Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

EPA – *Waived.*

State 401 Certification – *Approved*

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 that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)(40 CFR Part 1500 et seq.), that the activity, work, or discharge 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 the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

NWP Notification Requirement — *Yes, in all instances. See the regional conditions below and National General Conditions 13(b) (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance — *Individual BE required except for replacement or modification of culverts or bridges including the following directly related activities: construction of fish passage weirs, bed control structures, placement of stream bed substrate and woody debris, and installation of bank protection on roadway fill prism. Submit a Specific Project Information Form (SPIF) for these activities. See website for specific conditions and details on Programmatic Consultations for these activities..*

Regional Conditions — *The permittee must notify the District Engineer in accordance with General Condition 13 for projects within the State of Washington.*

NOTE: *Notification should include a statement/form that the proposed work is categorically exempt. The statement/form must be signed by an official of the Federal agency that has issued the categorical exemption.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification — *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Partially denied without prejudice. Written approval of the proposed mitigation plan for the project is required by Ecology for the activities and impacts listed below:*

1. *Any fill-related impacts to tidal waters or to non-tidal wetlands adjacent to tidal waters.*
2. *Any fill-related impacts greater than ½ acre.*

An individual 401 certification, in addition to an approved mitigation plan, is required prior to starting work for the following:

1. *For the activities listed in 1. and 2. above where Ecology determines the mitigation proposed for the project is insufficient and written approval is not received;*
2. *Any project impacting 1 acre or greater of wetlands*

NOTE: *Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals (Ecology Publication 94-29 or as revised).*

For projects proposing mitigation at an Ecology-approved mitigation bank, applicants shall provide a copy of the bank credit withdrawal transaction recorded at the county auditor's office.

An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*

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- c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.).*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency*

Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.

24. State Administered Section 404 Program.

There is no State administered Section 404 program in Washington.

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 US. (Section 404)

NWP Notification Requirement — *Yes. Notification is required for fills in designated critical resource waters. See national General Conditions 13(b) (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance — *Individual BE required*

Regional Conditions -- *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification — *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification — *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

- 1. The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management*

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practices. These projects are presumed to comply with state water quality standards including state sediment management standards:

- a. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 3 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: *An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.*

3. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: *An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.*

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

26. (Reserved)

27. Stream and Wetland Restoration Activities. Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

- (a) The activity is conducted on:
 - (1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or
 - (2) 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 (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or
 - (3) Any other public, private or tribal lands;
- (b) Notification: For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and
- (c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, 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 creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create 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; 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.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. 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 creation projects conducted under paragraphs (a)(3), 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. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), 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 creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). 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 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 will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior

condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

NWP Notification Requirement — *Yes. Notification required as discussed in (b) above, for work proposed in Department of the Army mitigation sites, in designated critical resource waters, and in CERCLA/MTCA sites. See National General Conditions 13(b) (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance — *Pre-approved ESA compliance may apply. Submit a Specific Project Information Form (SPIF) for replacement or modification of culverts, bridges and tide gates including the following directly related activities: construction of fish passage weirs, bed control structures, and placement of stream bed substrate and woody debris. Also submit a SPIF for debris jam removal and removal of up to 25 cubic yards of sediment within 50 feet of the mouth of a stream including any directly related stream bed and stream bank grading, and the temporary use of sandbags for fish passage. See website for specific conditions and details on Programmatic Consultations for these activities under Removal of Fish Passage Barriers. An individual BE is required for all other types of activities.*

Regional Conditions –

1. *If the proposed work results in impacts to a special aquatic sites (e.g., wetlands or riffle and pool complexes), the "Notification" must include a statement of why the impacts are necessary, how the impacts have been minimized, and how the overall project is beneficial, despite these impacts.*
2. *The permittee must notify the District Engineer in accordance with General Condition 13 for proposed projects in stream or wetland restoration and enhancement areas previously authorized as mitigation by a Department of the Army permit.*
3. *The permittee must notify the District Engineer in accordance with General Condition 13 for a stream and wetland restoration projects occurring in a designated Federal Superfund site (Comprehensive Environmental Response, Compensation and Liability Act), hazardous waste clean-up site (Resource Conservation and Recovery Act), or State clean-up site (Model Toxics Control Act).*

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

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. Written approval of the proposed mitigation plan for the project is required by Ecology for the activities and impacts listed below:*

1. *Any fill-related impacts to tidal waters or to non-tidal wetlands adjacent to tidal waters.*
2. *Any fill-related impacts greater than ½ acre.*

An individual 401 certification, in addition to an approved mitigation plan, is required prior to starting work for the following:

- a. *For the activities listed in 1. and 2. above where Ecology determines the mitigation proposed for the project is insufficient and written approval is not received;*
- b. *Any project impacting 1 acre or greater of wetlands*

NOTE: *Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals (Ecology Publication 94-29 or as revised).*

For projects proposing mitigation at an Ecology-approved mitigation bank, applicants shall provide a copy of the bank credit withdrawal transaction recorded at the county auditor's office.

An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management*

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practices. These projects are presumed to comply with state water quality standards including state sediment management standards:

- a. Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. Projects, activities or portions of projects or activities designed, constructed and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
- 2. For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
 - 3. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

- 4. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.).*

NOTE: *An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.*

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency*

Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.

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

Notification Requirement - *Yes, in all instances. See Regional Conditions and National General Conditions 13 (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

- 1. The permittee must notify the District Engineer in accordance with General Condition 13.*
- 2. This NWP is not authorized for projects that will adversely impact areas with eelgrass (*Zostera sp.*), kelp, or other macroalgae (*Macrocystis sp.*, *Nereocystis sp.*, *Ulva sp.*).*

State, EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Not applicable (Section 10)*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects involving fuel facilities or sewage pump-out stations and located within counties in the coastal zone.*

- 29. Single-Family Housing.** Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family house and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

- The discharge does not cause the loss of more than ¼-acre of non-tidal waters of the US, including non-tidal wetlands;

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- b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition;
- c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;
- d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of ¼-acre for the entire subdivision;
- e. An individual may use this NWP only for a single-family home for a personal residence;
- f. This NWP may be used only once per parcel;
- g. This NWP may not be used in conjunction with NWP 14 or NWP 18 for any parcel; and,
- h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership." (Sections 10 and 404)

Notification Requirement - *Yes, in all instances. See Regional Conditions and National General Conditions 13 (Notification) for specific requirements.*

Agency Coordination – *Required with NMFS and USFWS.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *This NWP is not authorized for use in salt marshes, or all open water areas such as, but not limited to rivers, lakes, all streams, ponds, playa lakes, etc. Salt marshes and playa lakes are defined in the Appendix of this Public Notice.*
2. *In addition to the information required for notification (National General Condition 13), photographic documentation of site conditions is required. Photos should clearly and accurately show the existing site conditions. These photos should be keyed to a site map or drawing. This will help facilitate project review.*
3. *Per Condition h. above, the vegetative buffer shall consist of native emergent, scrub-shrub, or tree species and shall be at least 100 feet wide, unless otherwise approved by the Corps and Ecology.*
4. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

30. Moist Soil Management for Wildlife. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, 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: The repair, maintenance or

replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

NWP Notification Requirement — *Yes. Notification required for work proposed in designated critical resource waters. See National General Condition 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance — *Individual BE required.*

Puyallup Tribe and Chehalis Tribe 401 Certification — *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

EPA — *Waived.*

State 401 Certification — *Approved*

CZM Consistency Response — *Concur.*

31. Maintenance of Existing Flood Control Facilities. Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, 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 it was 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. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these 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 US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)).

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the "Notification" General Condition. The 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.

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. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. 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 design capacities of the flood control facility. The documentation will also include BMPs 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 can not 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 permit 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 BMPs 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. (Sections 10 and 404)

Notification Requirement - *Yes, in all instances. See Regional Conditions and National General Conditions 13(b) (Notification) for specific requirements.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions – *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Approved*

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 CWA 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 CWA, provided that:
 - a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;
 - 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 U.S. under section 404 of the CWA 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 (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. '19jj, to the extent that a Corps permit is required. For either (i), (ii) or (iii) above, 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 or fails to complete the work by the specified completion date. 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)

NWP Notification Requirement – *None.*

Agency Coordination – *Loss of greater than 1/2 of an acre of waters of the US.*

ESA Compliance – *BE not required for remedial actions undertaken by applicant voluntarily in conjunction with a Corps enforcement action. Contact Corps for guidance in all other enforcement situations.*

Regional Conditions -- *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
 - c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance

supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

- 2. For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
- 3. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

- 4. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

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 USCG,

or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the US. (See 33 CFR Part 322). The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure that environmental adverse effects are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable). (Sections 10 and 404)

Notification Requirement - *Yes, in all instances. See Regional Conditions and National General Conditions 13(b) (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *Temporary fills may be in place for up to six months only, unless the applicant requests and receives approval for an extension from the District Engineer. Additional timing adjustments may be included to lessen impacts during critical times for migratory species.*
2. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*

3. *This NWP is prohibited from use in playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system. An individual permit application must be submitted for proposed work in these areas.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
 - c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 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 provided that the activity meets all of the following criteria:

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- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the US, including wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,
- c. The activity does 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. (Section 404)

Notification Requirement - *Yes, in all instances. See Regional Conditions and National General Conditions 13 (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance – *Individual BE required.*

Regional Conditions — *None.*

NOTE: *Additional information regarding mitigation can be found in the Corps' 1998 SPN titled Guidelines for Implementation of Compensatory Mitigation Requirements for Conversion of Wetlands to Cranberry Bogs.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP unless the proposed project meets 1 or 2 below:*

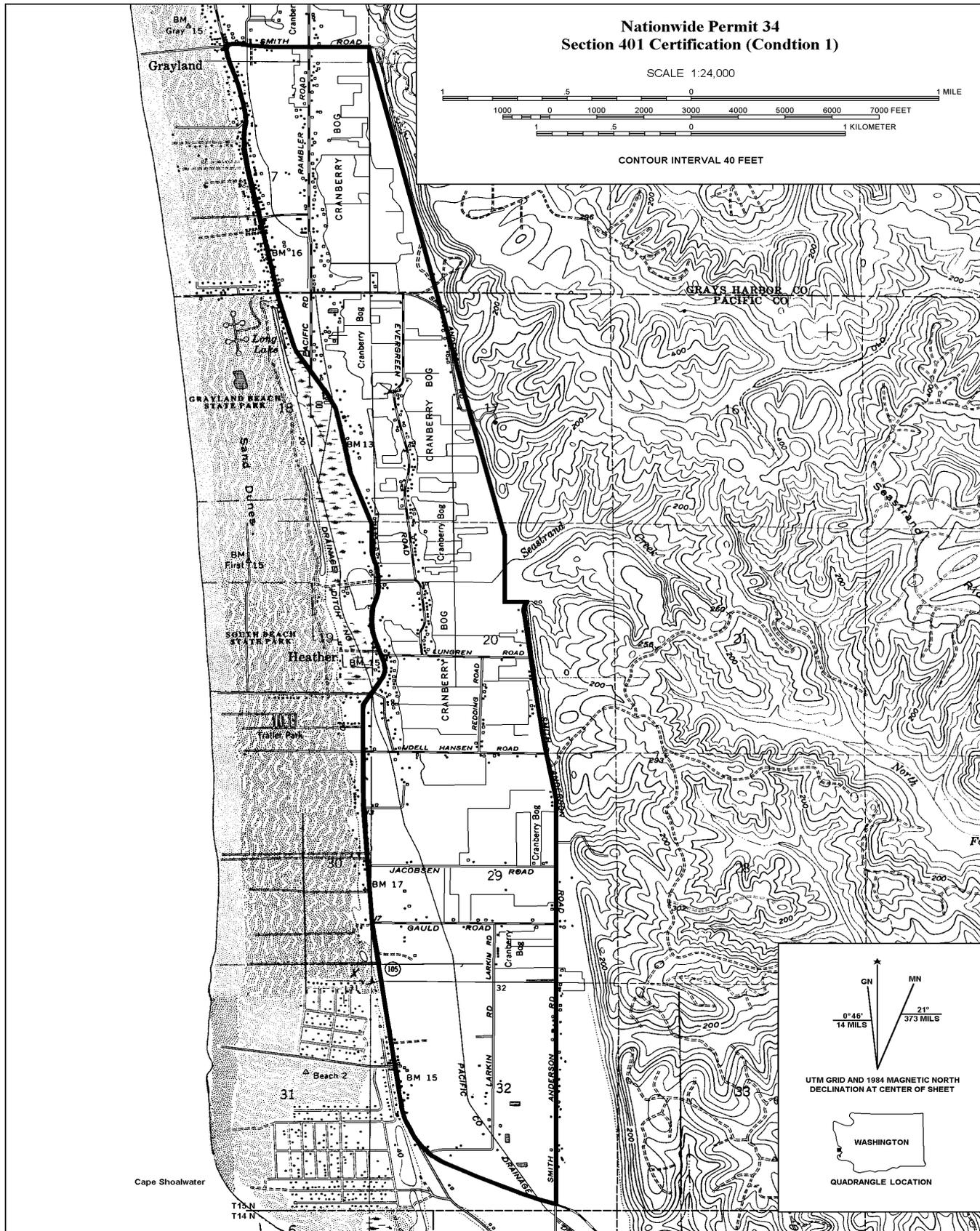
1. *The proposed expansion area:*
 - a. *Does not include forested wetland with trees of 8" Diameter or greater at Breast Height or provide 30% or greater of the areal canopy coverage of that wetland;*
 - b. *Is not within 50 feet of the Pacific County Drainage Ditch 1; and*

- c. *Is located within the geographic area as described below (see map on page 72, 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 1680.0 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.

or

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 an individual 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.*

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

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

Notification Requirement - *Yes, in all instances. See Regional Conditions and National General Condition 13 (Notification) for specific requirements.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *Prior to performing any maintenance dredging, the applicant must complete dredged material sampling and analyses that are required by Federal, State, or local agencies. The applicant should contact the Seattle District Corps of Engineers Dredged Material Management Office (telephone (206) 764-3768) to determine testing requirements.*
2. *The permittee must notify the District Engineer in accordance with General Condition 13 and provide:*
 - a. *The results of any required testing; and,*
 - b. *The location of the upland disposal area.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401 Certification – *Not applicable (Section 10)*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

36. Boat Ramps. Activities required for the construction of boat ramps provided:

- a. The discharge into waters of the US does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);
- b. The boat ramp does not exceed 20 feet in width;
- 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.

Another NWP, Regional General Permit, or Individual Permit may authorize dredging to provide access to the boat ramp after obtaining a Section 10 if located in navigable waters of the US. (Sections 10 and 404)

NWP Notification Requirement – *Yes. Notification required for work proposed in designated critical resource waters, for ramps wider than 12 feet, or located on beaches forage fish use for spawning. See Regional Conditions below and National General Condition 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination – None.

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *The permittee must notify the District Engineer in accordance with General Condition 13 for boat ramps wider than 12 feet or boat ramps located on smelt, herring, sand lance, candlefish, or salmon spawning*

beaches. Spawning beach locations are based on information obtained from the StreamNet database at <http://www.streamnet.org>, Washington Department of Fish & Wildlife habitat managers, or other authoritative sources.

- 2. Only one boat ramp per contiguous property ownership is authorized.*
- 3. Poured-in-place concrete is not authorized.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

- 1. An individual 401 Certification is required for proposed work that would occur in a limited or scarce riparian habitat, as identified by the Washington State Department of Fish and Wildlife Habitat Biologist.*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

- 2. The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
- 3. For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise*

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comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.

4. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

CZM Consistency Response – *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

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

- a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or
- b. The USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or
- c. The DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)). (Sections 10 and 404)

NWP Notification Requirement — *Yes, in all instances. See National General Conditions 13 (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance — *Individual BE required. Another Federal agency may be lead agency if it is funding or undertaking the proposed project.*

Regional Conditions — *None.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification — *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response - *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

- 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 provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. 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. 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 CWA or Section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

NWP Notification Requirement — *Yes, in all instances. See National General Conditions 13 (Notification) and 25(b) (Designated Critical Resource Waters) for specific requirements.*

Agency Coordination — *Loss of greater than ½ of an acre of waters of the US.*

ESA Compliance — *Individual BE required. Another Federal agency may be lead agency if it is funding or undertaking the proposed project.*

Regional Conditions -- *None.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification - *Partially denied with out prejudice. An individual 401 Certificate is required unless authorized through a cleanup order from Ecology or EPA. An individual 401 Certification is required for all other activities.*

CZM Consistency Response - *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

39. Residential, Commercial, and Institutional Developments.

Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, 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, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. 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 activities listed above are authorized, provided the activities meet all of the following criteria:

- a. The discharge does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, 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;

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- c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:
 - (1) The discharge causes the loss of greater than 1/10-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or
 - (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or
 - (3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, 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;
- d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
- e. The discharge is part of a single and complete project;
- f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;
- g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10-acre requires that the permittee notify the District Engineer in accordance with General Condition 13;
- h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);
- i. For discharges causing the loss of 1/10-acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work;

(3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., 1/12-acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., 1/12-acre of emergent wetlands created on-site);

- j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the US on the project site in excess of the acreage limit for NWP 39 (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed ½ acre).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 cannot exceed 1/2-acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs under paragraph (c)(2), above; however, activities that result in the loss of greater than 1/10 acre of ephemeral waters would require PCNs under paragraph (c)(1), above).

NWP Notification Requirement – Yes. Pre-construction notification required for loss of non-tidal waters greater than 1/10th of an acre, or any loss of open water area including perennial, intermittent, and ephemeral stream beds. Post-construction notification is required for the loss of 1/10 of an acre or less of waters of the US. See the Regional Conditions below and National General Conditions 13(b) (Notification) and 26 (Fills Within 100-Year Floodplains) for specific requirements.

Agency Coordination – Yes, in all instances.

ESA Compliance – Individual BE required.

Regional Conditions –

1. For any real estate subdivision, including commercial, institutional and residential developments, the aggregate total permanent loss of waters of the U.S. cannot exceed ½ of an acre as authorized by NWP 39, any other NWP, and Individual Permits. This applies to the entire residential, commercial, or other real estate subdivision including all parcels and parts thereof. An individual permit must be submitted for a permanent loss of waters exceeding ½ of an acre.
2. For real estate subdivisions, notification must include the subdivision history for the subject property.
3. In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:
 - a) Wetlands adjacent to lower perennial riverine systems (See Note below); or
 - b) Coastal dunal wetland systems along the coast of Washington; or
 - c) Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.

NOTE: Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.

4. Discharges of fill material causing the loss of any amount of ephemeral stream bed requires notification to the District Engineer in accordance with General Condition 13.

5. *Discharges of fill material causing the loss of greater than 300 linear feet of intermittent stream bed cannot obtain a waiver from the District Engineer. An individual permit application must be submitted for proposed impacts in excess of this limit.*

NOTE: *The national language already places this 300-foot restriction on the loss of perennial stream beds.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
 - c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water.

This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response - *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and 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

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relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

- a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:
 - (1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);
 - (2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;
 - (3) The permittee must have NRCS-certified wetland delineation;
 - (4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and
 - (5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g. 1/3-acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g. 1/3-acre of emergent wetland on a farm tract; credits purchased from a mitigation bank); or
- b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):
 - (1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;
 - (2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10-acre of non-tidal wetlands;
 - (3) The notification must include a delineation of affected wetlands; and
 - (4) The notification must include a compensatory mitigation proposal to offset losses of waters of the US; or

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- c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; and
- d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. 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. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer in accordance with the Notification General Condition 13; and
- e. The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the 1/2-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of 1/2 acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed 1/2 acre (see General Condition 15). (Section 404)

Notification Requirement – *Yes. Pre-construction notification required for loss of non-tidal wetlands greater than 1/10th of an acre, the relocation of any amount of existing serviceable drainage ditches constructed in non-tidal streams, including perennial, intermittent, and ephemeral streams, construction of building pads, or combining 40(a) with 40(c) and 40(d). Post-construction notification required for USDA Program participants performing activities authorized per paragraph 40(a). See National General Conditions 13(b) (Notification) and 26 (Fills Within 100-Year Floodplains) for specific requirements.*

Agency Coordination – *Yes, in all instances.*

ESA Compliance – *Individual BE required. The NRCS may be the lead Federal agency for ESA coordination for activities authorized per paragraph 40(a).*

Regional Conditions for NWP 40(b, c, and d) –

1. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*
2. *In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
 - b) *Coastal dunal wetland systems along the coast of Washington; or*
 - c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

NOTE: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definitions section of this SPN.*

3. *The relocation of any amount of existing serviceable drainage ditches constructed in non-tidal streams, including perennial, intermittent, and ephemeral streams, requires notification to the District Engineer in accordance with General Condition 13.*

4. *The relocation of greater than 300 feet of existing serviceable drainage ditches constructed in intermittent non-tidal streams cannot obtain a waiver from the District Engineer. An individual permit application must be submitted for proposed impacts in excess of this limit.*

NOTE: *The national language already places this 300-foot restriction on the relocation of existing serviceable drainage ditches constructed in perennial streams.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
 - c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water.

This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.*
3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response - *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 41. Reshaping Existing Drainage Ditches.** Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity. Nor can it expand the area drained by the ditch as originally designed (i.e., the capacity of the

ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the US). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the US, 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 sidecasting not to exceed a total of 180 days, where appropriate. In general, this NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are generally not waters of the US, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the US; 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. (Section 404)

Notification Requirement – *Yes. Notification required if greater than 500 linear feet of drainage ditch would be reshaped. See National General Condition 13 (Notification) for specific requirements.*

Agency Coordination – *None.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*
2. *In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*

- a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
- b) *Coastal dunal wetland systems along the coast of Washington; or*
- c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

NOTE: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification – Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response - Denied without prejudice. *An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

42. Recreational Facilities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

- a. The discharge does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, 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;
- c. The permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 for discharges exceeding 300 linear feet of impact of intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

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- d. For discharges causing the loss of greater than 1/10-acre of non-tidal waters of the US, the permittee notifies the District Engineer in accordance with General Condition 13;
- e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
- f. The discharge is part of a single and complete project; and
- g. Compensatory mitigation will normally be required to offset the losses of waters of the US. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the US.

For the purposes of this NWP, the term recreational facility is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This NWP may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the US and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management measures in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. 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. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

Notification Requirement – *Yes. Notification required for loss of non-tidal waters greater than 1/10th of an acre, golf courses and ski areas, or any loss of perennial, intermittent, or ephemeral stream beds. See the Regional Conditions below and National General Conditions 13(b) (Notification) and 26 (Fills Within 100-Year Floodplains) for specific requirements.*

Agency Coordination – *Golf courses and ski areas only.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the US and why avoidance or additional minimization cannot be achieved.*
2. *In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
 - b) *Coastal dunal wetland systems along the coast of Washington; or*
 - c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

NOTE: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

3. *Golf courses and ski areas require notification to the District Engineer in accordance with General Condition 13.*
4. *For the expansion of golf courses and ski areas, the ½ of an acre limit applies to the cumulative totals for the development which occurred after 1 July 1977.*
5. *Discharges of fill material causing the loss of any amount of perennial, intermittent, or ephemeral stream bed requires notification to the District Engineer in accordance with General Condition 13.*
6. *Discharges of fill material causing the loss of greater than 300 linear feet of intermittent stream bed cannot obtain a waiver from the District Engineer. An individual permit application must be submitted for proposed impacts in excess of this limit.*

NOTE: *The national language already places this 300-foot restriction on the loss of perennial stream beds.*

EPA, Puyallup Tribe and Chehalis Tribe 401 Certification –

Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:*

1. *The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:*
 - a. *Projects or activities where the discharges authorized under this NWP are explicitly authorized or covered by a National Pollutant Discharge Elimination System permit.*
 - b. *Projects, activities or portions of projects or activities designed, constructed, and maintained in accordance with the stormwater standards and practices contained in the most current version of Ecology's Stormwater Manual or an Ecology approved equivalent.*
 - c. *For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with conditions 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.*

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. *For projects/activities not designed in accordance with either Ecology's stormwater manual or an Ecology approved equivalent, or for projects where there is credible site specific information which indicates that the permits, approvals, or management practices identified above will not be sufficient to meet state water quality standards, the applicant may provide documentation with the application that the project/activity will otherwise*

comply with state water quality standards. An individual 401 Certification is required for projects which are unable to provide documentation that the project/activity will otherwise comply with state water quality standards.

3. *Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html or by contacting Ecology's Federal Permits staff.*

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

4. *Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, For projects/activities not designed in accordance biotechnical design, rock barbs, etc.)*

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

CZM Consistency Response - *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for 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, provided the activity meets all of the following criteria:

- a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing

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pursuant to a determination by the District Engineer, as specified below, 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;

- c. For discharges causing the loss of greater than 300 linear feet of intermittent stream beds, the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;
- d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;
- e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the Notification' General Condition 13. In addition, the notification must include:
 - (1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;
 - (2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and
 - (3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);
- f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

- g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;
- h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and
- i. The discharge is part of a single and complete project. (Section 404)

NWP Notification Requirement – *Yes. Notification required for loss of non-tidal waters greater than 1/10th of an acre or any loss of perennial, intermittent, or ephemeral stream beds. See the Regional Conditions below and National General Conditions 13(b) (Notification) and 26 (Fills Within 100-Year Floodplains) for specific requirements.*

NOTE: *Also review information in Migratory Bird section, page 21.*

Agency Coordination – *Yes, in all instances.*

ESA Compliance – *Individual BE required.*

Regional Conditions –

1. *In addition to being restricted from use in tidal waters of the US (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the US listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
 - a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
 - b) *Coastal dunal wetland systems along the coast of Washington; or*
 - c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

NOTE: *Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands*

upstream of this line only. These systems are defined in the Appendix of this Public Notice.

- 2. Discharges of fill material causing the loss of any amount of perennial, intermittent, or ephemeral stream bed requires notification to the District Engineer in accordance with General Condition 13.*
- 3. Discharges of fill material causing the loss of greater than 300 linear feet of intermittent stream bed cannot obtain a waiver from the District Engineer. An individual permit application must be submitted for proposed impacts in excess of this limit.*

NOTE: *The national language already places this 300-foot restriction on the loss of perennial stream beds.*

NOTE: *Compensatory mitigation will be allowed within the stormwater management facility when: (1) the hydrology is persistent and permanently vegetated wetlands will develop, i.e. the hydrology is not flashy; and (2) sinuous edges, islands, vegetation class and open water interspersion are incorporated into the design; and (3) water quality treatment is incorporated outside of the compensatory mitigation area.*

State, EPA, Puyallup Tribe and Chehalis Tribe 401

Certification – *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response - *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coast zone.*

44. Mining Activities. Revoked in the State of Washington.