

**DEPARTMENT OF THE ARMY
RECORD OF DECISION
FOR
MUCKLESHOOT INDIAN TRIBE
1997-4-01098-ATF**

Concerning issuance of a Department of the Army (DA) permit under Section 404 of the Clean Water Act.

1. Introduction. This permit decision document constitutes the Record of Decision (ROD) and the Section 404(b)(1) Guidelines Evaluation (Guidelines) (see appendix B of this ROD) for the work described in the 19 February 1998 public notice and the Final Environmental Impact Statement (FEIS) dated February 2002 which are hereafter incorporated by reference. Section 8 and Appendix A of this ROD contain the comments and responses related to the large number of issues raised concerning the proposed and existing work.

My decision is to issue a DA permit with special conditions for the work as originally proposed in the 19 February 1998 public notice and as modified and shown on revised drawings dated 30 April 2002, and as described as The Proposed Action in the FEIS.

2. Description of Work. To discharge and retain fill material into 0.33 of an acre of emergent, scrub/shrub, and forested wetlands near the White River near Auburn, King County, Washington, for the construction of an amphitheater. Wetland mitigation for the fill consists of creating 1.88 acres of emergent and 0.19 of an acre of scrub/shrub wetlands on- and off-site. Wetland mitigation also consists of the enhancement of an existing emergent wetland into 0.2 of an acre of scrub/shrub and 0.36 of an acre of forested wetlands. Other work will include the restoration of 3.4 acres of the 3.7 acres of emergent and forested wetlands impacted by the unauthorized land clearing activities of the Muckleshoot Indian Tribe (Tribe).

The overall proposed project involves the construction of an amphitheater bowl surrounded by a berm and associated facilities. The amphitheater design is dependent on the 0.33 of an acre of existing and proposed wetland fill. The amphitheater is covered with a roof. Associated facilities include office space and conference room, parking, plaza, concessions, onsite roads, bus-loading area, and a stormwater management system. The project area is approximately 95 acres.

Wetlands will be created and enhanced to mitigate for the impacts to 0.33 of an acre of wetlands and to offset the temporal loss of the land cleared wetlands. The off-site mitigation area is located to the northwest and down slope of the project area, near the White River. The on-site mitigation will be located near the amphitheater bowl and will involve the creation of wetlands and the connection of several small wetland areas to create a larger wetland.

Background: Prior to the Tribe conducting this work, the Bureau of Indian Affairs (BIA) had completed a draft Environmental Assessment (EA) that stated that there were no wetlands on-site and environmental impacts (cultural resources and traffic) would occur but could be mitigated. Mitigation measures included long-term planning and management strategies. The U.S. Army Corps of Engineers (Corps) was not given the opportunity to comment on this project before the work commenced.

On 16 May 1997, the Corps received a complaint that the Tribe filled wetlands without a permit on the site of the proposed White River Amphitheater near Auburn, King County, Washington. The Corps subsequently inspected the site and determined that 3.7 acres of wetlands were mechanically landcleared for the project. The Corps also determined that the work was in an “above the headwater” area. The wetlands onsite are adjacent to a tributary to the White River. No Corps permit was obtained prior to the commencement of the work; therefore, the work was a violation. There was no evidence that the Tribe knew wetlands existed on the property before they started work. Therefore, the action was not considered a knowing and willful violation. The Tribe was required to apply for an after-the-fact permit (ATF).

The Tribe revised their plans to reduce the wetland impacts to 1.6 acres. The plan included restoring the remaining 2.1 acres of land cleared wetlands. Because the wetlands are located above the headwaters and the impacts are less than 2 acres, the project appeared to fit the category of a Nationwide Permit 26 (NWP 26). Notification to the agencies was required under NWP 26.

On 18 August 1997, the Corps issued a “Post” Construction Notification to the required resource agencies for their comments. The project is located on Tribal property; therefore, local and state governments have no jurisdiction. However, many comments, opposing the project as proposed, were received from the public and local, State, and Federal agencies.

The Tribe redesigned the amphitheater so that permanent wetland impacts would be 0.31 of an acre (Note: as described below, the total permanent wetland impacts will be 0.33 of an acre as described in revised plans dated 30 April 2002). Although the wetland impact acreage composes a small percentage of the site acreage, the impacts of the entire project were considered in the Corps’ review because the wetland impacts are an integral part of the project.

In reviewing the notification for a nationwide permit, the District Engineer (DE) determines whether the activity to be authorized by the nationwide permit will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps determined that there would be more than minimal impacts as a result of this project based on the amount of wetland impacts due to the unauthorized land clearing, the loss of wetland functions, and the need to fully address storm and surface water runoff issues and the traffic management plan. All public interest factors could not be adequately addressed through the Nationwide Permit notification process. Therefore, on 22 January 1998, the Corps took

discretionary authority and required a Standard Individual Permit for this project. The Tribe submitted an application and the Corps subsequently issued a public notice on 19 February 1998.

On 17 April 1998, Judge Coughenour of the United States District Court, Western District of Washington at Seattle [The United States et al. Citizens For Safety & Environment et al. v. Bill Graham Enterprises, No. C97-1775C (W.D. Wash., April 17, 1998).], directed the BIA to complete an Environmental Impact Statement (EIS) for the proposed project. The Tribe had requested the BIA to transfer 324 acres of fee title lands, including the project site, to Federal trust status held for the Tribe, a decision subject to the National Environmental Policy Act (NEPA) compliance. Under NEPA, the BIA, in cooperation with the Washington State Department of Transportation (WSDOT), prepared an EIS. The Corps participated in the EIS preparation as a “cooperating” agency and provided input and comments on the development of the EIS. While this ROD incorporates the FEIS by reference, this ROD is an independent review of the project.

Several changes were made to the project and wetland mitigation since the public notice was issued. These changes were in response to comments from the public and state and Federal resource agencies. However, the overall scope of the project and wetland mitigation have remained the same.

Changes to the project include: the main storm water detention pond and outfall were relocated and redesigned, another storm water detention pond was added in the northwest corner of the site, and the State Route (SR) 164 (per requirements from WSDOT) modifications at the access points will require additional fill in roadside wetlands totaling 0.02 of an acre. The on-site mitigation area has been redesigned to create a larger wetland. Berms along the restored wetland swales will be removed to create a large continuous wetland between the wetland swales and created wetlands. The contours of, and water flow into, the off-site mitigation area have been modified. In the Corps’ governing regulations 33 CFR Part 325.2(a)(2), the DE will issue a supplemental, revised, or corrected public notice if in [their] view there is a change in the application data that would affect the public’s review of the proposal. These changes described above do not change the essence of the project nor do the changes reflect a substantial increase in wetland impacts. Therefore, the Corps determined that a supplemental public notice was not required.

Per NEPA requirements, no decision on the proposed action shall be made or recorded by a Federal agency until 30 days after publication of a notice by the Environmental Protection Agency (EPA) in the Federal Register of EISs filed during the preceding week. That notice was published on 12 April 2002. This decision is being made more than 30 days after this date.

3. Location. The proposed project location is on the Muckleshoot Indian Tribe reservation located between Auburn and Enumclaw in King County, Washington. The site is located along the west side of SR 164 just south of Southeast 400th Street. The

site is bordered on the east by SR 164 and on the west by a steep bluff that terminates at the White River.

4. Purpose of the Work. For the review of the proposal under Section 404 of the Clean Water Act (CWA), the purpose of the proposed project is to construct and operate an economically competitive performing arts center that serves the greater Seattle - Tacoma metropolitan area concert market and provides a facility for Tribal cultural, educational, and communal gatherings and events. Pursuant to NEPA, in the FEIS, the purpose is to construct and operate an economically *desirable* performing arts center. While essentially the same, these different purposes are allowed for the same project under NEPA and Section 404 of the CWA because they are two separate, distinct, and independent laws. Additional information on the need and purpose of the project can be found in Section 3 of Appendix B of this document and Section 1.0 of the FEIS.

5. Relative Extent of Public and Private Need for the Proposed Work. The Tribe has determined that there is a public need for an amphitheater in this region. A market study for the amphitheater was prepared. The study concluded that there is sufficient consumer demand to support a 20,000-seat amphitheater. The Seattle market is one of five of the 34 metropolitan markets that do not have a large amphitheater of approximately 20,000 seats. These large amphitheaters are required to attract the foremost popular music concert artists in the United States and are more marketable and profitable. The expense of managing larger amphitheaters does not increase proportionately with seating compared to smaller amphitheaters (10,000 seats); therefore, they are more profitable. The Tribe has determined that a 20,000-seat facility is the best option to maximize their earning potential.

The Seattle area has two new open-air stadiums (Safeco baseball Field and Seahawks Football Stadium). The Seattle Mariner's baseball season at Safeco Field would conflict with the amphitheater concert season. The Seahawks Football Stadium is planned for 72,000 seats. In the previous structure (Kingdome), there were only 0 – 2 concerts per year and typically only large "stadium tours" will play in facilities this large. Therefore, these two facilities do not provide a suitable open-air venue for concerts in the 20,000 seat range. Based on our review of the available information, the purpose of constructing a performing arts center is a reasonable economic venture.

The Tribe has also identified a private need of the amphitheater for cultural, educational, and communal gatherings. The Tribe does not have suitable facilities for council meetings, cultural events, annual powwows, and educational programs. The proposed facilities would include the Canoe Lodge that will have space for 600 people. This would be utilized for council and community meetings. The amphitheater itself would be utilized for cultural events such as classes, festivals, powwows, and community celebrations. In addition, the amphitheater would be utilized as an educational facility and a performing arts center for tribal and community youth. The combination of the public need and private need provide the rationale for constructing a large outdoor performing arts center.

6. Alternatives. A comprehensive discussion of alternatives available to the applicant is contained in Section 3 of Appendix B of this ROD and Section 2.0 of the FEIS

Alternatives are discussed differently in the FEIS and in this ROD. This is allowable under NEPA and Section 404 of the CWA because they are two separate, distinct, and independent laws. Under NEPA, in the FEIS, reasonable alternatives which are not available are still reviewed. Whereas, under the 404(b)(1) Guidelines, alternatives which are not available do not have to be considered. I have conducted an independent analysis of the overall project alternatives and have determined that the proposed project alternative is the least environmentally damaging practicable alternative available to the applicant.

Options available to the Corps: Under NEPA, all Federal agencies must evaluate the options available to them when making decisions dealing with environmental matters. In the case at hand, the Corps' disposition of the permit request is a Federal decision dealing with an environmental matter. Under the Corps' NEPA implementing regulations, the three options available to the Corps are as follows: deny the permit (the no action alternative), issue the permit with standard conditions, or issue the permit with standard and special conditions.

I have decided to issue the permit with standard and special conditions.

7. Statutory Authorities and Administrative Determinations Applicable to the Proposed Project.

- a. **National Environmental Policy Act.** A FEIS was prepared by the Bureau of Indian Affairs, Portland Office, pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500 – 1508) and was published on February 2002. The WSDOT was the co-lead. The Corps and the EPA were cooperating agencies in the preparation of the EIS. The Corps adopted the findings of the FEIS and has prepared this Record of Decision in conjunction with the FEIS. The FEIS is hereby incorporated by reference. The Corps believes the FEIS is reasonable and complete. Concerns from the public regarding the adequacy of the FEIS are addressed in this ROD.

The FEIS includes information which was not discussed in the Draft Environmental Impact Statement (DEIS). These changes include additional mitigation measures and studies. However, these changes did not result in additional significant information that was not disclosed in the DEIS. Therefore, a supplemental EIS is not required. A discussion of these changes are contained in the Supplemental Information Report in the FEIS.

- b. **Clean Water Act.** A DA permit pursuant to Section 404 of the CWA is required for the discharge of dredged or fill material into waters of the United States, including wetlands. Mechanized landclearing activities are considered a discharge of dredged material regulated under Section 404.

The proposed project includes the discharge of dredged or fill material into 0.33 of an acre of wetlands, restoration of 3.4 acres of land cleared wetlands, and implementation of a compensatory wetland plan. The CWA Section 404(b)(1) Guidelines Evaluation is attached as Appendix B to this ROD. The applicant has demonstrated that the proposed project is the least environmentally damaging practicable alternative available to the applicant for achieving the project purpose.

- c. National Historic Preservation Act and Cultural Resources.** The National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of its actions on historic properties. Requirements under Section 106 of the Act apply to any Federal undertaking, funding, licensing, or permitting. The Washington Office of Archaeology and Historic Preservation is consulted when projects are subject to review under Section 106 of the NHPA.

Two cultural resource sites were identified on the project site. These sites are discussed in Section 4.11 of the FEIS. The first site was found not eligible for listing on the National Register of Historic Places (NRHP). The site was determined to be unlikely to contain information that could be important; therefore, further mitigation was not needed. The second site was eligible for listing on the NRHP. The site was determined to have integrity, research potential, and cultural importance for the Tribe. Under BIA's lead, data recovery was undertaken and completed to mitigate impacts to the site.

The Corps notified the BIA that a MOU was required for the processing of these sites. No MOU was prepared by BIA. The Tribe submitted copies of cultural resource reports to the Corps. The Corps' Native American Affairs/Cultural Resources Coordinator was in contact with the BIA and the State Historic Preservation Office (SHPO). The Corps was informed that SHPO had concurred with the BIA that the cultural resources have not been adversely affected. An MOU is typically only required when there has been an adverse effect to cultural resources. Because there were no adverse effects and the Corps has received copies of cultural resource documents, the Corps will not require an MOU for this project.

- d. Water Quality Certification.** Prior to issuance of a DA permit pursuant to Section 404 of the CWA, the EPA must either issue a Section 401 Water Quality certification (WQC) stating that the work complies with Section 401, waive the requirement, or deny certification. The EPA has 1 year from the date of the public notice to issue or deny WQC or the requirement is waived. The EPA did not issue or deny WQC by the deadline of 19 February 1999, therefore the WQC requirement is waived. On 28 October 1999, the EPA sent the Corps a letter issuing WQC for the project. However, because the WQC requirement was waived, this WQC is not valid as an official certification, but the information contained therein was considered as part of

the public interest review. The WQC had five Specific Conditions regarding the proposal. The Corps has addressed all of these conditions in Section 8(a)(4) of this ROD. Because the WQC is not an official certification, it does not expire nor need to be renewed.

While there have been some changes in the project, none of the changes are sufficient to require a new application for a WQC. Several changes were made to the project and wetland mitigation since the public notice was issued. These changes were in response to comments from the public and state and resource agencies. However, the overall scope of the project and wetland mitigation have remained the same, therefore, the Tribe does not need to reapply for a WQC.

e. National Pollutant Discharge Elimination System (NPDES) Permit.

Under the CWA, the EPA has the authority for the regulation of discharges of pollutants into waters of the United States. The Tribe obtained a NPDES Storm Water Baseline Construction General Permit (NPDES General Permit) approval on 17 March 1998 from the EPA for the stormwater discharge system on the proposed project site as a condition of their WQC. The Tribe complied with this condition of the WQC even though the WQC was not an official certification. The NPDES General Permit authorization is valid for five years. Subsequently, the stormwater discharge system was modified. On 30 May 2002, the Tribe submitted the required forms to be re-authorized by a NPDES General Permit approval from EPA.

Provisions within the Intermodal Surface Transportation Efficiency Act (ISTEA) temporarily exempted Phase I industrial activities operated by municipalities with populations less than 100,000 (e.g., Muckleshoot Indian Tribe) from the need to obtain a storm water discharge permit (e.g., NPDES permit). This exemption is valid until 10 March 2003. Therefore, an NPDES permit is not required for the construction or operation of the stormwater detention facilities for the Muckleshoot amphitheater. However, an NPDES permit was obtained for the construction of the facility to meet the requirements of the WQC.

f. Endangered Species Act. BIA was the lead Federal agency for this coordination. A Biological Assessment (in the DEIS) with the initial findings of may affect, not likely to adversely affect, the Puget Sound chinook and bull trout and bald eagle was prepared and sent to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS). Subsequently, the NMFS and the FWS stated they could not concur with those findings for chinook and bull trout and formal consultation must be initiated. On 6 June 2000, the FWS concurred with the findings of may affect, not likely to adversely affect the bald eagle. On 7 December 2001, the NMFS issued a Biological Opinion. On 9 January 2002, the FWS issued a Biological Opinion. NMFS stated that the proposed action is not likely to

jeopardize the continued existence of Puget Sound chinook salmon or result in the destruction or adverse modification of their critical habitat. The FWS stated that the proposed action is not likely to jeopardize the continued existence of bull trout within the Distinct Population Segment. Issues regarding ESA are addressed in Section 4.4 of the FEIS.

To ensure compliance with ESA, the following special conditions will be added to the permit:

You must implement the ESA requirements and/or agreements set forth in the Biological Assessment in the DEIS dated August 1999. The U.S. Fish and Wildlife Service (FWS) concurred with a finding of “may affect, not likely to adversely affect” bald eagles based on this document on June 6, 2000 (FWS Reference Number 1-3-99-I-0829). The FWS will be informed of this permit issuance and will enforce any known violations of the commitments made in this document pursuant to the ESA.

This Corps permit does not authorize you to take a threatened or endangered species, in particular the Puget Sound chinook and bull trout. In order to legally take a listed species, you must have a separate authorization under the ESA (e.g., an ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with “incidental take” provisions with which you must comply). The enclosed BOs prepared by the National Marine Fisheries Service (NMFS) dated December 7, 2001, and the FWS dated January 9, 2002, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” that is also specified in the BO (NMFS Reference Number WSB-99-156 and FWS Reference Number I-3-00-F-1442). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BOs, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. However, the FWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their BOs, and with the ESA. For further clarification on this point, you should contact the FWS and NMFS. Should the FWS and NMFS determine that the conditions of the BOs have been violated, normally the FWS and NMFS will enforce the violation of the ESA, or refer the matter to the Department of Justice.

g. Essential Fish Habitat. In accordance with the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the Corps has determined that the proposal would impact 0.33 of an acre of EFH utilized by Pacific salmon. The NMFS has determined that the proposed action will adversely affect EFH for federally-managed fisheries in Washington waters. In NMFS' BO dated 7 December 2001, the NMFS stated that in addition to conservation measures described in the BO, Reasonable and Prudent Measures (RPMs) 1 and 2, and associated Terms and Conditions, described in Section II-G of the BO should be adopted to address EFH. Where these Terms and Conditions are written to apply only to chinook (e.g., 1d and 2c), they should be extended to both coho and pink salmon to address EFH. Puget Sound chinook, coho, and pink salmon have very similar habitats and environmental requirements. Therefore, compliance with the BO and RPMs to protect chinook will also protect the EFH of coho and pink salmon. To ensure this EFH conservation recommendation is met, a special condition will be added to the permit requiring adherence to the BO and the RPMs. The NMFS states that the Corps must provide a response in writing, within 30 days from the date of their letter dated 2 January 2002, including a description of measures proposed to avoid, mitigate, or offset the adverse impacts of the activity. This 30-day deadline is a recommendation not a requirement. A response was provided to the NMFS on 3 June 2002. EFH coordination has been completed.

h. Executive Order 11988 (Floodplain Management). The project site is adjacent to the White River. The project site is located on top of a steep bluff 180 feet above the White River. The site is not located within the floodplain of the White River. An unnamed tributary to Pussyfoot Creek, a tributary to the White River, traverses the southeast corner of the project site. The floodplain of this unnamed tributary is almost wholly within Wetland 2. Wetland 2 was land cleared. The majority of the wetland will be restored as part of this project. A small portion of the tributary (0.035 of an acre) and its floodplain will be impacted by the construction of a road crossing. The remainder of the floodplain within Wetland 2 will be restored. Because floodplain impact area is minimal and has been minimized, this project complies with this executive order.

8. Coordination. The Corps issued a public notice on 19 February 1998, to coordinate with the general public and the appropriate Federal, State, and local agencies in accordance with procedures specified in 33 CFR Parts 320 – 330 (Corps' permit regulations). A public hearing was also held on 25 March 1998 to solicit additional comments.

This section addresses some of the comments received in response to the public notice, and comments made at the public hearing. Sources of these comments were Federal, State, and local agencies, elected officials, environmental groups,

and the public. Agency comments and concerns are addressed in this section. All of the additional comments and concerns are addressed in Appendix A of this document.

a. Federal Agencies.

(1.) U.S. Fish and Wildlife Service (FWS). In a letter dated 23 March 1998, the FWS had the following comments and concerns: (Note: these concerns were resolved as detailed in their BO dated 9 January 2002)

FWS Comment 1. The stormwater pond proposed on the bluff must be appropriately sited and designed so that failure of the pond will not occur and result in increased sediment into the White River adversely impacting salmon and other aquatic organisms.

Applicant's Response. Since the date of the comment, the largest stormwater pond has been relocated and redesigned. The nearest edge is 170 feet from the nearest point of the bluff edge. The outlet system of the pond consists of two pipelines to transport stormwater from the ponds down to the White River. A third pipe was added to provide additional capacity for severe storm events and full pond conditions so the pond will not overflow and cause erosion and increase sediments flowing into the White River. Surface water and runoff is addressed in Section 4.3 and Volume III Common Response 6 of the FEIS.

District Engineer's Response. The stormwater pond has been moved to be further landward from the bluff. The pond is designed to filter out sediments to prevent and reduce impacts to fish and wildlife downstream of the project site. The stormwater pond has been appropriately sited and designed. This is addressed in more detail in Section 5 of Appendix A of this ROD.

FWS Comment 2. The potential widening of Highway 164 may impact wetlands. Additional widening may be needed to resolve traffic issues. These potential impacts to wetlands must be addressed.

Applicant's Response. There will be no widening of SR 164. However, WSODT has required changes in plans for access which will impact additional wetlands. These impacts total an additional fill in 0.02 of an acre of wetlands.

District Engineer's Response. The additional fill in 0.02 of an acre of wetlands will be compensated for per the compensatory mitigation plan. Details on the mitigation are in Section 11 of this ROD.

FWS Comment 3. The applicant needs to identify the disposal method for sewage. This method should be reviewed by the agencies and the public for an evaluation on any impacts to the environment.

Applicant's Response. This is addressed in Section 4.13 of the FEIS.

District Engineer's Response. In the DEIS, the applicant discussed their preferred method of sewage disposal (hookup to the city of Auburn's sewage system) and alternative methods if the preferred method could not be implemented. Agencies and the public had the opportunity to comment on their proposal. When the FEIS was published, no agreement had been made with the city of Auburn (City) regarding sewage disposal through the City's existing sewage system. Therefore, the sewage system that will be implemented consists of routing wastewater to a pump station on-site then a pipeline would discharge the wastewater into temporary above ground storage tanks on-site. Sewage trucks would then haul the waste off-site to be disposed of at a King County regional sewer system. This method will effectively remove sewage from the site. The preferred method will be used at a later date if an agreement with the City can be reached.

FWS Comment 4. The indirect impacts to wetlands must also be addressed. Impacts due to changes in surface hydrology, increased fragmentation, and increased human disturbance should be addressed.

Applicant's Response. Wetland impacts are addressed in Section 4.3 and Appendix I and J of the FEIS.

District Engineer's Response. Completing the on- and off-site wetland mitigation will compensate for the loss of wetland functions. The mitigation wetlands will be fed by clean water sources that include runoff water from the roof of the amphitheater. The on-site wetland mitigation will combine separate wetland areas into a larger, contiguous wetland. This will reduce fragmentation of the wetlands. There will be increased human disturbance around the remaining and on-site mitigation wetlands which would affect wildlife use. However, human presence will not affect the other mitigation functions which will improve water quality and flood storage. The off-site mitigation is isolated from human disturbance and will provide a habitat for wildlife. Refer to Section 11 of this document for details of the mitigation plan.

FWS Comment 5. The mitigation plan should identify how the remainder of the site will be utilized in the future. The proposed mitigation does not adequately compensate for wetland and wildlife losses due to the indirect impact of the proposed project. The Corps should require wider buffers or additional compensatory mitigation to account for indirect impacts.

Applicant's Response. Section 2.0 of the FEIS describes how the remainder of the site will be used. In addition to the amphitheater, a drug and alcohol rehabilitation center will be constructed.

District Engineer's Response. Of the 3.7 acres of impacted wetlands, 3.4 acres will be restored. In order to compensate for the temporal loss of the 3.4 acres of wetlands and the permanent impacts to 0.33 of an acre of wetlands, wetlands will be created on- and off-site. Because of the configuration of the project, the buffers cannot be widened. Widening of the buffers would result in the loss of required parking areas and a redesign would inevitably have to include additional impacts to wetlands. I have determined that the proposed wetland mitigation as detailed in the Final Mitigation Plan, dated 29 May 2002, will compensate for direct and indirect impacts to wetlands. Refer to Section 11 of this ROD for details.

FWS Comment 6. The Corps should not issue a permit until all of these concerns have been fully addressed. The Corps should consider preparing an EIS to address the indirect effects of this project. If the Corps decides to issue a permit over the FWS recommendations, the following 12 items should be incorporated as special conditions.

1. A final mitigation plan should be provided for agency review and comment.
2. Additional mitigation should be required to compensate for the temporal and permanent loss of forest wetlands.
3. No more than 10 percent of the mitigation and restored areas may contain non-native species.
4. Only native plant species shall be utilized.
5. Monitoring of water quality and sediments should be required.
6. Monitoring should be required for 10 years. Monitoring reports shall be provided to the FWS for review and comment. Contingency measures must be in place.
7. Eighty percent survival of the plants must be achieved by year 10.
8. The mitigation and restoration sites must meet success criteria for a minimum of three consecutive years without major maintenance activities.
9. The restored and created wetlands must meet the Corps' wetland regulatory definition by the end of the monitoring period.
10. The mitigation and restoration sites and avoided wetlands will be preserved in perpetuity to benefit wildlife.
11. Pesticides and herbicides shall not be utilized within created or avoided wetlands.
12. Planting shall occur during the appropriate planting season to better ensure plant survival.

Applicant's Response. None specifically provided, however, the concerns have been addressed in the Final Mitigation Plan.

District Engineer's Response. All of the FWS concerns have been fully addressed. An EIS was prepared to address all direct and indirect effects of this

project. On 4 October 2000, a revised Final Wetland Mitigation Plan was completed. The wetland mitigation plan was sent to the FWS on 6 October 2000. No comments were received from the FWS. The FWS accepted the mitigation as evidenced by their issuance of a Biological Opinion based on the FEIS which included the wetland Mitigation Plan. Subsequent to the FEIS, the Final Wetland Mitigation Plan was revised as of 29 May 2002. This Plan elaborates on the FEIS Mitigation Plan. The mitigation submitted is appropriate to compensate for permanent and temporal losses, therefore, no additional mitigation is required. The Corps does not agree that only native species should be used. Our main concern is to minimize the amount of invasive weeds. We have found that certain specific grass species (including some possibly non-native species) retard the invasion of Reed canarygrass (*Phalaris arundinacea*), a highly invasive species which creates dense monotypic stands. Therefore, we prefer to see non-native species over Reed canarygrass. However, the applicant has proposed to use only native species. Monitoring of water quality will be performed as required by the FWS. The Corps has found that % cover of vegetation is a better indicator of success than % survival of planted plants. As detailed in the mitigation plan, in the forested community, there must be 70% cover by year 10. In the scrub/shrub community, there must be 70% cover by year 5. In the herbaceous community, there must be 90% cover by year 5.

The restored and created wetlands will meet the Corps' wetland regulatory definition by the end of the monitoring period. A special condition of the permit will identify that the wetland area created as mitigation for work authorized by this permit, shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purposes of enhancing or restoring the mitigation associated with this project without Department of the Army approval.

Pesticides will not be used in the mitigation areas. Herbicides such as glyphosate are necessary and will be used to control invasive species in the restoration and compensatory mitigation areas. Plantings will take place during the appropriate time of year.

FWS Comment 7. Wintering bald eagles may occur in the vicinity of the project from approximately 31 October through 31 March. The Corps needs to assess whether the proposed project will affect the bald eagle due to the construction and operation of the project.

Applicant's Response. None specifically provided.

District Engineer's Response. Impacts to bald eagles were addressed in the Biological Assessment prepared for review by the FWS. On 6 June 2000, the FWS concurred with the findings of "may affect, not likely to adversely affect" the bald eagle.

FWS Comment 8. The FWS would like a copy of the impact determination for the bald eagles and a copy of the decision document for this project.

Applicant's Response. None required.

District Engineer's Response. The FWS has already received a copy of the impact determination for bald eagles through the consultation process. A copy of this ROD will be provided to the FWS.

(2.) National Marine Fisheries Service (NMFS). In a letter dated 3 April 1998, NMFS had the following comments, concerns, and questions. (Note: these concerns were resolved as detailed in their BO dated 7 December 2001.)

NMFS Comment 1. The Chinook salmon is proposed for listing under the Endangered Species Act. The NMFS is concerned with the potential impact to Chinook and other salmonid species known to occur in the White River. Potential impacts include sedimentation, stormwater induced flow changes, water quality degradation, physical disturbances and indirect impacts from associated development.

Applicant's Response. These impacts are addressed in Appendix H of the FEIS. Appendix H contains the Biological Assessment and subsequent Biological Opinions. These impacts are also addressed in Volume III Common Response 8 of the FEIS.

District Engineer's Response. The BIA prepared a Biological Assessment to address impacts to the Puget Sound chinook. Since the NMFS' original comment, the Puget Sound chinook were listed as threatened. On 7 December 2001, the NMFS stated in their Biological Opinion that the proposed work is not likely to jeopardize the continued existence of Puget Sound chinook salmon.

NMFS Comment 2. What is the potential for slides that may increase sediment loads in the White River and its tributaries? Does a geo-tech study exist for this proposal?

Applicant's Response. This is addressed in Section 4.1 of the FEIS and Volume III Common Response 7 of the FEIS. Appendix F of the FEIS discusses geotechnical information.

District Engineer's Response. Natural and gradual erosion of the bluff has occurred at this site. Engineering studies described in the FEIS show that construction activities will not cause enough vibratory impacts to result in any mass wasting or erosion of the bluff.

The discharge system of the main stormwater facility consists of two 12-inch diameter high-density polyethylene pipes to carry stormwater down the bluff to discharge water into a gabion energy-dissipation structure at the base of the bluff. A third pipe will be installed as a secondary bypass point. Water will only discharge intermittently during and after storms through the rainy fall, winter, and spring season. Containing water in pipes will reduce the chance of bluff instability due to water seepage in the bluff. The gabion energy-dissipater will help to protect stream bank stability. The design of the system will reduce the potential for slides and likelihood of sediments entering the White River or it's tributaries.

Stormwater runoff previously occurred directly over the bluff. With the proposal, stormwater runoff will be directed through swales and detention ponds and then pipes that run down the bluff and direct water away from the bluff. This reduces the number of points along the bluff where water is currently discharged and the number of points of erosion. If the directed combined discharge point fails there may be a potential for landslides. However, per requirements in the BO, the applicant has a Monitoring and Contingency Plan approved by the Services, which includes an operation, monitoring, and maintenance program that will be implemented to ensure that the system does not fail.

NMFS Comment 3. What sedimentation controls are being utilized during and after construction activities?

Applicant's Response. This is addressed in Section 4.14.3, Appendix O, and Volume III Common Response 6 of the FEIS.

District Engineer's Response. The applicant will implement a Construction Pollution Prevention Plan (CPPP) to reduce siltation and erosion on-site. This is required as part of the NPDES Construction General Permit from the EPA. The CPPP is detailed in Appendix O of the FEIS.

NMFS Comment 4. Is the stormwater plan consistent with the Puget Sound Technical Manual? What is the likelihood of another failure of the stormwater pond proposed for the bluff above the White River?

Applicant's Response. Since the date of the comment, the stormwater pond has been relocated and redesigned to further minimize impacts to the bluff. Surface water and runoff is addressed in Section 4.3 and Volume III Common Response 6 and 7 of the FEIS.

District Engineer's Response. For this project, under the CWA, the EPA has the authority for the regulation of discharges of pollutants into waters of the United States not the State of Washington. Because compliance with the Puget Sound Technical Manual is not required, the requirements of the Manual have not been reviewed to determine consistency. The Tribe obtained a NPDES Construction General Permit approval on 17 March 1998 for the construction of

the stormwater discharge system on the proposed project site as a condition of their WQC. This authorization is valid for five years. Subsequently, the stormwater discharge system was modified. On 30 May 2002, the Tribe submitted the required forms to be re-authorized by a NPDES General Permit approval from EPA. The stormwater pond has been moved further landward of the bluff in order to reduce the likelihood of impacts to the bluff. The pond is designed to filter out sediments to minimize impacts to fish and wildlife downstream of the project site. This is also addressed in Section 5 of Appendix A of this ROD.

NMFS Comment 5. Will there be any outfalls to tributaries or the White River? If so, what will be the quantity and quality of discharges?

Applicant's Response. This is discussed in Section 4.3 of the FEIS.

District Engineer's Response. Stormwater runoff from the site will be directed into three different systems. The Services were involved in the redesigning of the stormwater system as part of their BO review. The majority of the water will be directed through swales to the central stormwater detention pond. The swales will aid in filtering out sediments. The central stormwater detention pond is also designed to settle out sediments and filter out oily sediments. The water will then be discharged over the bluff through pipes which discharge into a gabion energy-dissipation structure at the base of the bluff prior to discharging into Pussyfoot Creek then into the White River. Discharges from the central pond will occur intermittently during and after storms through the rainy fall, winter and spring season. These discharges would be approximately 0.95 cubic feet per second.

Stormwater runoff will also be directed to the north detention pond, which discharges into the off-site mitigation site and intermittently discharges into the river. Stormwater runoff on the east side of the property will drain to a small detention pond on the east which discharges into restored wetlands then into an unnamed tributary then into Pussyfoot Creek which flows into the river.

The Tribe does not have their own water quality standards and is not required to meet state water quality standards nor obtain an NPDES permit for stormwater discharges out of the constructed stormwater facilities. However, because sediments and contaminants in the stormwater runoff will be filtered through swales and allowed to settle out in detention ponds, the discharge into Pussyfoot Creek and the unnamed creek should meet State water quality standards. Also, per requirements in the BO and in coordination with the NMFS and FWS, a water quality monitoring plan was developed, approved, and will be implemented to ensure the stormwater discharges will not adversely impact aquatic resources.

NMFS Comment 6. How will the sewage be handled?

Applicant's Response. This is discussed in Section 4.13 of the FEIS.

District Engineer's Response. Sewage disposal is addressed in the District Engineer's Response to FWS Comment 3 in this section of the ROD.

NMFS Comment 7. Will the amphitheater spur additional development adjacent to the White River and, if it does, what impact will it have on anadromous fish stocks?

Applicant's Response. No answer was specifically provided, however, secondary and cumulative impacts are discussed in Section 5.0 of the FEIS.

District Engineer's Response. There is the potential for additional development to occur near the amphitheater. However, it would be difficult to determine if the amphitheater was the impetus for new development. The FEIS identified several proposed projects in the vicinity. This includes the Auburn Bowling Center reconstruction, Muckleshoot Indian Casino expansion, a residential project near the Weyerhaeuser complex, expansion of Crystal Mountain Ski Resort, a 47-unit Tribal housing project and daycare facility, a Tribal clinic and wellness center, Tribal school facilities, and expansion of the Muckleshoot Administrative complex. Some of these activities may occur near the White River.

If additional development is proposed adjacent to the White River and a Federal action is involved, any impacts or potential impacts to Puget Sound chinook, an anadromous fish stock, will have to be addressed before any work can be approved. Under the 4d rule of NMFS, non-Federal activities (e.g., no Department of the Army permit required) must also assess impacts to Puget Sound chinook, a Federally listed threatened anadromous fish. Therefore, if there is additional development, impacts to anadromous fish stocks will be assessed at the time that specific activity is proposed.

(3.) Environmental Protection Agency (EPA). In a letter dated 6 April 1999, the EPA provided the following comments and concerns:

EPA Comment 1. The off-site mitigation area should be increased by 0.5 of an acre. The mitigation area should be increased to offset the narrow wetland buffers of the on-site wetlands.

Applicant's Response. Instead of increasing the size of the off-site mitigation, with wetland restoration design changes, we were able to increase the on-site mitigation area by 0.5 of an acre.

District Engineer's Response. The Final Wetland Mitigation Plan dated 29 May 2002, includes a revision to increase the on-site mitigation area by 0.5 of an acre. Increasing the size of the on-site mitigation area should offset the narrow wetland buffers of the on-site wetlands. This plan adequately compensates for the loss of wetland functions. Refer to Section 11 of this document for details on the mitigation.

EPA Comment 2. The monitoring period should be extended to 10 years.

Applicant's Response. The monitoring period for the forested system will be for 10 years. The performance standards for the scrub/shrub and emergent systems will be met by year 5.

District Engineer's Response. The standard monitoring period for most emergent and scrub/shrub mitigation is 5 years. Based on our experience with mitigation sites, the success of emergent and scrub/shrub mitigation is seen within the first 5 years. However, my technical staff has found that for forested systems, a monitoring period of 10 years is required to ensure the success. Therefore, 10 years of monitoring will only be required for the forested portion of the mitigation and restoration areas.

EPA Comment 3. The performance standards in the mitigation plan should be changed to reduce the percent coverage by weedy species to 10% and include only native species in buffers and grass seed mixes.

Applicant's Response. By year 5 the coverage of non-native, invasive species shall be no more than 10 percent. The mitigation plan involves the use of only native species.

District Engineer's Response. For years 1 – 3 the coverage of non-native, invasive species shall be no more than 20 percent. By year 5, the coverage should be no more than 10 percent. The Corps recommended the use of a grass seed mix that includes some non-native species. These species were preferable because they tend to hinder the establishment of Reed canarygrass, a particularly invasive weedy monotypic grass species. However, the applicant has proposed to use only native species.

EPA Comment 4. The Corps' NEPA review should address traffic issues.

Applicant's Response. Traffic concerns are addressed in detail in Section 4.12, Appendix S, and Volume III Common Responses 16 - 27 of the FEIS.

District Engineer's Response. The Corps' NEPA review includes the adoption of the FEIS prepared by BIA, dated February 2002. Traffic and transportation are addressed in Section 3 of Appendix A of this ROD and Section 4.12 and Appendix S of the FEIS.

EPA Comment 5. The Corps' NEPA review should address the Clean Air Act. The project must conform with the carbon monoxide and ozone elements of Washington's State Implementation Plans, pursuant to the General Conformity requirements found in 40 CFR 51, Subpart W. To assess carbon monoxide impacts, EPA recommends that the air quality dispersion modeling be conducted for intersections with high projected traffic volumes and/or low projected predicted level of service.

Applicant's Response. This is addressed in Section 4.2 of the FEIS.

District Engineer's Response. The applicant completed all testing in accordance to EPA standards and recommendations. The EPA confirmed in letters dated 28 October 1999, 23 November 1999, and 17 June 2002, Clean Air Act (CAA) conformity. Refer to Section 13.b. of this ROD for a detailed discussion on CAA conformity.

EPA Comment 6. The manner of waste (wastewater, sewage, solid waste, and or septage) disposal and its environmental impacts must be addressed.

Applicant's Response. This is addressed in Section 4.13 of the FEIS.

District Engineer's Response. Sewage disposal is addressed in District Engineer's Response to FWS Comment 3 in this section of the ROD. Solid waste will be disposed of at King County's Cedar Hills Landfill.

EPA Comment 7. Additional noise modeling should be conducted. There needs to be more discussion on noise perceptibility, measured ambient values, and the strengths and weaknesses of the model in simulating real work conditions.

Applicant's Response. This is addressed in Section 4.6 and Volume III Common Responses 9 - 12 of the FEIS.

District Engineer's Response. The applicant used the Environmental Noise Model to predict amphitheater concert and construction noise levels. This method is described as a computer model that produces results that have repeatedly shown to be a reliable predictor of actual noise levels. This method appears to be appropriate and sufficient for this project. Noise levels were predicted using the sound measurement unit of dBA (A-weighted decibels). Use of this type of measurement is appropriate for comparison to county and Federal sound limits that are given in the same measurement unit. Perceptibility or audibility is a more subjective measurement. The levels of audibility can vary from person to person and thus are not an enforceable standard. Measured ambient noise values are discussed in Section 4 of Appendix A of this ROD and Appendix K of the FEIS. Concert noise is predicted to exceed County sound limits in a limited area. The Tribe has proposed noise mitigation measures which includes offering soundproofing to impacted residences.

EPA Comment 8. The Corps should evaluate the alternatives analysis to assure compliance with the requirements of Section 404(b)(1).

Applicant's Response. None required.

District Engineer's Response. Appendix B of this document consists of the Section 404(b)(1) Evaluation that includes an alternatives analysis.

(4.) EPA – 2nd letter. In a letter dated 28 October 1999, the EPA provided the following comments. (Note: Please refer to Section 7.e. of this document for a discussion on WQC requirements.)

EPA – 2 Comment 1. There are no Water Quality Standards approved by EPA under the CWA that are applicable for waters on the Tribe's Reservation. The Tribe agrees to conform with the EPA approved Washington State water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48.010.

Applicant's Response. None required.

District Engineer's Response. There are no EPA approved Water Quality Standards that the Tribe has to meet and the EPA has waived the requirement of a WQC. Therefore, the Corps is not required to make the WQC conditions from EPA, conditions of the Corps permit. However, in the BOs the Services have required a Monitoring and Contingency Plan of which one facet is the water quality of stormwater discharges. In this plan, the Tribe has committed to meet water quality standards, set by the Services, for Total Suspended Solids, Total Petroleum Hydrocarbons, and water temperature.

EPA – 2 Comment 2. The work must be completed in accordance with the project description in the Public Notice dated 19 February 1998, and the Wetland Mitigation Plan dated 23 March 1998, or the work will not meet the provisions of Section 301, 302, 303, 306, and 307 of the CWA.

Applicant's Response. None required.

District Engineer's Response. As stated previously, the original plan in the public notice was modified as shown on revised drawings dated 30 April 2002, and as described as The Proposed Action in the FEIS. The final wetland mitigation plan was received on 29 May 2002. Several changes were made to the project and wetland mitigation since the public notice was issued. Changes to the project include: relocating and redesigning the main storm water detention pond and outfall, adding another storm water detention pond in the northwest corner of the site, and modifying State Route (SR) 164 (per requirements from WSDOT) which requires additional fill in roadside wetlands totaling 0.02 of an acre. The on-site mitigation area has been redesigned to create a larger wetland. These changes were in response to comments from the public and state and resource agencies. However, the overall scope of the project and wetland mitigation have remained the same. Completion of the work in compliance with the revised project drawings and mitigation plan will meet the described provisions of the CWA.

EPA – 2 Comment 3. The Tribe must notify Steve Roy of the Environmental Protection Agency at (206) 553-6221 at least seven (7) days before reinitiating work authorized under the permit application.

Applicant’s Response. None required.

District Engineer’s Response. To support cooperation between the Tribe and EPA regarding the environmental aspects of this project, this comment will be made a special condition of this permit, except the current EPA contact is Joan Cabreza, not Steve Roy. The condition will state this correction.

EPA – 2 Comment 4. The Tribe shall utilize silt fences, straw bales and straw mulching, and hydroseeding to prevent soil erosion, sedimentation, and reduced water quality.

Applicant’s Response. This is addressed in Section 4.14.3, Appendix O, and Volume III Common Response 6 of the FEIS.

District Engineer’s Response. The applicant will implement a Construction Pollution Prevention Plan to reduce siltation and erosion on-site per the requirements of their NPDES authorization. This plan is detailed in Appendix O of the FEIS.

EPA – 2 Comment 5. The Tribe will comply with the Terms of NPDES General Permits.

Applicant’s Response. The Tribe has completed the necessary requirements and submitted the appropriate documentation to the EPA to comply with the NPDES General Permit.

District Engineer’s Response. Refer to Section 7.d. for a description of how the project meets the requirements of the NPDES General Permit.

(5.) Comments from Indian Tribes:

In a letter dated 27 March 1998, the Lummi Indian Nation expressed their support of the project. In addition to providing jobs and revenue for the Tribe, the project will provide the opportunity to display the art and culture of the Muckleshoot and other Indian Nations.

In a letter dated 27 March 1998, the National Congress of American Indians (NCAI) expressed their strong support of the project. The project will provide jobs for Tribal members and provide non-gaming revenue to assist in meeting Tribal needs in the fields of social services, health care, education, youth programs and other services which have lost Federal funding.

In a letter dated 6 April 1998, the Quinault Indian Nation expressed their strong support of the project for the same reasons described by the NCAI.

b. State and Local Agencies.

(1.) Pierce County Council. In a letter dated 18 February 1998, the Pierce County Council recommend the Corps require an EIS for the project.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency.

District Engineer's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency.

(2.) King County Fire District. In a letter dated 18 February 1998, the King County Fire District stated that several of the roads proposed as alternate routes to the amphitheater are not designed to accommodate the traffic volumes that may occur. Residents and emergency vehicles will be unable to navigate on these roads. Also, during events, they may have to refuse requests to respond to situations at the amphitheater due to lack of personnel. This would jeopardize the safety and well being of the citizens.

Applicant's Response. This is addressed in Section 4.12 of the FEIS.

District Engineer's Response. The project will increase traffic in the area during concert days. Traffic management plans will be implemented to ensure that traffic congestion is minimized and emergency medical response time is not significantly delayed. Refer to Section 3 of Appendix A of this document for a detailed response regarding safety concerns related to traffic.

(3.) Black Diamond Fire District. In a letter dated 19 February 1998, the Black Diamond Fire District state that the project will have associated increased traffic that has the potential for general additional automobile accidents and Emergency Medical responses. They request an EIS be prepared to determine the true impact to their operation.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps was a cooperating agency. Section 4.12 and Volume III Common Responses 16 – 27 of the FEIS addresses traffic.

District Engineer's Response. An EIS was prepared for the project. The BIA was the lead agency and the Corps was a cooperating agency. The project will increase traffic in the area during concert days that may result in more traffic accidents. Traffic management plans will be implemented to ensure that traffic congestion and accidents are minimized and emergency medical response time is not significantly

delayed. Refer to Section 3 of Appendix A of this document for a detailed response regarding traffic concerns.

(4.) Auburn School District. In a letter dated 24 February 1998, the Auburn School District states a concern about the increased traffic volumes on State Route 164. School bus transportation is active between 6:30 a.m. and 4:45 p.m. Another safety concern is the lack of an alternative route for emergency vehicles to access Chinook Elementary School if State Route 164 were blocked with traffic.

Applicant's Response. This is addressed in Section 4.12.2 and Volume III Common Responses 16 and 27 of the FEIS.

District Engineer's Response. Most of the events will occur on weekends and evenings after 4:45 p.m. Therefore, increased traffic from the events held at the amphitheater should have a limited impact on school transportation. Refer to Section 3.b. of Appendix A of this document for a more detailed response regarding traffic impacts to school operations.

(5.) City of Bonney Lake. In a letter dated 19 February 1998, the city of Bonney Lake states that an environmental study should be conducted. They are concerned about noise and traffic impacts on Pierce County, especially Bonney Lake.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency. Sections 4.6 and 4.12 and Volume III Common Responses 9 – 12 and 16 – 27 of the FEIS addresses noise and traffic.

District Engineer's Response. An EIS was prepared for the project. The BIA was the lead agency and the Corps is a cooperating agency. Refer to Sections 3 and 4 of Appendix A of this document and sections 4.6 and 4.12 of the FEIS for a detailed response regarding noise and traffic.

(6.) King County Agriculture Commission (KCAC). In a letter dated 24 February 1998, the King County Agriculture Commission states the following comments and concerns:

KCAC Comment 1. Increased traffic in Agricultural Production Districts (APDs) can detrimentally affect farming operations by delaying the pickup and/or delivery of farm products, by hindering the delivery of needed goods and services to the farming operation, and by reducing customer access to farm stands and sales areas. Increased traffic can make it difficult and dangerous to move oversized, slow moving farm machinery from one field to another.

Applicant's Response. This is addressed in Section 4.12 and Volume III Common Response 13 of the FEIS.

District Engineer's Response. Most of the events will occur in the evening. Most farming operations occur during the daytime. Therefore, there should be limited conflicts with traffic. The Tribe has committed to establishing a direct phone number to the manager of the amphitheater. For farming activities occurring in the evening or during concert times, if there is a need to expedite the movement of farming vehicles or equipment, the manager can direct roving security or traffic forces to the location for assistance. This may cause delays in completing farming activities but it will ensure that concert activities do not completely prohibit farming activities. Refer to Section 3.b. of Appendix A of this ROD for additional discussion.

KCAC Comment 2. The effect of increased noise levels on farming and livestock operations is uncertain. Because of the sporadic nature of the increased noise, the animals may not get used to loud music or unfamiliar noises. Increased noise levels can result in stress in dairy cows that can significantly reduce milk production.

Applicant's Response. This is addressed in Section 4.6.3.2 of the FEIS.

District Engineer's Response. Predicted concert noise levels at farmlands to the east of the proposed site would be less than 45 dBA. As discussed in the FEIS, studies have shown that sound levels do not affect the health of animals unless they approach the 100 dBA range. Even in that range, adverse impacts have not been substantiated.

KCAC Comment 3. Increased traffic may result in increased damage to farmland by an increase in amount of litter or food wastes that are tossed from passing vehicles which may be ingested by livestock, possibly causing serious harm to the animals.

Applicant's Response. This is addressed in Section 4.13 of the FEIS.

District Engineer's Response. After events, the management of the amphitheater will have hired custodial crews to pick up litter along the nearby roadways. Most of the litter will likely be near the amphitheater where the traffic is moving slower. The clean up crews will be concentrated there. This should help to prevent consumption of litter by livestock. Details on these impacts are addressed in Section 4.13 of the FEIS.

KCAC Comment 4. The siting of this open-air facility will result in increased nuisance complaints to King County and the neighboring farmers. Complaints will include concerns about slow moving farm equipment, disruptive noises caused by farm machinery, and farm odors.

Applicant's Response. This is addressed in Section 4.8 of the FEIS.

District Engineer's Response. The traffic management plan includes plans to reduce event traffic that may conflict with agricultural operations. A relatively small number of farms with possible odor sources are located near the amphitheater; therefore, the likelihood of odor complaints should be low. Details on these impacts are addressed in Section 4.8 of the FEIS.

KCAC Comment 5. The project will severely impact the economic viability of farming operations located on these lands in the Enumclaw and Upper Green River APDs. An EIS should be required for this project.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps was a cooperating agency.

District Engineer's Response. The project site is not located within either the Enumclaw or Upper Green River APDs. However, the Enumclaw Plateau APD is located 1,500 feet east of the site. While there will be some impacts to farming activities, as described in the previous four responses, none of these impacts will severely impact the economic viability of farming operations in the APDs. No other impacts have been identified that will severely impact the economic viability of the APDs. An EIS was prepared for the project. Environmental impacts to farmlands are addressed in Section 4.8 of the FEIS.

(7.) City of Enumclaw. In an undated letter received on 2 March 1998, the city of Enumclaw requested the Corps require an EIS for the project. They passed Resolution No. 781 to formalize this request.

Applicant's Response. An EIS was prepared for the project. The BIA was the lead agency and the Corps was a cooperating agency.

District Engineer's Response. An EIS was prepared for the project. The BIA was the lead agency and the Corps is a cooperating agency.

(8.) City of Maple Valley. In a letter dated 5 March 1998, the city of Maple Valley expressed concerns about the project's impacts on traffic on State Route 169 within the city limits. They have a concern about the effect of concert traffic on level of service, the impact on traffic flow during major holiday weekends and special community events, and the potential for increased accidents involving intoxicated drivers. They also requested the Corps require an EIS for the project.

Applicant's Response. An EIS was prepared for the project. Section 4.12 and Volume III Common Responses 16 – 27 of the FEIS addresses traffic issues.

District Engineer's Response. An EIS was prepared for the project. The BIA was the lead agency and the Corps is a cooperating agency. Refer to Section 3 of

Appendix A of this document as well as Section 4.12 and Volume III Common Responses 16 – 27 of the FEIS for a detailed response regarding traffic concerns.

(9.) King/Pierce County Farm Bureau. In a letter dated 17 March 1998, the King/Pierce County Farm Bureau requested that an EIS be prepared for this project.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency.

District Engineer's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency.

(10). National Air Traffic Controllers Association (NATCA). In an undated letter received on 20 March 1998, the NATCA stated their concerns about traffic impacts, ingress and egress to their facility, public safety, emergency services, increased crime and vandalism, noise and other environmental impacts. They requested that an EIS be prepared for this project.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency. All of their concerns have been addressed in the EIS. Transportation impacts on the facility are addressed in Volume III Common Response 26 of the FEIS.

District Engineer's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency. All of the NATCA concerns have been addressed in this ROD and appendices. Transportation impacts on the facility are addressed in Volume III Common Response 26 of the FEIS.

(11). City of Covington. In a letter dated 17 March 1998, the city of Covington requested that an EIS be prepared which addresses: the traffic impact on State Route 516 and State Route 18 within the city of Covington particularly on major holiday weekends and special city events.

Applicant's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency. Traffic impacts, though not specifically within the Covington city limits, are addressed in Section 4.12 and Volume III Common Responses 16 – 27 of the FEIS.

District Engineer's Response. An EIS was prepared for the project. The BIA is the lead agency and the Corps is a cooperating agency. Traffic impacts are addressed in Section 3 of Appendix A of this ROD. Traffic impacts are addressed in Section 4.12 and Volume III Common Responses 16 – 27 of the FEIS.

(12.) Washington State Department of Fish and Wildlife (WDFW). In a letter dated 19 March 1998, the WDFW had the following recommendations and concerns.

WDFW Comment 1: Conifers should be planted at the top of the slope.

Applicant's Response: In the Appendix J-2 of the FEIS, the Tribe has committed to planting a buffer along 1,500 feet of the bluff. The area will be planted with Douglas fir, Western red cedar, Big leaf maple and Black cottonwood.

District Engineer's Response: The planting of these trees should add to recruitment sources for large woody debris in the White River. Per requirements in the BO, the applicant has prepared and obtained approval from the Services for a Monitoring and Contingency Plan which includes a plan for bluff plantings.

WDFW Comment 2: Install an impervious barrier in the bottom and sides of the stormwater detention pond to eliminate seepage to the unstable adjacent stream bank so as to reduce future potential slope failures.

Applicant's Response: All three detention basins will be lined to ensure impoundment of stormwater and to minimize infiltration of stored water to the subsurface soil.

District Engineer's Response: All three detention basins will be lined. In addition, the perimeter ditches will be lined with low permeability soil to reduce the potential for infiltration. Per requirements in the BO, the applicant has prepared and obtained approval from the NMFS and USFWS for a Monitoring and Contingency Plan which includes a plan for ensuring the liners are monitored and contingency plans are in place to ensure the liners retain their integrity.

WDFW Comment 3: Develop a comprehensive slope stabilization plan for the slide area which incorporates bioengineering methods. This plan should be developed immediately to reduce any additional sediment delivery to Pussyfoot Creek and the White River.

Applicant's Response: Historic photographs have been reviewed and site inspections have been performed. Based on this review, it would take roughly 150 years for the bluff to reach the outside edge of the berm protecting storm water basin 2. This is beyond the lifetime of the project. Therefore, no slope stabilization plan was developed. This topic is addressed in Volume III Common Response 7 of the FEIS.

District Engineer's Response: A recent slide was likely caused due to leakage from the storm water basin located near the edge of the bluff. The basins have subsequently been relocated further landward of the bluff and the basins will be lined. This will reduce, if not eliminate, any leakage from the ponds which could cause slope erosion. The storm water ponds, and biofiltration swales are designed to retain sediments, thereby preventing sediments from migrating downstream into the creek or river. Therefore, a slope stabilization plan is not necessary.

WDFW Comment 4: Reassess the design and structure of the storm drainage outfall to Pussyfoot Creek for integrity of the structure and stream bank stability considerations to handle peak storm water delivery to the stream.

Applicant's Response: See response to NMFS Comment 2 in this section of the ROD.

District Engineer's Response: See District Engineer's Response to NMFS Comment 2 in this section of the ROD.

WDFW Comment 5: Sewer management must be addressed.

Applicant's Response. This is addressed in Section 4.13 of the FEIS.

District Engineer's Response. Sewage disposal is addressed in District Engineer's Response to FWS Comment 3 in this section of the ROD.

WDFW Comment 6: The noise assessment is not conclusive. The effects of sound on elk, wintering eagles and other wildlife along the river is unknown.

Applicant's Response. This is addressed in Section 4.6 of the FEIS.

District Engineer's Response. As discussed in Section 4.6 of the FEIS, studies have shown that sound levels do not affect the health of animals unless they approach the 100 dBA range. And even in that range, adverse impacts have not been substantiated. Noise restrictions to protect bald eagles usually prohibits work between November 1 to March 31. The concert season is not during this time period, therefore, there should be no concert noise effects on wintering eagles. While this area is rural, elk and deer in the vicinity have had human contact and have become accustomed to humans and associated noise, e.g. cars, raceway noise, and construction equipment. In regards to concert noise, in the short term, the animal's behavior may change due to the new source of noise. However, in the long term the animals will become accustomed to the noise and return to their normal behavior patterns.

WDFW Comment 7: Human access to the sensitive floodplain area must be restricted.

Applicant's Response: A fence will be constructed along the bluff perimeter. On event days, the perimeter will be patrolled and gates leading to the creek will be locked.

District Engineer's Response: The measures described by the applicant should be effective in restricting and limiting access to the lower floodplain areas.

(13.) City of Auburn. In a letter dated 6 April 1998, the city of Auburn stated three areas of concerns: traffic operations and safety, public emergency services, and sanitary sewer service on the project site.

Applicant's Response: These concerns have been addressed in Sections 4.12 and 4.13 of the FEIS.

District Engineer's Response: A detailed response is provided in Sections 3 and 10 of Appendix A of this ROD.

c. Public Comments after the Public Notice period and FEIS publication.

Generally, only comments received during the public notice period must be addressed as part of the Corp's permit review. However, because of the complexity of this project, all comments received were reviewed and addressed as appropriate.

On 18 June 2002, Bricklin & Gendler, LLP (B&G) on behalf of the local opposition group, Citizens for Safety & Environment (CSE), submitted a letter describing their concerns regarding the adequacy of the FEIS. Because this letter represented a response from a large group of concerned parties and included specific technical issues, I believed it was appropriate to request a response from the applicant to address these issues and for the Corps to review this information.

B&G Comment 1: In the FEIS, the technical traffic information is prepared by Transportation Solutions, Inc. (TSI), a consultant for the amphitheater management group Clear Channel, Inc. (CCI). The BIA or WSDOT did not verify this information. The traffic studies contain omissions, inaccuracies, and incomplete information. TSI did not use the current Highway Capacity Manual (HCM); therefore, their findings resulted in less delay and better LOS ratings. The overall cycle lengths and splits are wrong. The Peak Hour Factor (PHF) used was wrong. A lower PHF should have been used. The Corps must complete an independent review of the traffic information. If the Corps based their conclusions on false information, their decision would likely be considered arbitrary and capricious.

Applicant's Response: The Tribe selected TSI and insisted TSI be used because they have extensive experience in transportation analysis and involvement in

virtually every major special event facility in the Northwest and Alaska for over more than twenty five years. The Traffic Impact Analysis (TIA) (Appendix L of the FEIS) was the end result of a lengthy interactive process with WSDOT. WSDOT took an extensive and active role in the preparation of the TIA.

The 1994 HCM was utilized in the DEIS. Since that time, updated versions were published in 1997 and 2000. There were no changes in the fundamental methodologies. The only substantial change is the way that average vehicle delay is measured. These changes result in delays approximately 30% higher than those determined using the 1994 HCM. However, the ranges of LOS grades were also increased to reflect this difference in measurement. Thus the LOS grades between 1994 and 1997 generally remain the same.

The change in the PHF is very reasonable since traffic volumes are going to increase prior to events at the amphitheater.

District Engineer's Response: The Corps informally consulted with WSDOT (telephone conversation with WSDOT on 17 July 2002) to discuss the impacts of changes in the HCM. WSDOT stated that the biggest change was the way average vehicle delay is measured. Because the delay is measured in a different manner, the value of the time delay may be larger. However, to retain consistency with the older versions of the HCM, the ranges of LOS grades were changed to reflect the difference in measuring. Therefore, differences between using the 1994 and 1997 manuals are minimal. Based on this information, the use of the 1994 HCM would not affect the LOS grades utilized in the FEIS.

The expertise of WSDOT in transportation issues was thoroughly incorporated into the environmental permit review process. Because WSDOT was actively involved in the EIS process and in the development of the TIA and TMP, I believe that transportation issues have been disclosed and contingency measures are in place to address additional traffic impacts should they occur.

B&G Comment 2: The traffic study is misleading, inaccurate and absent in their analysis of SR 18 backups. Our traffic consultant, TDA, used the SYNCHRO computer model to analyze this situation. Backups will occur whether or not mitigation measures are implemented. An "accordion" effect (stop and go, weaving in and out) will occur a minimum of 1,000 feet to the west at the SR 18 exit. Traffic time is almost doubled than what is discussed in the FEIS. And the specific mitigation measures within the city of Auburn will never happen. The adverse impacts of the SR 18 backups are not fully discussed in the FEIS.

Applicant's Response: The queuing analysis prepared by TSI was very carefully reviewed with WSDOT to ensure that it reflected a realistic set of conditions. TSI acknowledged that there is a potential for peak hour queuing on SR 18 and incorporated possible mitigation measures including a vehicle-actuated, internally illuminated advance warning signs to address this potential (Section 4.2.2.6 of the

TIA, Appendix L of FEIS). WSDOT did not want to incorporate this as a mitigation measure at this time but rather felt it was more appropriate to observe traffic conditions with the proposed action in place. Based upon the conditions which actually develop, WSDOT could exercise implementation of this measure should it be warranted. Also, if queuing occurred and presented an unsafe condition along SR 18, WSDOT could exercise their ownership authority to minimize the impact associated with congestion at the east bound SR 18/SR 164 ramps.

District Engineer's Response: The Corps informally consulted with WSDOT (telephone conversation with WSDOT on 17 July 2002) on this issue. WSDOT wanted mitigation measures developed and in place in case unreasonable backups occur on SR 18. These measures would then be implemented before the next event. The measures were developed and are detailed in the TMP. They include intersection modifications, incentives to increase shuttle services, and improved advertisement of alternative routes. Installing warning signs may be implemented as a mitigation measure if the other methods are not fully effective.

Queuing and SR 18 backups are discussed in the FEIS, albeit briefly. According to the FEIS, backups will occur but will be infrequent and mitigation measures have been established to minimize traffic impacts. B&G state that queues will extend well onto SR 18 thereby creating a safety hazard. I have reviewed information presented by both sides of the issue and I believe that there will be substantial backups onto SR 18, primarily on weekday evenings. However, because the shows will not all occur on weekday evenings, backups will occur infrequently. I believe that implementation of the TMP, that contains contingency measures, will help to minimize traffic impacts to improve safety at this off-ramp. The Tribe has committed to complying with the TMP (Tribe letter dated 29 August 2002) and formal compliance with the TMP will be made a condition of the WSDOT access permit (telephone conversation with WSDOT on 3 July 2002). The PHF utilized is acceptable. Due to the uniform steady flow of vehicles to amphitheater site, a PHF factor close to 1 is reasonable.

B&G Comment 3: Based on our consultant's analysis, because mitigation measures within the city of Auburn will never happen, key intersections will function at LOS "F". The FEIS does not discuss this scenario and falsely assumes that mitigation measures will be implemented. If mitigation measures within the city of Auburn are not implemented, there will be substantial backups creating a safety hazard.

Applicant's Response: In the FEIS, conditions without mitigation measures are discussed. In Section 5 of the TIA, contingency mitigation is detailed and could be implemented if required. It would be improper to exclude consideration of potential altering of the timing of traffic lights and temporary closure of 6th Street merely because two years ago the Auburn City Council opposed these measures. The City Council's opposition to these measures does not preclude the adoption of these or similar measures in the future. If the City Council wishes to deny its

citizens the benefit such measures could produce, that is the prerogative of the City Council and is not the fault of the Tribe. Moreover, WSDOT and the Washington State Patrol have independent authority to implement the contested mitigation measures on SR 18 and SR 164 since these routes are state highways. It is thus premature to conclude that the mitigation measures identified in the FEIS will never be implemented. However, even if they are not implemented, the FEIS provides a discussion of traffic impacts associated with the proposed amphitheater with both limited and no mitigation measures.

District Engineer's Response: In Section 4.12.4.3 of the FEIS, traffic conditions without mitigation measures are discussed, albeit briefly. In the FEIS, a scenario is analyzed assuming mitigation measures in the city of Auburn are not implemented. In Section 4.12.10 of the FEIS, it is clearly acknowledged that if the city of Auburn prohibits certain mitigation measures, unavoidable significant adverse impacts will occur. According to the FEIS, these adverse impacts will occur for capacity events occurring on a weekday. However, B&G state that these adverse impacts will occur for all events, regardless of size. The projected number of capacity shows is between 10 – 13 out of a total of 30 – 40 shows per year. Therefore, assuming all of these shows occurs on a weekday and traffic mitigation within the city of Auburn is prohibited, there will be significant adverse impacts on 10 – 13 days per year (averaging once every other week). During the concert season, this is an average of once every other week. Therefore, while there may be significant adverse impacts due to certain traffic situations, because the impacts will be discontinuous and sporadic, the traffic impacts have been minimized to the maximum extent practicable.

B&G Comment 4: The traffic analysis in the FEIS is based on average vehicle occupancy (AVO) of 3.2. This is not a realistic figure. Based on other information, a realistic AVO is 2.1 or 2.5. Utilization of an AVO of 3.2 has resulted in an underestimation of the LOS at intersections. Using a realistic AVO of 2.1 or 2.5, shows that more intersections will be functioning at an LOS "F".

Applicant's Response: A letter from Clear Channel Inc. previously stated that the average patron per car ratios is in the range of 2.5 patrons per car. A subsequent letter from CCI clarified that that statement was in error. It should have read "the average patron per car ratios are in the range of 2.5 to 3.5 patrons per car". This AVO is for all of CCI's venues, not just amphitheaters. AVO data for a wide variety of types of venues of varying sizes usually results in a lower AVO. For this project, we used data from four amphitheaters of comparable size. We believe this is a more accurate predictor of traffic values for the proposed facility than other generalized AVO values. Data from 2000 and 2001 concert seasons at four amphitheaters of similar size indicate an AVO of 3.1 and an AVO of 3.4 for events with over 15,000 people.

District Engineer's Response: An AVO of 3.2 was utilized in the FEIS analysis. It is reasonable to use an AVO from similar sized amphitheaters as a reference.

Therefore, use of an AVO of 3.2 in the FEIS traffic analysis is reasonable. Traffic volumes would be larger and more intersections would function at an LOS “F” if the AVO utilized was smaller. However, effective use of the TMP will ensure safety (e.g., movement of emergency vehicles) is not compromised.

B&G Comment 5: The traffic analysis underestimates the level of background traffic and uses questionable assumptions, such as the use of fall traffic count data instead of summer traffic count data and changing the background rate of traffic growth from 3 percent to 2 percent per year. The discussed background traffic levels change between reports. The background traffic levels identified in the FEIS are lower than reported by the State and City. Using realistic background traffic levels, more intersections will be functioning at an LOS “F” and traffic queues will be longer.

Applicant’s Response: Historical traffic volumes showed that traffic volumes were essentially identical in late July as compared to late September. Therefore, this is not a questionable assumption. The background growth rates used in the 2002 TIA were based on a combination of historical average daily volumes recorded by WSDOT and a comparison of the original 1998 existing traffic volumes to the updated 2001 existing traffic volumes. To maintain a conservative analysis, where the forecasted background growth rate differed between the two methods, the greater value was used. This resulted in the use of background growth rates at some locations as high as five percent annually.

District Engineer’s Response: Per B&G’s analysis, the Corps looked at the figures for traffic volumes of intersections 02, 04, and 07 in Figures 4 and 6 of the FEIS. Based on this data, the growth rate for all three intersections was 4%, not 2% as stated by B&G. Any differences between traffic volumes figures obtained in July versus September is negligible. The growth rate used in the FEIS, a document co-authored by WSDOT, is considered to be reasonable for the traffic analysis.

B&G Comment 6: The traffic analysis incorrectly assumes late start times for shows. The analysis assumes most concerts will begin at 8:00 p.m. Other CCI venues typically have only 12.3 percent of their shows beginning at 8:00 p.m. Most of the shows start between 6:00 – 7:30 p.m. Assuming a late start time subsequently results in underestimation of traffic impacts and congestion because the show would interfere with earlier rush hour traffic.

Applicant’s Response: Based on the event schedule at other amphitheaters, approximately half of all events occur on a weekend. Of those events that would occur on a weekday, only two or fewer per season would have an attendance greater than 90% capacity. Historically 66% of shows (weekend and weekday) at the Shoreline Amphitheater have a start time of 7:00 p.m or later. Shows at the proposed amphitheater would start later than the Shoreline Amphitheater because sunset occurs later during the summer at the proposed site, which is farther north than the Shoreline Amphitheater.

District Engineer's Response: Half of the events (15 – 20 shows) should occur on the weekend and would thus not interfere with rush hour traffic during the work week. The number of events during the work week would likely be an average of 1 per week (20 shows over a 24 week period). Therefore, even if the majority of the shows did start earlier than 8:00 pm, any interference with rush hour traffic would occur at the most once a week. And of that average of 1 show per weekday, not all shows will be capacity events. Therefore, even if the start time is earlier, traffic impacts due to overlapping with rush hour, will be infrequent (an average of once per week).

B&G Comment 7: A corridor analysis was not completed. A corridor analysis would show how backups at one intersection impact the functioning of intersections up and down stream. TSI is hiding significant impacts by omitting reference to a corridor analysis.

Applicant's Response: A travel time analysis was performed and discussed in Appendix L of the FEIS. This analysis reflects the additional travel time throughout the entire SR 164 corridor. This is one type of corridor analysis. There are other types of corridor analysis and professionals can have different approaches to dealing with the same issue. The implications of their analysis seems to correspond very closely with the analysis presented in Table 9 of Appendix L of the FEIS. We believe this impact has been clearly disclosed.

District Engineer's Response: The travel time analysis in section 4.2.2.2 of Appendix L of the FEIS describes the incremental increase in travel time along three major routes, Auburn, Black Diamond, and Enumclaw. For example, for an "A" Show with traffic mitigation measures implemented, during the hours of 7 – 8 p.m., the increase in travel time would be 22.2 minutes beyond the background travel time of 11 minutes. This value takes into account all intersections along this route. This analysis is appropriate to describe total impacts to intersections along these travel corridors.

B&G Comment 8: The traffic analysis assumes a maximum of 40 shows per year. Traffic impacts will be worse if this number of shows is exceeded. There is no guarantee that the number of shows will not exceed this amount.

Applicant's Response: None provided.

District Engineer's Response: Limiting the number of shows is not practicable. While most of the commercial venues will be scheduled well in advance, many of the Tribal and local events may be scheduled on an as needed basis. Placing a limit on the number of shows may result in restricting or prohibiting use of the facility for "last minute" Tribal or local events exceeding a specified maximum limit of shows. Data from other amphitheatres show that the range of 30 – 40 shows per

season is reasonable and likely to occur. Therefore, basing traffic studies on the assumption of 30 – 40 shows per season is reasonable.

B&G Comment 9: Because the traffic impacts have been underestimated, public safety issues regarding emergency vehicle access and conflicts with school events and activities are heightened. Because of these issues, this project is not in the public interest.

Applicant's Response: Proposed mitigation measures addressing public safety and emergency service impacts are clearly identified in Chapter 6 of the FEIS. CSE ignores or misconstrues this extensive discussion of public safety and emergency service impacts in the FEIS. Any conceivable impact will be offset by the presence of uniformed off-duty police officers to control traffic and intersections. These police officers can and will control traffic to facilitate access by emergency service vehicles if a fire or medical emergency occurs along a concert route. The apparent concerns of the Auburn School District are similarly overstated. The potential conflicts with school activities are possible only on a few days or nights each year.

District Engineer's Response: Traffic impacts are discussed in this ROD and details on traffic impacts are addressed in Sections 4.12, 5.12, 6.12, 7.12, and Appendix M and S of the FEIS. I have determined that all traffic impacts including impacts to public safety and businesses have been identified and addressed in the FEIS. In Section 10.q. of this ROD, I detail my findings that I have weighed all of the public interest factors. While there will be adverse traffic impacts due to the project, all other impacts including environmental impacts have been minimized. In addition, the project will provide economic benefits to the region, therefore, I have determined that the project is not contrary to the public interest.

B&G Comment 10: Because the traffic impacts have been underestimated, the adverse economic impacts will be even greater to local businesses and even the Muckleshoot casino.

Applicant's Response: CSE's arguments are speculative conclusionary assertions, do not submit any data in support of their assertions, and ignores the potential economic benefit to local business from operation of the amphitheater and potential customers which the amphitheater will draw to the Auburn area. The Tribe has determined that the operation of the amphitheater will have a positive benefit upon Tribal businesses, including the Muckleshoot Casino, by bringing potential customers to the area and exposing them to the existence and opportunities provided by Tribally owned businesses.

District Engineer's Response: See Response to B&G Comment 9.

B&G Comment 11: The actual benefit to the Tribe has not been substantiated. No specific information regarding revenues or profitability has been presented. In fact,

operation of the amphitheater may reduce the profitability of the Tribe's own casino, thus reducing economic benefit for the Tribe. The claim that new Tribal jobs will be created is not substantiated in the FEIS. The Tribe does not need a facility of this size for cultural events. The Tribe may be prohibited from using the facility pending CCI's priority over use of the facility.

Applicant's Response: The Tribe has determined that the proposed project will further the economic development objects of the Tribe for the benefit of its members and the Tribal community. CSE completely ignores the sovereignty of the Tribe to make economic development decisions. The financial details of the project are confidential business information which are proprietary to the Tribe and need not be disclosed to the public in an EIS or under the Corps' public interest review under the CWA. To require the release of such confidential financial information would undermine the Tribe's right to economic self-determination.

District Engineer's Response: In Appendix B, Section 3 of this ROD, I have completed a detailed discussion substantiating the purpose of the project. Section 1.0 of the FEIS, also adequately describes the economic benefits of the project and project purpose. No additional information is required to substantiate the purpose.

B&G Comment 12: WSDOT's peer review, by Transpo, of the traffic analysis should not be considered approval of the traffic analysis. Transpo's review was only the traffic analysis in the DEIS, not the changed analysis in the FEIS. Transpo's review was general and was not specific. Transpo was not aware of the city of Auburn rejecting the mitigation measures and did not mention AVO. However, other critiques by Transpo were accurate.

Applicant's Response: The peer review conducted by the Transpo Group was part of the iterative process that resulted in the development of the FEIS. Comments received by Transpo were reviewed and the transportation analysis was modified where appropriate. While the sequence of reviews and updates occurred such that updated data was incorporated into the FEIS following the Transpo peer review, the basic approach and conclusions have generally remained constant. The Transpo Group's review and their reference to more general aspects of the analysis clearly reflect their more experienced understanding of special event traffic characteristics. AVO concerns are addressed in B&G Comment 4 and Applicant and District Engineer's Responses to Comment 4.

District Engineer's Response: See Response to B&G Comment 9. Additional comments on The Transpo Group's comments are in Appendix B, Section 3, of this ROD

On 7 August 2002, Bricklin, Newman, Dold LLP (BND) on behalf of CSE submitted another letter describing their concerns regarding the adequacy of the FEIS. On 24 July and 8 August 2002, the Corps met with representatives from BND, CSE, and TDA

to listen to their concerns. Issues brought up by BND but not previously addressed in this ROD are discussed below:

BND Comment 1: CSE is concerned that the Corps' issuance of its permit could greatly prejudice the ability of WSDOT to make its access permit decision. The Corps should condition their permit to preclude any additional development on-site until the WSDOT decision is made separately.

Applicant's Response: Not applicable.

District Engineer's Response: The Corps does not believe it is appropriate to condition their permit to preclude resumption of construction activities until the WSDOT decision is made. WSDOT's task is to make an unbiased decision regardless of whether the work has commenced. The Corps is not responsible for the oversight of the WSDOT permit decision making process.

BND Comment 2: EPA's Clean Air Act conformity analysis was based on information contained in the DEIS. Envirometrics (a consulting firm hired by BND) performed a more current conformity analysis. According to Envirometrics, the traffic associated with the project will create 102 tons per year of carbon monoxide and will exceed the 100 tons per year threshold for carbon monoxide and cause one or more intersections to fail the general conformity test. We request the Corps reach their own Clean Air Act conformity determination.

Applicant's Response: Not applicable.

District Engineer's Response: Refer to the Clean Air Act analysis in Section 13.c. of this document.

BND Comment 3: BND's land use consultant, JL and Associates, state:

- (a) Alternative 3, the combined gravel quarry site is more appropriate for the amphitheater because it is in an urban area.
- (b) The Mitigation Tax Fund has no organization or mechanism proposed to represent impacted parties, nor the means and authority to monitor the project to ensure compliance with mitigation measures or take remedial action to rectify impacts of the project.
- (c) The Tribe's claim that the remaining 217 acres will be preserved as fish and wildlife habitat is a false assumption. Further conversion of Tribal lands is a likely possibility due to the presence of the amphitheater.

Applicant's Response:

- (a) Alternative 3 was eliminated as an alternative because the site was not available.
- (b) The Tribe will establish, by ordinance, the White River Amphitheater Off-Site Community Mitigation Fund. A committee composed of representatives of the Tribe, local agencies, WSDOT, and amphitheater management, would establish

criteria for selecting and funding projects and would administer distribution of funds to mitigation projects.

(c) The amphitheater would not encourage new commercial development in the immediate vicinity because those developments would not likely be economically viable because of the infrequent number of concerts. Also, commercial uses would not be permitted in the immediate vicinity under the current zoning of the Muckleshoot Indian Reservation and King County. The remaining 217 acres are zoned as Conservancy. The Conservancy Zone is intended to protect habitat, scenic areas, and sensitive areas. Development is not generally permitted in a Conservancy Zone, unless a special use permit is obtained from the Tribe.

District Engineer's Response:

(a) Alternative 3 was eliminated as an alternative because the site was not available. Therefore, the Corps did not have to assess the viability of the site based on the fact that it is located in an urban setting.

(b) As stated in the FEIS, the Tribe has committed to establishing a committee which will include impacted parties. This committee will establish criteria and distribute the funds. If impacts persisted, the Tribe as the governing entity, not the Corps, would be ultimately responsible for compliance with this mitigation measure.

(c) In addition to zoning constraints, the remaining 217 acres to be preserved consist primarily of the White River and areas immediately adjacent to the steep bluff. Development of the majority of the remaining 217 acres is not likely to occur because of topographic restraints.

9. Treaty Rights: In the mid-1850's, the United States entered into treaties with a number of Indian tribes in Washington. These treaties guaranteed the signatory tribes the right to "take fish at usual and accustomed grounds and stations . . . in common with all citizens of the territory" [U.S. v. Washington, 384 F.Supp. 312 at 332 (WDWA 1974)]. In U.S. v. Washington, 384 F.Supp. 312 at 343 - 344, the court also found that the Treaty tribes had the right to take up to 50 percent of the harvestable anadromous fish runs passing through those grounds, as needed to provide them with a moderate standard of living (Fair Share). Over the years, the courts have held that this right comprehends certain subsidiary rights, such as access to their "usual and accustomed" fishing grounds. More than de minimis impacts to access to usual and accustomed fishing area violates this treaty right [Northwest Sea Farms v. Wynn, F.Supp. 931 F.Supp. 1515 at 1522 (WDWA 1996)]. In U.S. v. Washington, 759 F.2d 1353 (9th Cir 1985) the court indicated that the obligation to prevent degradation of the fish habitat would be determined on a case by case basis. The Ninth Circuit has held that this right also encompasses the right to take shellfish [U.S. v. Washington 135 F.3d 618 (9th Cir 1998)].

Treaty Determinations. The work described in this application has been analyzed in terms of received comments from Indian Tribes and with respect to its effects on the treaty rights described above, and my conclusions are that:

- (1) the work will not interfere with access to usual and accustomed fishing grounds or with fishing activities or shellfish harvesting;
- (2) the work will not cause the degradation of fish runs and habitat; and
- (3) the work will not impair the tribes' ability to meet moderate living needs and should in fact, improve their ability to meet living needs.

10. Impact Evaluation. The Corps has evaluated both the individual and cumulative impacts of the proposed work. The evaluation considered relevant factors including conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. Possible alternatives to reduce identified adverse impacts have also been considered and incorporated where practicable. The results of this evaluation are discussed below.

a. **Affected Environment:** The amphitheater project site originally consisted of a large relatively flat pasture. Wetland swales traversed the pasture area. A forested wetland existed along the southern boundary. Along the western boundary is a steep bluff. At the bottom of the bluff is the White River. The project will convert the entire pasture area into an amphitheater and associated facilities including, roadways, parking lots, buildings, and storm water detention ponds. The project will result in wetland, fish and wildlife, water quality and supply, cultural resources, and safety impacts, and an increase in storm water runoff, noise, and traffic. Each of these impacts are described in the following paragraphs. Detailed information is in Section 3.0 of the FEIS.

b. **Special aquatic sites:** The proposal involves a permanent impact to 0.33 of an acre of wetlands and restoration of 3.4 acres of land cleared wetlands. This will change the physical substrate of the wetland, alter water circulation patterns, increase turbidity, and change the amount of detrital input into the aquatic ecosystem. With the implementation of compensatory wetland mitigation and appropriate sedimentation control measures, impacts to wetlands are not significant. Details are provided in Sections 4 – 6 of Appendix B, of this document and Section 4.4.12 of the FEIS. Details of the compensatory wetland mitigation plan are discussed in Section 11 of this document.

c. **Water Quality:** Impacting wetlands will remove the capability of wetlands to retain sediments and contaminants. This results in increasing turbidity downstream of the site. With the implementation of the compensatory wetland mitigation plan and appropriate sedimentation control measures and compliance with NPDES requirements, adverse impacts to water quality are not significant. Details are provided in Section 4.b. and c. and Section 11.b(1) of Appendix B of this document and Section 4.3.12 of the FEIS.

d. Fish and Wildlife: Impacting wetlands will result in a change in the amount of detrital input into the aquatic food web. This change would affect fish and wildlife supported by organic detritus. Also, the loss of wetlands would result in the loss of wildlife habitat. The compensatory wetland mitigation will create 2 acres of wetland to compensate for the loss of 0.33 of an acre of wetlands. The mitigation will create and replace organic detritus input more than that lost by impacting 0.33 of an acre of wetlands. The 3.4 acres of land cleared wetlands will be restored. This will restore wildlife habitat on the site. There will be temporal losses of habitat until the land-cleared wetlands have been restored. The emergent wetlands should be restored within a period of several years. This temporal loss is minimal. A majority of the land cleared forested wetlands have already been planted and is successfully revegetating. However, the forested wetlands may take 40 – 50 years to be fully restored, thus displacing certain wildlife species. This temporal loss is substantial. However, the displaced wildlife could inhabit nearby forested areas with similar habitat until the forested area is restored. The impact is not significant. Details are provided in Section 5.b. and c. of Appendix B of this document and Section 4.4 of the FEIS.

e. Flood Hazards and Floodplain Values: The project site is next to the White River. The project site is located on top of a steep bluff 180 feet above the White River. The site is not located within the floodplain of the White River. An unnamed tributary to Pussyfoot Creek, a tributary to the White River traverses the southeast corner of the project site. The floodplain of this unnamed tributary is almost wholly within the wetland area to be restored as part of this project. A small portion of the tributary (0.035 of an acre) and its floodplain will be impacted by the construction of a road crossing. This impact is not significant.

f. Cultural Resources and Historic Properties: Two cultural sites were found on the project site. All applicable procedures were followed to ensure that all issues regarding the National Historic Preservation Act have been met. There are no significant impacts on cultural resources. Details are provided in Section 7.c. of this ROD. Potential impacts are discussed in Section 4.11 of the FEIS.

g. Endangered Species: All applicable procedures were followed under the Endangered Species Act to ensure that all issues regarding listed species in the area have been addressed. There are no significant impacts on listed species. Details are provided in Section 7.f. of this ROD. Potential impacts are addressed in Section 4.4 of the FEIS.

h. Essential Fish Habitat (EFH): All applicable procedures were followed under the Magnuson-Stevens Fishery Conservation and Management Act to ensure that all issues regarding the EFH of coho and chinook and pink salmon have been addressed. There will be an adverse affect to EFH species. However, with the implementation of measures detailed in the BO, potential adverse impacts will be minimized and will conserve EFH. Therefore, this impact is not significant. Details are provided in Section 7.g. of this document and Section 4.4 of the FEIS.

i. Navigation: Not applicable. There are no navigable waters of the United States on-site.

j. Economics: This project will create additional jobs, directly and indirectly, and increase the employee income of Tribal members. The venue itself will create additional revenue to the Tribe through concert revenues and taxes. This will help to diversify the economic base of the Tribe. The project will also increase spending in the region by entertainers, support personnel, and event attendees. Existing businesses in the vicinity of the amphitheater may have a decrease in revenues due to the decrease in ease of access during concert events. However, most businesses operate during the day and most concerts would be at night. Also, there is a possibility that certain businesses, which operate during the evening, may increase their revenue because of the increased number of customers coming to the area as a result of the concerts. Overall, this project will improve the economic situation within the region. There are no significant impacts to economics. Potential impacts regarding socioeconomic issues are addressed in Sections 1 and 4.9 of the FEIS.

k. Aesthetics: The temporal loss of the forested wetland reduces the natural aesthetics of the site. The parking lot and amphitheater will be visible from SR-164. The height of the amphitheater is significantly higher and different in form than the neighboring structures and the roof will be visible for several miles to the east and south of the site. The land-cleared forested wetlands that will be restored will, over time, provide a visual buffer along the south portion of the site. The frontage area along the highway will be planted with trees creating a partial visual blockage. The structure and parking lots will change the rural setting in this neighborhood. With the completion of the amphitheater there will be more vehicles utilizing SR-164 increasing traffic on an already busy highway. The project will have an adverse aesthetic impact on the rural community. However, because of the existing busy highway conditions and many houses and fireworks stands along this stretch of SR-164, this rural environment is not "pristine", therefore, this impact will not be significant. Potential impacts are addressed in the Appendices of this ROD and Section 4.10 of the FEIS.

l. Safety: Increased traffic and human activity will result in increased safety issues. In regards to traffic, there are concerns regarding an increase in traffic accidents and traffic congestion causing delay in response time of emergency vehicles. The Traffic Management Plan and measures described in the FEIS address these concerns. The increase in human activity could result in trespassing and vandalism issues on neighboring properties. However, because off-site parking will be discouraged and most, if not all, of the patrons will be parking on-site and will not be walking past neighboring properties, these issues should be minimized. Patrons using the shuttle service will be dropped off and picked up on-site, thereby discouraging any trespassing and vandalism issues. The impact to safety is not significant. Details are provided in Sections 3 and 7 of Appendix A of this ROD. Potential impacts are addressed in Section 4.12 and 4.13 of the FEIS.

m. Food and Fiber Production: The traffic and noise associated with the use of the facility will impact farming operations. An increase in traffic congestion could result in delaying the movement of farm vehicles on Highway 164. However, traffic management will be available to expedite the movement of farm vehicles should the situation arise. Concert noise levels near farmland will not reach levels which would affect animals. The impacts are not significant. Refer to Sections 4.b. and 9 of Appendix A of this ROD. Potential impacts to farming are addressed in Section 4.12 of the FEIS.

n. Energy Needs: Electrical power will be the primary energy resource utilized. Propane gas will be utilized for food services. An extension of an electric line will be installed to service the site. The electrical demand of this project has no significant impact on the power distribution capabilities of the supplier. The limited propane use will have no significant impact on propane supplies. There will be no significant impacts on energy needs. Potential impacts are discussed in Section 4.5 of the FEIS.

o. Recreation: The completed facility will provide an entertainment venue for the greater Seattle-Tacoma area. This will provide an increase in recreation opportunities for the general population. The project's impacts will be minimized to reduce impacts to fish. There will be no significant impacts to recreational fishing. Potential impacts are discussed in Section 4.4 of the FEIS.

p. Water Supply and Conservation: Water utilized for the facility will be drawn from an aquifer connected to the White River. There is predicted to be a 0.5% reduction in the base flow. Impacts to other water wells in the vicinity will be minimal. This is not a significant impact. Refer to Section 12 of Appendix A of this ROD for details. Potential impacts are addressed in Section 4.3 of the FEIS.

q. Traffic: There will be an increase in traffic on the roadways near the facility during events. A shuttle service between the Auburn Supermall and the amphitheater will be utilized to reduce the amount of vehicles on the roadways during an event. A Traffic Management Plan will be implemented which includes using flaggers and off-duty police officers, changing traffic signaling, closing certain city streets, and installing barriers, cones, and signs. There will be increased congestion and backups from the SR-18 off ramp to the site. Measures will be implemented to ensure the expedited passage of emergency vehicles and farm vehicles. School activities and residential and business usage in the area will be impacted by increased traffic.

In the FEIS, the worst case scenario is during an "A" Show (ticket sales of 15,000 to 20,000 persons) from 7-8 p.m. If mitigation measures detailed in the Traffic Management Plan are not implemented, three major intersections will be operating at a Level of Service (LOS) "F". A LOS "F" means there is a breakdown in traffic. The FEIS identifies this impact as a significant unavoidable impact. The mitigation measures within the city limits of Auburn are unlikely to occur because the city of Auburn passed a resolution opposing optimizing traffic signals or closing city streets during events. If all of the mitigation measures do occur, the intersections will not function at a LOS "F", and the impact will not be significant.

For “A” Shows, the exiting times may exceed 2 hours and cause long lines of vehicles on SR-164. Also, there is some uncertainty regarding the success of the shuttle services. Failure of the shuttle service would result in more vehicles on the roadways potentially resulting in more intersections functioning at a LOS “F”. Contingency measures are planned to help boost shuttle service use. Long exiting times and the uncertainty of the success of the shuttle service could adversely affect traffic issues and the overall success of the facility.

There will be adverse impacts due to traffic associated with this project. The most substantial adverse impacts will be during “A” Shows during the week. The average yearly number of “A” Shows will be between 10 – 13. Because the concert season is not year round and every event will not be an “A” Show on a weekday, substantial adverse traffic conditions will occur *infrequently*, on an average of once every other week.

For this project, the Tribe must obtain an Access Permit from the WSDOT. This permit is required because the project will have driveways off of a state highway. As part of WSDOT’s review of the project for the Access Permit, a number of traffic issues were reviewed and addressed. WSDOT reviewed the Tribe’s Traffic Management Plan (TMP) (Appendix M of the FEIS) which includes a Traffic Operation Plan. The TMP is designed to be adaptable to address fluctuations in traffic volumes and conditions. This TMP contains the following four traffic mitigation strategies:

1. Event Coordination and Public Information. This includes proactive elements to provide advanced information to event patrons and surrounding residents a reliable notice of expected conditions and methods for communicating with the management during events. This includes having a transportation coordinator, utilizing pre- and post-events to help “spread out” traffic, promoting shuttle facilities, providing route maps to patrons, recording and responding to complaints in a timely manner, and distributing event information to the surrounding residents. Public information will be directed through a public information coordinator. A ticket holder information program will be implemented which will provide patrons, in advance, via print advertisements, trailers in radio and television commercials and printer flyers provided at the time of ticket purchase, information regarding the shuttle service, alternative routes, and incentives for carpooling. An Event Access Guide that details the shuttle service, transit options, carpooling incentives and advantages, and restricted parking areas, will be developed, distributed widely to individual ticket purchasers, press, travel agencies, etc, and posted on the amphitheater webpage.
2. Traffic and Parking Demand Reduction. This includes measures to minimize vehicular traffic volumes by providing a shuttle service and incentives for increasing the average vehicle occupancy.

3. Manage Resultant Vehicle and Pedestrian Demand. This includes measures to reduce the duration and intensity of vehicle circulation in parking areas surrounding the amphitheater. Measures include providing towing services for every event, establishing and updating a Traffic Operations Plan (TOP), posting permanent guide and no parking signs prior to the start of the season, and prohibiting on-street and off-site parking. The TOP details activities and duties to be performed on event days including the use of: manual traffic control locations and procedures, flaggers, cones, barrier, and lighting placement and internal traffic routing to expedite exiting the parking lot.
4. Implementation and Monitoring. The Tribe, amphitheater management, certain agencies and neighborhood representatives will regularly review the TMP to ensure that the TMP is being responsive to required needs on event days.

The public has expressed a major concern that the traffic information contained in the FEIS is inaccurate and dramatically underestimates traffic impacts. Traffic issues described in the FEIS and unexpected traffic issues have been adequately addressed to ensure that substantial adverse traffic impacts are avoided and minimized to the extent practicable. Implementation of the TMP will provide the venue for the Tribe and amphitheater management to efficiently address traffic impacts whether or not they exceed impacts described in the FEIS. The Tribe has committed to complying with the TMP. Also, the WSDOT has stated that they will require compliance with the TMP as a condition of their Access Permit.

Mitigation measures and compliance with the TMP will reduce traffic impacts. However, as stated previously, without certain mitigation measures (e.g., optimizing traffic signals or closing streets within the city of Auburn) there will be significant traffic impacts at certain intersections. The Tribe is committed to performing all mitigation measures but restrictions within the city limits of Auburn may prohibit them from implementing certain mitigation measures.

Details on traffic impacts are addressed in Sections 4.12, 5.12, 6.12, 7.12, and Appendix M and S of the FEIS.

r. Noise - To humans: Many noise reduction measures were incorporated into the structure and design including bowl construction, speaker location, installation of a berm along the south property line, and the construction of a roof. For properties impacted by sound exceeding county noise limits, the Tribe would provide soundproofing or offer to purchase homes. Because of these mitigation measures, the impacts are not significant.

Noise – To animals: Concert sound will not approach the levels which will adversely affect the health of farm and wildlife animals in the vicinity. While the animal

behavior will be affected in the short term, over the long term the animals will become acclimated to the noise. This impact is not significant.

s. All other evaluation factors: No adverse effects to marine sanctuaries, conservation, mineral needs, or consideration of property ownership have been identified.

11. Mitigation: As part of the original application, the applicant voluntarily submitted a wetland mitigation plan designed to compensate for filling 0.33 of an acre of emergent, scrub/shrub, and forested wetlands and for the temporal loss of 3.7 acres of wetlands. The proposed mitigation is outlined in the document entitled Final Wetland Mitigation Plan White River Amphitheatre dated 29 May 2002. The applicant proposes to create 1.88 acres of emergent wetlands on- and off-site, create 0.18 of an acre of scrub/shrub wetland off-site, and enhance 0.56 of an acre of an existing emergent wetland located off-site (0.2 of an acre will be scrub/shrub and 0.36 of an acre will be forested). Separate from the compensatory mitigation, the applicant will be restoring 3.4 acres of emergent and forested land cleared wetlands.

Impacted wetlands: The impacted wetlands were grass lined swales through a pasture area and a forested wetland with an understory of scrub/shrub vegetation. Almost the entire forested wetland and some wetland swales (a total of 3.4 acres) will be restored. The permanent impacts will be primarily to grass lined wetland swales. The functions of the swales was limited to floodflow attenuation and water quality improvement. A major function of the forested wetland was for wildlife habitat.

Compensatory wetlands: Emergent wetlands will be created on- and off-site. Uplands will be excavated, overlain with soil, and planted with native emergent plants. Scrub/shrub and forest vegetation will be planted in a portion of the off-site mitigation area. The off-site mitigation area is located adjacent to a large existing emergent wetland. Two portions of this wetland will be enhanced with plantings of native scrub/shrub and forest species.

Mitigation Rationale. The goals of the compensatory mitigation are to compensate for lost wetland acreage and functions and to produce wetland types that naturally occur in the project area. The goals of the wetland restoration are to restore hydrologic, soil, topographic, and vegetation conditions and wetland functions that were present before construction.

Mitigation Function. The compensatory mitigation will provide wildlife habitat, moderate flood flow, and improve water quality which will compensate for the loss of these functions due to the filling of 0.33 of an acre of wetlands.

Mitigation Acceptance. The Corps has evaluated and approved the proposed Mitigation Plan. The mitigation plan was reviewed per Regulatory Guidance Letter 01-1, Guidance for the Establishment and Maintenance of Compensatory Mitigation Projects. The onsite mitigation will compensate for the lost functions of onsite floodflow attenuation

and water quality improvement. The onsite mitigation will assist in slowing surface water flow to allow some sediment to settle out before entering the creek or river downstream. The offsite mitigation will primarily compensate for the temporal loss of the habitat function of the forested wetland. A scrub/shrub and forested community will be created on a plateau close to the White River, near the project site. Because this mitigation will be located offsite, separate from the project area and associated human disturbance, the wetland will be able to provide undisturbed habitat for wildlife.

The wetland mitigation will compensate for the functional and acreage loss of wetlands as well as the temporal loss of the 3.4 acres of land cleared wetlands. In terms of function and acreage, there will be no overall net loss of wetlands. The mitigation plan proposed by the applicant is reasonable and has been specifically designed for this project site to compensate for the loss of wetlands and their functions, which has and will occur during project construction. Special conditions to the permit will be added to ensure that the mitigation completion and monitoring is enforceable.

12. Section 404(b)(1) Evaluation. The proposed and existing work was evaluated pursuant to Section 404(b)(1) of the CWA in accordance with the Guidelines promulgated by the Environmental Protection Agency (40 CFR 230) for evaluation of the discharge of dredged or fill material into waters of the United States. This evaluation is presented in Appendix B of this ROD.

My evaluation concludes that the proposed and existing discharges are in compliance with the Guidelines because the applicant has demonstrated that the project represents the least environmentally damaging practicable alternative available to the applicant that would meet the overall project purpose. The project would not result in the unacceptable degradation of the aquatic environment.

13. Determinations. I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this Department of the Army permit application, as well as the stated views of other interested Federal and non-Federal agencies, Native American Tribes, and the concerned public relative to the proposed and existing work in waters of the United States.

There will be no significant adverse impacts to special aquatic sites, water quality, fish and wildlife, flood hazards and floodplain values, cultural resources, endangered species, essential fish habitat, economics, aesthetics, safety, food and fiber production, energy needs, recreation, and water supply. Without certain mitigation measures, however, there will be significant traffic impacts.

I have determined that the discharge of dredged or fill material for this project shall be permitted because there will be no significant degradation of waters of the United States, there will be no significant adverse effects of the discharge on municipal water supplies, fish, wildlife, special aquatic sites, life stages of aquatic life and other wildlife dependent on aquatic ecosystems, or aquatic ecosystem diversity or productivity.

a. Section 404(b)(1) Evaluation. The discharges and methods specified for the proposed and existing work are in accordance with the Guidelines (see Appendix B to this ROD).

b. Public Hearing. In response to extensive public interest in the proposed project, a public hearing was held on 25 March 1998, in accordance with 33 CFR, Part 327. The transcripts of the hearing are available in the Seattle District office. Appendix A of this ROD details the Corps' response to comments raised during the hearing.

c. Clean Air Act. The project has been analyzed for conformity pursuant to regulations implementing Section 176(c) of the Clean Air Act (CAA) – General Conformity Rule developed by the EPA. The basic requirement of the General Conformity Rule is “a Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken” (40 CFR 93.150(b)). A conformity *determination* is required if the total of direct and indirect emissions would exceed the thresholds described in 40 CFR 93.153(b).

The EPA adopted the exclusive definition of indirect emissions because:

1. it is consistent with the manner indirect emissions are covered in the transportation conformity rule,
2. Can be reasonably implemented, and
3. Best fits within the overall framework of the CAA

This exclusive definition states that, “indirect emissions means those emissions of a criteria pollutant or its precursors that:

1. are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; **and**
2. the Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency

The term “indirect emissions” may initially be interpreted to mean future and associated emissions related to any activity which would occur “but for” the project (e.g., emissions from vehicles utilizing the completed facility). However, based on the exclusive definition described above, a close review of the rule shows that if the Federal agency does not have continuing program responsibility over the action and the Federal agency would be substantially removed in time from the indirect activities, and it is not practicable for the Federal agency to control indirect activities, the Federal agency does not need to document or analyze any indirect emissions.

For this project, a broad scope of analysis was used for the purposes of NEPA, the public interest review, and the 404(b)(1) analysis. All aspects of the proposal including wetlands, ESA issues, noise, and traffic were addressed in the permit review process. However, for this CAA conformity analysis, based on the exclusive definition described above, the direct emissions associated with the placement of fill in 0.33 of an acre of

wetlands and construction of the wetland mitigation areas and the indirect emissions associated with monitoring wetland mitigation area are the only emissions which need to be addressed. Direct emissions would include emissions from equipment and motor vehicles used in the filling operation or wetland construction, support equipment, and emissions from movement and placement of the fill material itself.

Per the FEIS, emissions based on a broad scope of analysis (e.g. traffic during a large concert event) will not exceed the values listed in 40 CFR 93.153(b). The direct and indirect emissions of this project that the Corps has control of (e.g. emissions due to the placement of fill in wetlands, construction of the wetland mitigation areas, and monitoring of the mitigation site) will be considerably less than emissions based on a broad scope of analysis. Emissions from activities associated with the placement of fill in wetlands, construction of the wetland mitigation areas, and monitoring of the mitigation site will be temporary and discontinuous. The direct and indirect emissions of this project that the Corps has control of will not exceed the values listed in 40 CFR 93.153(b). Therefore, a conformity *determination* by the Corps is not required. This conformity analysis satisfies the requirements of 40 CFR Part 93, Subpart B – conformity with the Clean Air Act.

Indirect emissions from subsequent use and operation of the completed facility (e.g., traffic emissions during concert events) were not analyzed as part of this CAA conformity analysis because these actions would occur well after the filling of the wetlands and the Corps will not be controlling traffic issues during concert events. The WSDOT and BIA, authors the FEIS, found that indirect emissions from traffic associated with the project during concert events, were found to be below threshold levels, therefore, a conformity *determination* was not required. (Note: Concerns about the inadequacy of the FEIS in regards to traffic impacts are discussed in this ROD.)

In addition to the Corps' review, in the EPA's review of the project, the EPA prepared a conformity analysis. The EPA's conformity analysis for the emissions caused by the permitted activities satisfies the requirements of 40 CFR Part 93, Subpart B. The EPA's conformity analysis shows that emissions caused by its actions do not exceed the values listed in 40 CFR 93.153(b) and a conformity determination by the EPA is not required. Their findings were documented in letters dated 28 October 1999, 23 November 1999, and 17 June 2002.

d. Public Interest. Based on the above determinations the proposed and existing work is not considered to be contrary to the general public interest. I have weighed all of the public interest factors and while there will be adverse traffic impacts due to the project, all other impacts including environmental impacts have been minimized, public safety will not be compromised, and the project will provide economic benefits to the region, therefore, I have determined that the project is not contrary to the public interest.

e. National Environmental Policy Act. The BIA under NEPA completed a FEIS dated February 2002. The Corps is a cooperating agency in the preparation of this

FEIS. The Corps has officially adopted this FEIS and consequently is meeting NEPA obligations.

f. Special Conditions. The following special conditions will be added to the permit.

a. The wetland area created, restored, and enhanced as mitigation for work authorized by this permit, shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purposes of enhancing or restoring the mitigation associated with this project without prior approval by the Department of the Army. In addition, a description of the mitigation area identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this documentation must be provided to the Corps of Engineers, Seattle District within 60 days from the date of permit issuance.

b. A status report on the mitigation construction, including as-built drawings, must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.

c. The Final Wetland Mitigation Plan White River Amphitheatre dated May 29, 2002, must be implemented. Mitigation monitoring reports will be due annually 1, 2, 3, 5, 7 and 10 years from the date of the Corps written acceptance of the as-built drawings of the mitigation site. All reports must be submitted to U.S. Army Corps of Engineers, Seattle District, Regulatory Branch and must prominently display the reference number 1997-4-01098-ATF.

d. You must implement the ESA requirements and/or agreements set forth in the Biological Assessment in the DEIS dated August 1999. The U.S. Fish and Wildlife Service (FWS) concurred with a finding of “may affect, not likely to adversely affect” bald eagles based on this Biological Assessment on June 6, 2000 (FWS Reference Number 1-3-99-I-0829). The FWS will be informed of this permit issuance and will enforce any known violations of the commitments made in this Biological Assessment pursuant to the ESA.

e. This Corps permit does not authorize you to take a threatened or endangered species, in particular the Puget Sound chinook and bull trout. In order to legally take a listed species, you must have a separate authorization under the ESA (e.g., an ESA Section 10 permits, or a Biological Opinion (BO) under ESA Section 7, with “incidental take” provisions with which you must comply). The enclosed BO(s) prepared by the National Marine Fisheries Service (NMFS) dated December 7, 2001, and the FWS dated January 9, 2002, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” that is also specified in the BO (FWS Reference Number I-3-00-F-1442 and NMFS Reference Number WSB-99-156). Your authorization under this Corps permit is conditional upon

your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. However, the FWS and NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA. For further clarification on this point, you should contact the FWS and NMFS. Should the FWS and NMFS determine that the conditions of the BO have been violated; normally the FWS and NMFS will enforce the violation of the ESA, or refer the matter to the Department of Justice.

f. The Tribe must notify Joan Cabreza of the Environmental Protection Agency at (206) 553-7369 at least seven (7) days before reinitiating work authorized under the permit application.

14. Findings. I find that issuance of this Department of the Army permit is predicated upon a thorough analysis of the various factors identified herein. The work is consonant with national policy, statutes, and administrative directives. Adverse environmental effects that would occur as a result of the work have been identified. However, with mitigation, the effects can be minimized. The issuance of a permit with special conditions would not be contrary to the public interest.

My decision is to issue a permit with standard and special conditions for discharge activities necessary for the Muckleshoot Indian Tribe's amphitheater project.

6 September 2002
DATE

signed by _____
RALPH H. GRAVES
Colonel, Corps of Engineers
District Engineer

**APPENDIX A
TO THE
RECORD OF DECISION
FOR
MUCKLESHOOT INDIAN TRIBE
1997-4-01098-ATF**

RESPONSE TO COMMENTS

1. Introduction. As discussed in Paragraph 8 of the ROD, over 470 comment letters were received in response to the 19 February 1998 public notice. Federal, State, and local governments, organizations, and individuals raised many concerns relating to the project. Many of the same concerns expressed in the letters were also raised at the 25 March 1998 public hearing.

Many of the comment letters contained comments addressing the same issues. To avoid repetition in responding to these comments, this Appendix was prepared to provide a response to the major issues of concern of the people who provided comments during the public comment period and at the public hearing. Many of these comments were also raised during the preparation of the DEIS and FEIS. After the publication of the FEIS, additional comments letters were received. These comments were addressed throughout the ROD.

2. Alternatives. Many commentors stated that the DEIS did not prove that the proposed alternative was the least environmentally damaging practicable alternative.

Applicant's Response. Alternatives are addressed in Section 2.0 and Volume III Common Response 2 of the FEIS.

District Engineer's Response. Refer to Appendix B, Section 3 of this ROD for a detailed analysis of practicable alternatives. Also refer to Section 2.0 of the FEIS. I have determined that the project represents the least environmentally damaging practicable alternative available to the applicant that would meet the overall project purpose.

3. Traffic Impacts and Traffic Safety.

a. Increase in traffic resulting in more accidents, more drunk drivers.

Many commentors expressed concerns over the increase in traffic resulting in more accidents partially due to more drunk or drugged drivers.

Applicant's Response. This is addressed in Section 4.12 and Volume III Common Response 23 of the FEIS.

District Engineer's Response. As part of the Traffic Management Plan, police officers will be available along the highway to improve traffic safety. Also, because of the increase in traffic congestion, there may be less severe accidents occurring. The increase in vehicles on the road will slow vehicle speeds. The reduction in speeds should decrease the likelihood of severe accidents and fatalities caused due to speeding. The Tribe has committed to complying with the TMP (Tribe letter dated 29 August 2002) and formal compliance with the TMP will be made a condition of the WSDOT access permit (telephone conversation with WSDOT on 3 July 2002).

To reduce the amount of accidents potentially caused by drunk or drugged drivers, the Tribe will attempt to reduce the amount of vehicles on the roads by establishing a shuttle service for concert goers from an off-site location (e.g. Auburn Supermall) to the amphitheater. Also, the alcohol management plan implemented by the Tribe will manage alcohol use and encourage responsible behavior during and after amphitheater events.

b. Delays for commute time, school, mail delivery, emergency vehicles. Many commentors expressed concerns over long delays in their commute, their children's commute to school and school events, mail delivery, farm equipment movement, and especially emergency vehicle response time. For those with crucial jobs (e.g., air traffic controllers, nurses, and doctors) and serious health problems (e.g., traumatic injuries, heart attacks, strokes, etc.) this delay could result in substantial health and safety issues.

Applicant's Response. This is addressed in Section 4.12 and Volume III Common Responses 16 - 27 of the FEIS.

District Engineer's Response. Most of the events will be occurring during the summer months and in the evenings. Therefore, the majority of the events should have no significant affect on school daytime activities or mail delivery. The majority of farming activities also occurs during the daytime, so again, there should be no significant delays.

There would be delays to nighttime and summer school activities, shift workers, nighttime farming activities, and emergency services. Delays to nighttime and summer school activities and shift workers will exist but because of the concert season will be limited to summer months, the number of days of conflict should be minimal. In September and October there is a potential for conflicts with evening school sporting events. However, this is the tail end of the concert season so there will be less concerts occurring during these months minimizing the actual number of days for conflicts. Delays to farming activities and emergency services will be minimized with the procedures described in the following paragraphs.

The main route to the amphitheater is east on SR 164. During events, there will be backups and delays in this direction. These delays would affect the majority of commuters on their way home, not on their way to work. The majority of residents in the area commuting to work in the metropolitan area will be travelling west on SR 164, contraflow to the amphitheater traffic. Therefore, there should be no significant delays for the majority of the people going to work.

As detailed in Section 4.12 of the FEIS, the predicted intersection delay times during an event will range from 6 – 27 minutes. Commuters using the same route and moving in the same direction as amphitheater traffic will be delayed. In cases of emergencies, the police at intersections will direct traffic to allow emergency vehicles to pass. There will be delays in emergency services. However, because of the police and traffic controllers, delays should be minimized.

Described in Section 4.12.2.7 of the FEIS are contingencies to expedite movement of emergency vehicles and mitigation measures to improve emergency services. Police and traffic controllers at intersections will hold up traffic to allow the passage of emergency vehicles. As a mitigation measure in the FEIS, Section 4.12.7.2, the amphitheater management and the local King County fire protection district have agreed in principle that the amphitheater management and/or the Tribe will pay the costs of the medical personnel and equipment on-site and at the fire station during events. The Tribe has also agreed to pay the costs for the placement of up to two career personnel on duty at local fire stations during events as needed. The design of the amphitheater includes access on site for a medical helicopter. These measures will ensure appropriate emergency personnel availability without impacting the economic resources of the local fire district.

In cases of an emergency or delay of a farming activity, a direct phone number to a manager at the amphitheater can be called. This manager can then direct roving security/traffic forces to the location or roadway to expedite the movement of farming vehicles or activities.

Air traffic controllers commuting to the Seattle Air Route Traffic Control Center in Auburn will typically be commuting east on Highway 164 with the amphitheater traffic. The center is approximately 3.5 miles from SR 18. Their commute to the center may be delayed because of backups due to events. According to the Traffic Management Plan in the FEIS, flaggers will be stationed at the entrance to the center to allow air traffic controllers expedited egress and ingress. As detailed in the FEIS, vehicle surveys of the commuters into this facility were monitored. The peak commuting times into the center were before 4:00 p.m. Therefore, because the majority of the events will occur in the evening, there should be no significant delays to the majority of these commuters.

However, one of the main mitigation measures for traffic is changing traffic signaling and closure of 6th Street near SR 18 and SR 164. The city of Auburn has passed a resolution opposing these measures. For a capacity event on a weekday from 7-8 p.m., if these mitigation measures are not implemented, three intersections will be operating at a Level of Service (LOS) "F". A LOS "F" means there is a breakdown in traffic flow. This will result in significant delays in traffic during a capacity event on weekdays.

c. There aren't enough alternative routes. Commentors have stated that while some alternative routes are proposed, the likelihood that they will be used is slim and there should be other alternative routes. Most people will use SR 164 and not the alternatives.

Applicant's Response. This is addressed in Section 4.12 and Volume III Common Response 20 of the FEIS.

District Engineer's Response. Three different routes are described in the Traffic Management Plan in the FEIS. These are the Auburn, Enumclaw, and Black Diamond Routes. Because of the road network in this area, these are the only practicable alternative routes. The manager of the amphitheater will publicize these routes where tickets are sold. Short of making these routes known to the public, no one can control which route the public will take. Therefore, the establishment and advertising of the routes is the appropriate measure to address alternative routes.

d. Air quality. If traffic impacts have been underestimated, there will be additional and unmitigated air quality impacts.

Applicant's Response. Because the air quality impacts were based on reasonable accurate traffic analyses, the air quality impacts in the FEIS were adequately predicted and were not underestimated. Traffic speeds were predicted in the FEIS using the EPA approved CAL3QHC model, which calculates separate emissions from idling traffic queues and cruising traffic in free flowing lanes. The speeds assumed for the cruising traffic components are consistent with the EPA recommendations. The persistence factor was calculated following EPA procedures, as described in the Air Quality Technical Appendix.

Substantial queues of traffic along SR 164, which could result in exceedances of air quality standards, are not expected with the proposed project with the proposed mitigation. The FEIS discloses that even without these mitigation modifications to traffic signals, the maximum predicted eight hour carbon monoxide concentration would be below applicable standards for a capacity event at the amphitheater.

Potential queues of traffic onto the ramps and mainline of SR 18 with the proposed project without mitigation, would not result in high carbon monoxide concentrations because the greater distances to areas of general public access would allow for greater dispersion of vehicular emissions.

The total yearly emissions of 95 tons of carbon monoxide per year from the project would not exceed the 100 tons of carbon monoxide per year threshold under the general conformity regulations. Air quality impacts are fully addressed in Section 4.2 of the FEIS.

District Engineer's Response: All traffic impacts have been disclosed in the FEIS and have been discussed in this ROD. Therefore, the conclusions on air quality not exceeding acceptable standards are valid findings.

Additional information on the traffic analysis in the FEIS: The Washington Department of Transportation contracted The Transpo Group (Transpo), a transportation and traffic-engineering firm, to perform a peer review (Appendix S of the FEIS) of the traffic impact analysis and the Transportation Management Plan detailed in the Draft EIS. The Tribe then provided responses to their findings and made appropriate changes in the FEIS. A discussion of their comments as detailed in their memo dated 26 April 2000 (Appendix S-1 of the FEIS) are as follows.

Transpo's Comment: Favorable items of the DEIS TIA were identified. When discussing traffic impacts in the Draft EIS, a worst-case scenario is discussed, and impacts of typical events are overstated. The analysis was also conservative when taking into account background traffic. The travel distribution appears to be reasonable.

Applicant's Response: None provided.

District Engineer's Response: Because the traffic scenario is worst case and impacts are overstated, this lends credence to the conservative nature of the findings. Moderate impacts could actually be minor impacts and substantial impacts could actually be moderate impacts. Therefore, the stated impacts area reasonable.

Transpo's Comment: Unfavorable items of DEIS TIA were also identified. Exiting times are excessively long (over 1 ½ hours), the 20% late arrival may be an invalid assumption, mitigation such as traffic signal variations must be clearly noted, the same peak hour factor (PHF) should be used for mitigated and unmitigated scenarios, there must be a clear advantage to using a shuttle service to ensure that the shuttle service is used, and the narrowed section (two-lane to one-lane merge) of highway east of Dogwood Street SE needs to be studied as a "system". These factors, in conjunction with each other, might result in significant impacts.

Applicant's Response: Exit clearance times of greater than two hours are only anticipated for the largest shows. Arrival data for two events at the Shoreline Amphitheater in Mountainview, California was used to extrapolate the percentage of late arrivals for the proposed amphitheater facility. Timing adjustments could be considered as mitigation and subsequently, the intersection LOS summaries presented in the FEIS TIA have been updated to reflect this fact. The PHF for unmitigated scenarios have been reanalyzed and the TIA has been updated. In the event the shuttle service is under utilized, amphitheater management would increase the number or magnitude of incentives offered in an effort to attract a larger percentage of patrons using the shuttle. The entire "system", not just east of Dogwood Street SE, was studied. The average vehicle delay for total travel time eastbound on SR-164 was calculated and presented in the FEIS. Depending on the number of vehicles per hour, the delay for total travel time ranged from 0 to 60 minutes.

District Engineer's Response: The lengthy exiting times and uncertainty of the success of the shuttle service may deter patrons from attending another show, thus affecting the overall success of the facility. Because of lack of information to the contrary, the 20% late arrivals appear to be reasonable. Traffic information was updated in the FEIS TIA to more adequately describe the traffic situation. The TMP adequately addresses methods to reduce traffic impacts.

Transpo's Comments: Use of "vehicles per 1000 attendees" as a measure of average vehicle occupancy and transit mode split should be compared to actions taken by other facilities (e.g., Safeco Field) to see if they are a reliable measure of success. During peak arrival times, it will be crucial to prevent the off-site parking patterns from beginning. Roadways and attractive off-site areas suitable for unwanted off-site parking must be adequately signed and enforced. The terminology in the TMP needs to be clear to ensure administration and enforcement of the TMP. Some form of written agreement must be made to preclude simultaneous events from occurring at the amphitheater and the King County fairgrounds. The specifics of the "guest survey" need to be clarified. At unsignalized intersections, the minor movements such as left turns should be referenced in regards to the LOS of the intersection.

Applicant's Response: The TMP has been updated to replace guest surveying with a new goal compliance procedure which will entail counting the number of vehicles parked on site and the number of attendees entering the turnstiles. Off site parking will be aggressively enforced. The TMP has been updated to include a more detailed description of the various advisory groups and event personnel and their relationships to each other. The TMP describes how the amphitheater management

group will meet with affected parties (e.g., King County fairgrounds) to coordinate schedules. While avoiding certain overlapping dates and times will be considered, they cannot be committed to based on the unpredictable nature of performer's schedules. The TIA has been updated to show the LOS calculations results for the critical movements at unsignalized intersections.

District Engineer's Response: The updated TMP details compliance procedures and how off site parking enforcement and coordination with affected parties will occur. Implementation of the TMP will ensure that traffic impacts are minimized.

4. Noise.

- a. Affect on residents.** Many commentors are concerned that the noise from traffic, the audience, and the events will disturb their quiet rural area. The noise would disturb their sleep and would not allow them to enjoy outdoor activities.

Applicant's Response. This is addressed in Section 4.6 and Volume III Common Responses 9 – 12 of the FEIS.

District Engineer's Response. The Tribe does not have any noise ordinances. King County noise ordinances do not have to be met because the property is located on the reservation. However, the sound limits of King and Pierce County were utilized for this analysis. The maximum allowable sound limits in King County for a project of this nature in this type of surrounding is 55 dBA during the daytime and 45 dBA during the nighttime. The maximum allowable sound limits in Pierce County for a project of this nature in this type of surrounding is 57 dBA during the daytime and 47 dBA during the nighttime.

The stage is oriented in the direction where there are the fewest residences. This will minimize direct sound impacts to residences. To reduce impacts to residences to the south, an earthen berm will be constructed on the south side of the property. The berm and other structures to be built will reduce the sound levels emanating from the south side of the property. The insulated roof, earthen berm, sunken stage area, sidewalls, and specific speaker locations will also reduce noise levels.

Concert sound level and noise contours were mapped out for the proposed site. The maximum allowable sound level will be 102 dBA at the mixing board in the center of the amphitheater. With the sound reduction measures described in the previous paragraph, the areas nearest to the site will receive sound levels of 65 dBA. Seventy-four residences are estimated to receive concert sound greater than 45 dBA.

Residences impacted will be monitored during events. If the concert noise level consistently exceeds 45 dBA after 10 p.m., the Tribe would offer to purchase the property (located on the reservation) at fair market value. The Tribe would also provide soundproofing to homes on or off the reservation where the noise levels consistently exceed 55 dBA and the homeowner does not wish to sell.

Traffic noise was analyzed using predictions from the Federal Highway Administration's (FHWA) traffic noise modeling program. Under FHWA, a traffic noise level of 67 dBA is considered to be no impact. The predicted noise levels range from 40 to 64 dBA, therefore, there should be no impacts due to traffic noise.

b. Affect on livestock, milking cows, and other animals. The noise levels from concerts will reduce milk production and stress animals. The stress may affect the health and reproduction of the animals.

Applicant's Response. This is addressed in Section 4.6 of the FEIS.

District Engineer's Response. Predicted concert noise levels at farmlands beyond adjacent residential properties to the east of the proposed site would be less than 45 dBA. As discussed in Section 4.6 of the FEIS, studies have shown that sound levels do not affect the health of animals unless they approach the 95 to 100 dBA range. Even in that range, adverse impacts have not been substantiated. The environment for farm animals contains many loud sounds, e.g. tractors, farm machinery, chain saws, truck noise. Studies show that over time the animals have become accustomed to these types of noises and their behavior has not been adversely affected. Therefore, in regards to concert noise, in the short term, the animal's behavior may change due to the new type of noise. However, in the long term, because they have shown the ability to adapt to loud noises, the animals will become accustomed to the noise and return to their normal behavior.

c. The sound testing is inaccurate. There is an underestimation of predicted concert noise levels.

Applicant's Response. This is addressed in Volume III Common Responses 9 and 10 of the FEIS.

District Engineer's Response. The methods employed and results obtained by the sound consultant appear to be professionally appropriate and reasonable. The proposed sound mitigation measures will reduce noise levels.

5. Fish and Wildlife - stormwater runoff and adverse effects to water quality. Water runoff from the site will adversely affect the water quality of neighboring streams and the White River. This will have negative effects on the fish and wildlife utilizing these resources.

Applicant's Response. This is addressed in Section 4.3 and Volume III Common Responses 6 and 8 of the FEIS.

District Engineer's Response. Stormwater runoff from the site will be directed into three different systems. The majority of the water will be directed through swales to the central stormwater detention pond. The swales will aid in filtering out sediments. The central stormwater detention pond is also designed to settle out sediments and filter out oily sediments. The water will then be discharged over the bluff through pipes, which discharge into Pussyfoot Creek then into the White River. Discharges from the central pond will occur intermittently during and after storms through the rainy fall, winter and spring season. These discharges would be approximately 0.95 cubic feet per second.

Stormwater runoff will also be directed to the north detention pond, which discharges into the off-site mitigation area and intermittently discharges into the river. Stormwater runoff on the east side of the property will drain to a small detention pond on the east which discharges into restored wetlands then into an unnamed tributary then into Pussyfoot Creek which flows into the river.

The Tribe does not have their own water quality standards and is not required to meet state water quality standards. However, because sediments and contaminants in the stormwater runoff will be filtered through swales and allowed to settle out in detention ponds, the discharge into Pussyfoot Creek and the unnamed creek should meet State water quality standards. As detailed in Section 7.e. of this ROD, stormwater discharges are regulated through the NPDES program administered by the EPA. Construction activities have and will meet the requirements of the NPDES General Permit. A NPDES permit is not required for the operation of the storm water facilities. However, per requirements in the BO and in coordination with the NMFS and FWS, a water quality monitoring plan was developed, approved, and will be implemented to ensure that storm water discharges from the storm water facilities will not substantially impact the aquatic environment.

During summer months, the temperature of the water in the ponds will increase and warm water discharges may increase the temperature of the water in the creek. The temperature increase would likely have localized adverse impacts on fish utilizing the stream. However, to minimize the chances of this occurring, water in the basins will be pumped out and used for irrigation or pumped into wetlands in the late spring/early summer to decrease the water levels thus reducing the likelihood of the basins overflowing. Because the stormwater runoff will be filtered through swales and detention ponds, the water quality of the water entering creeks and the river will likely meet water quality standards and will not have a significant impact on fish and wildlife utilizing these waterbodies.

6. Landslides. The construction and use of the amphitheater will result in exacerbated landslides of the bluff into the creek and river. This will adversely impact the environment and cause a safety hazard at the amphitheater itself.

Applicant's Response. This is addressed in Section 4.1 and Volume III Common Response 7 of the FEIS.

District Engineer's Response. Natural and gradual erosion of the bluff has occurred at this site. In the FEIS, the determination was made that the bluff's natural retreat rates ranged from 0 to 1 foot per year. The nearest major structure is a detention pond. It will be moved further inland to be 170 feet from the edge of the bluff.

Before the site was developed, stormwater runoff previously occurred directly over the bluff. With the proposal, stormwater runoff will be directed through swales and detention ponds then into pipes running down the bluff into energy-dissipating gabions directing water away from the bluff. This reduces the number of points along the bluff where discharged water can be a source of erosion. If the combined discharge point fails, there may be the potential to cause a major landslide. However, the applicant has an operation, monitoring and maintenance program that will be implemented to ensure that the system does not fail. This system includes the installation of a backup outlet pipe, and installing redundant anchors on the pipes. The Tribe will monitor bluff activity, pipe movement and gabion performance.

Detention basin 2 will have a double-liner to help prevent leaks, which will reduce the saturation of soils and decrease the likelihood of a massive slide. In addition, the Tribe will be implementing a basin monitoring system, per NMFS and FWS requests.

Also, engineering studies performed by the applicant show that construction activities would not cause enough vibration impacts to result in any erosion of the bluff. There will be no significant increase in landslides at the site.

7. Crime.

- a. Increase in drug and alcohol use.**
- b. Increase in vandalism and trespassing, at an increased expense to public.**
- c. Increase in littering, garbage, public urinating, etc., at an increased expense to the public.**
- d. Overburdening of public safety resources.**

Applicant's Response. This is addressed in Section 4.13 and Volume III Common Response 14 of the FEIS.

District Engineer's Response. The change in use of the site from a pastureland to a facility that will be used by thousands of people has the potential to increase littering, garbage, and other public disturbances, including an increase in criminal activities. However, quantifying the amount of increase is difficult. In the following paragraphs, the applicant has proposed the mitigation measures for the potential increase in crime.

During events, uniformed police services will be contracted by the operator of the amphitheater at no cost to the public. The contracted police will be off-duty officers and will not be taken from the regular pool of on-duty officers. They will manage security, crowd control, parking enforcement, and traffic management. They will also be available to respond to drug, alcohol, vandalism, and trespassing issues. They will be able to handle major disturbances; however, they will not be unable to handle *all* nuisance complaints.

Vandalism and trespassing issues should be few because the Tribe is planning to prohibit off-site parking on land within reservation boundaries by a Tribal ordinance and on-site parking will be free. Therefore, patrons will be limited to the site. The operator of the amphitheater will pay for litter pick up crews to clean up the area near the site. There will be adverse impacts in terms of an increase in public nuisance issues; however, with the described proposed mitigation measures, the impacts will be held to a minimum. Also, the alcohol management plan implemented by the Tribe will manage alcohol use and encourage responsible behavior during and after amphitheater events.

8. Decreased property values. The construction and use of the amphitheater will decrease the property values of the properties in the vicinity because of the degradation of the quiet rural environment.

Applicant's Response. This is addressed in Section 4.8.1.2 of the FEIS.

District Engineer's Response. The amphitheater will change the complexion of the neighborhood. The intrinsic value of the property for some current landowners may decrease because their rural environment has been altered. However, as discussed in the FEIS, studies of the impact on surrounding areas of other amphitheaters have shown that the appraised property values have not been significantly lowered as a result of their proximity to the facilities.

9. Destroys rural habitat, impacts agricultural use, and increases nuisance complaints. The construction and use of the amphitheater will destroy the rural habitat and atmosphere of the area. Agricultural use of properties and transportation of farming equipment and livestock will be adversely impacted. Farmers will receive nuisance complaints from the amphitheater due to odors from their farms.

Applicant's Response. This is addressed in Section 4.8.1.2 of the FEIS.

District Engineer's Response. Most of the events will occur in the evening. Most farming operations occur during the daytime hours. Therefore, there should be limited conflicts with traffic. The traffic management plan includes plans to manage event traffic that may coincide with agricultural operations. Only a relatively small number of farms with possible odor sources are located near the amphitheater. Therefore, the number of farmers getting odor complaints should be low.

10. Sewage disposal. The method of sewage disposal has not been finalized and the city of Auburn has indicated that they will not allow the applicant to hook up to their system.

Applicant's Response. This is addressed in Section 4.13 of the FEIS.

District Engineer's Response. At the time of the publishing of the FEIS, no agreement was made with the city of Auburn (City) regarding sewage disposal through the City's existing sewage system. Therefore, the sewage system that will be implemented is a system-utilizing temporary above ground wastewater storage tanks. The method includes truck transport to an off-site location for the disposal of sewage. This method will effectively remove sewage from the site; therefore, there will be no significant impacts regarding sewage disposal. The preferred method of connecting to the City's existing sewage system will be used at a later date if an agreement with the City can be reached. That option will have no significant impacts if implemented.

11. Aesthetics Impacts. The current environment is rural and agricultural. The construction of a large facility will have a detrimental impact on the aesthetics of the community.

Applicant's Response. This is addressed in Section 4.10 of the FEIS.

District Engineer's Response. The temporal loss of the forested wetland reduces the natural aesthetics of the site. The parking lot and amphitheater will be visible from SR-164. The height of the amphitheater is significantly higher and different in form than the neighboring structures and the roof will be visible for several miles to the east and south of the site. The forested wetlands will be restored which, over time, will provide a visual buffer along the south portion of the site. The frontage area along the highway will be planted with trees creating a partial visual blockage. The structure and parking lots will change the rural setting in this neighborhood. SR-164 is currently a busy highway but with the completion of the amphitheater there will be more vehicles utilizing SR-164. The project will have an adverse aesthetic impact on the rural community. However, because there are many houses and fireworks stands along this stretch of SR-164 this rural environment is not "pristine" therefore, this impact will not be significant.

12. Groundwater Contamination, lowering of water table, pollution of water wells. The impervious surfaces of the completed project will lower the water table and affect water wells. The operation of the facility will result in contamination of the groundwater and pollution of water wells.

Applicant's Response. This is addressed in Section 4.3 of the FEIS.

District Engineer's Response. There is a regional aquifer that encompasses the site. However, based on monitoring well testing on-site, the subsurface water system is perched ground water (on glacial till) not the water table of the deep aquifer. The dense glacial till with low permeability would limit the amount of infiltration into the deep aquifer. Therefore, the increase in impermeable surfaces on-site would not affect the quality, supply or recharge of the deep aquifer supplying water wells in the area.

The impervious surfaces of the project site will prevent direct infiltration of any contaminants into the shallow perched ground water table. All surface water on the site will be directed into swales and stormwater ponds. Contaminants will be removed before the water is discharged from the site thereby further preventing any contamination of groundwater supplies or water wells.

13. Wetlands. Wetlands will be impacted for this project. This loss of wetlands will adversely affect wildlife using the wetlands. Important wetland functions will be lost.

Applicant's Response. This is addressed in Section 4.4 of the FEIS.

District Engineer's Response. The applicant has chosen the on-site alternative with the least amount of impacts to wetlands. On-site changes have been made to further minimize impacts to wetlands. After the restoration of 3.4 acres of wetlands, 0.33 of an acre of wetlands will be permanently filled for this project. Refer to Section 11 of the ROD for details on wetland mitigation. The wetland mitigation will compensate for the acreage and functional loss of wetlands as well as the temporal loss of the 3.4 acres of land cleared wetlands. The work will not substantially degrade waters of the United States.

14. Erosion of moral fiber, social fabric, and increased stress. The people who attend events use drugs and alcohol. These people may loiter at nearby schools and parks and influence youths at these facilities. This will destroy the moral and social fabric of the neighborhood. This, in addition to the noise from concert events, will cause increased worry and stress on residents in the vicinity.

District Engineer's Response. The Tribe will implement an alcohol management plan as detailed in Appendix Q of the FEIS to encourage the responsible use of alcohol during and after concert events. In addition, this facility will provide a tribal gathering place where tribal youth can take part and be active in their

community. This should help to increase their commitment to the community and may subsequently reduce the incidence of alcohol abuse by youth in the community. The concerns about affects on the moral and social fabric of the neighborhood and increased worry and stress on residents are noted but difficult to quantify.

15. Violation of local and state laws and zoning and construction safety codes. The area is zoned rural/agricultural. An amphitheater is not consistent with this zoning. King County construction codes have been violated. This will result in the construction of an unsafe facility and may endanger the lives of those who attend events at the facility.

Applicant's Response. This is addressed in Section 4.8 and addressed in Volume III Common Response 1 of the FEIS.

District Engineer's Response. The area is zoned as Rural Residential by the Tribe and is located in an undeveloped rural area. The Muckleshoot Zoning Ordinance allows community facilities in areas zoned as Rural Residential. Community facilities include "any building, structure or activity which is operating in whole or in part by the Tribe for the use of benefit of the Tribe". The construction and operation of a community facility in a rural area is consistent with Tribal zoning rules. The Tribe does not have any construction or building codes. The applicant is not required to abide by King County construction codes or zoning because King County has no jurisdiction on the reservation lands. King County performed a "courtesy" review of project plans. This review is not binding because King County does not have jurisdiction over this project. King County identified portions of the project that would not meet county building codes. After this review, the project was voluntarily altered to meet most of these requirements (e.g., changes to meet American Disabilities Act requirements). The Tribe has hired a construction firm to provide a peer review to ensure the structures are stable and safe. The King County fire department also inspected the site to ensure that all fire safety requirements will be met.

16. Preferential treatment to Indians. The applicant is receiving special treatment by all the regulatory agencies. Any other proposal for an amphitheater would be under more scrutiny and would require more environmental review.

Applicant's Response. Not applicable.

District Engineer's Response. The Corps is processing this application in accordance to all standard procedures. No "special treatment" has been given to this project. Because of public interest factors and the amount of impacts to wetlands a Standard Individual Permit application not a Nationwide Permit was required. The application is the subject of a standard public notice and was accorded a public hearing to ensure all public concerns were collected. Permit decision documents, the Record of Decision, and appropriate appendices were

prepared. In addition, a Federal EIS was performed. This document represents the highest level of environmental review required by Federal law.

17. Benefits of the Project. Over 140 letters in support of the project were received. A petition with over 680 signatures was submitted in support of the project. The project is convenient access for concertgoers. The amphitheater will boost the Tribal as well as the local economy. The amphitheater will attract visitors and tourists to the area. This has the impact of increasing the quality of life. New jobs would be created. A benefit for local music lovers is the close proximity that will save energy costs and use less gas to travel to a concert.

Applicant's Response. The project will provide the greater Seattle-Tacoma metropolitan area with an outdoor performing arts center. This will provide income to the Tribe and will help to diversity the income base of the Tribe. The project will provide jobs for Tribal members and a location for Tribal gatherings and events.

District Engineer's Response. The Corps permitting process is a review of a project to ensure that the least environmentally damaging practicable alternative is implemented, and the public interest review is met. These commentors indicate that there is public support for the project in contrast to the numerous adverse comments received from residents in the vicinity of the project.

**APPENDIX B
TO THE
RECORD OF DECISION
FOR
MUCKLESHOOT INDIAN TRIBE
1997-4-01098-ATF**

SECTION 404(b)(1) GUIDELINES EVALUATION

1. Introduction. This document was prepared pursuant to Section 404(b)(1) of the Clean Water Act in accordance with Guidelines promulgated by the Environmental Protection Agency (40 CFR 230) for evaluating discharges of dredged or fill material in waters of the United States. The number in the headings, in parenthesis, refers to sections of the Section 404(b)(1) Guidelines (Guidelines).

2. Description of the Work. To discharge and retain fill material into 0.33 of an acre of emergent, scrub/shrub, and forested wetlands near the White River near Auburn, King County, Washington, for the construction of an amphitheater and associated facilities. Wetland mitigation for the fill consists of creating 1.88 acres of emergent and 0.19 of an acre of scrub/shrub wetlands on- and off-site. Wetland mitigation also consists of the enhancement of an existing emergent wetland into 0.2 of an acre of scrub/shrub and 0.36 of an acre of forested wetlands. Other work will include the restoration of 3.4 acres of the 3.7 acres of emergent and forested wetlands impacted by the unauthorized land clearing activities of the Tribe.

The original project impacted 3.7 acres of wetlands. The plan was initially modified to permanently impact 1.6 acres of wetlands. The plan was finalized to impact only 0.33 of an acre of wetlands. Wetlands are considered to be special aquatic sites under the Guidelines.

The overall proposed project involves the construction of an amphitheater bowl surrounded by a berm and associated facilities. The amphitheater design is dependent on the 0.33 of an acre of existing and proposed wetland fill. The amphitheater is covered with a roof. Associated facilities include office space and conference room, parking, plaza, concessions, on-site roads, bus-loading area, and stormwater management system. The project area is approximately 95 acres.

Wetlands will be created to mitigate for the filling of 0.33 of an acre of wetlands and temporal loss of land clearing 3.7 acres of wetlands. The off-site mitigation area is located to the northwest and down slope of the project area, near the White River. The on-site mitigation will be located near the amphitheater bowl

and will encompass connecting several small wetland areas to create a larger wetland.

3. Analysis of Practicable Alternatives (230.10(a)). Section 230.10(a) of the Guidelines states that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, provided the alternative does not have other significant adverse environmental consequences. In addition, with non-water dependent activities associated with fills in special aquatic sites, practicable alternatives that do not involve fill in these sites are presumed to be available, unless clearly demonstrated otherwise. This demonstration should indicate that an alternative (or site) cannot be obtained, utilized, expanded, or managed, to fulfill the basic purpose of the project.

An alternative is practicable if it is available to the applicant and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. An additional presumption is that when a fill is proposed in a special aquatic site, all practicable alternatives that do not require fill in these sites are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

Water dependency is defined by the basic project purpose. The basic project purpose of the project is to construct and operate an economically competitive performing arts center. This is considered to be a non-water dependent activity because the performing arts center does not require access or proximity to a special aquatic site to meet the project purpose. Being non-water dependent, the portion of the Guidelines on presumption of available alternatives is applicable.

Note: The Corps' review of project alternatives in this 404(b)(1) analysis document is based on different underlying premises than the review of alternatives in the FEIS. Therefore, review and elimination of alternatives under each process may involve different factors. Under the National Environmental Policy Act (NEPA), in the FEIS, reasonable alternatives that were not available to the applicant were still reviewed. Whereas under the 404(b)(1) Guidelines, alternatives which are not available do not have to be considered.

a. Identification of purpose. The basic project is to place fill in wetlands to construct and operate an economically competitive performing arts center. The purpose is to serve the greater Seattle - Tacoma metropolitan area concert market and to provide for cultural, education, and community gatherings and events for the Tribe. In addition to the basic purpose, the Tribe stated that the purpose of the facility is to provide a diversified income base and source of jobs for the Tribe and to construct a structure for cultural, educational, and communal gatherings. To achieve this purpose, since the late 1980's, the Tribe formulated the project of constructing and operating a performing arts center.

During the EIS process, there were public concerns regarding the purpose of the project. Opponents stated that this project would provide neither a diversified income base nor a source of jobs for the Tribe. Therefore, according to some commenters, this project should not be completed.

As stated in Section 1.0 of the FEIS, 131 full-time equivalent jobs (FTE) would be created. There will be a hiring preference for members of the Tribe and based on the employment ratio at the Casino, approximately 20 to 40 FTEs will be filled by members of the Tribe. During the EIS process, there were public concerns that the number of FTEs was overestimated and that there would not be a significant amount of jobs produced by this project. While there is no guarantee that this specific number of jobs will be created and this specific number of jobs will be filled by members of the Tribe, the project will undeniably create new job opportunities for the Tribe on the Reservation. These jobs would provide different job opportunities than other currently available jobs on the Reservation (i.e. work at the casino or bingo hall).

In addition to direct income from operation of the amphitheater, income is also generated for the Tribe through taxes. Because the amphitheater is located on the Reservation, the Tribe has taxing authority over activities on the site such as sales and admissions taxes. This tax revenue would go directly to the Tribe. Even though the existing casino provides a substantial income for the Tribe, the performing arts center will provide an alternate source of income to provide a diversified income base that will provide greater economic stability.

In addition to the project diversifying the income base of the Tribe, there would be an increase in the income base of the local economy of King County. The operation of the amphitheater could result in the creation of jobs in related entertainment industries. According to the FEIS, the amphitheater would provide the local economy a yearly input of \$1.8 million in wages, \$1.6 million in amphitheater supplies, \$0.5 million in local spending by entertainers and support personnel, and \$1.9 million in spending by attendees on food, gasoline, and other travel related items.

During the EIS process, there were public concerns and suggestions that there were other types of projects that could create revenue and jobs that would have fewer adverse impacts on the surrounding community. These alternative projects included a conference center or an environmental research facility. However, the stated purpose of the project is to construct a performing arts center, which would also serve as a location for cultural, educational, and communal gatherings. Based on our review of the available information, the purpose of constructing a performing arts center is a reasonable economic venture. The Corps has accepted the purpose of a performing arts facility to provide a diversified income base and source of jobs for the Tribe and constructing a structure for cultural, educational, and communal gatherings as valid. With this being the purpose, the applicant is not required to consider or

analyze other uses for the site. However, the applicant is required to consider alternative sites or configurations of the performing arts center that would have the least environmental damage.

b. Off-site Alternatives. Alternatives are discussed in detail in Section 2.0 of the FEIS.

In the FEIS, five criteria are used to screen alternatives to determine if the alternatives are practicable. Under the NEPA, alternatives that are both feasible and infeasible, available or not available to the project proponent must be evaluated. As stated previously, this is different than review of alternatives under the Guidelines. Under the Guidelines, an alternative must be available to be considered valid. Alternatives were raised during the scoping process for the Draft EIS (DEIS). The five criteria discussed in the FEIS, per NEPA, are:

- (1) Useable Area: The site size of a 20,000-seat amphitheater can range from 68 acres to 150 acres. The site size average of 5 similarly sized amphitheatres is 97.8 acres. By minimizing stormwater facilities and open areas, the site size could be as low as 81 acres.

There were numerous public comments on the size of the facility. The comments centered on the issue of a 10,000 versus a 20,000-seat facility. Based on the FEIS, the development and operating costs only minimally increase between a 10,000 and 20,000-seat amphitheater. However, a 20,000-seat amphitheater is more marketable and able to accommodate more major acts, and subsequently is able to bring in a larger profit. Besides increased ticket price revenues, there are increased revenues from concession and merchandise sales, advertising and sponsorship in a 20,000-seat facility over a 10,000-seat facility. The more popular entertainment acts will only perform at larger facilities. A 10,000-seat facility will not be able to attract these acts.

In the Seattle-Tacoma area, there are numerous competing facilities for acts seeking a 10,000 seat or less venue. Direct competitors include: Puyallup fair grounds, Mercer Arena, Piers 62/63, Chateau St. Michelle, Woodland Park Zoo, Paramount Theater, Benaroya Hall, and King County fairgrounds. Therefore, constructing a 10,000-seat facility in an already crowded market is not the most practical option.

Most 10,000-seat facilities are part of a larger entity (e.g., fair grounds, Seattle Center) and costs of the facility are shared with the larger entity. For most facilities of this size, if the costs were not shared, the facility may not be profitable. Therefore, to have a chance for success, a stand-alone 10,000-seat amphitheater must be able to bring in large revenues. Typically, the most popular entertainment acts bring in the

largest revenues. The most popular entertainment acts, however, will only perform in a large venue (larger than 10,000 seats).

Taking into account development costs and revenue potential, a 20,000-seat amphitheater would be more economically competitive in terms of being marketable or profitable. Therefore, the Corps considers a stand alone 20,000 seat facility to be a reasonable project in terms of being economically successful. For a site to support a 20,000-seat facility, the useable area should be approximately 81 acres.

- (2) Suitability for Development: The FEIS identified this as a screening criterion. This criterion stated that zoning of an area must allow for the use of an amphitheater. The Corps does not typically use zoning in the 404(b)(1) alternative analysis as a screening criteria, unless the factors of practicability have been part of the zoning process. However, the Corps will determine if an alternative is practicable by taking into consideration cost, existing technology, and logistics that are all components of suitability for development.
- (3) Availability of the Site to the Tribe: The FEIS states this criteria is related to the timeframe for development and the land must be either currently owned by the Tribe or the property must be available at a practicable price to be economically feasible for the Tribe. Per the 404(b)(1) Guidelines, the Corps will determine if an alternative is practicable by taking into consideration cost.
- (4) Association of a Site With the Muckleshoot Indian Reservation: A purpose of the amphitheater is to provide a location for Tribal ceremonies and cultural events. In order to retain the cultural and symbolic value of the facility, the ideal location would be on the reservation or in close vicinity to the reservation. Also, the Tribe would prefer the facility be located near the reservation to reduce commuting times for their tribal members. The Corps considers the logistics of an alternative to determine if the alternative is practicable, but will not necessarily limit the project location to the bounds of the reservation. Logistics can include public accessibility and existing transportation infrastructure.
- (5) Site Must Meet the Purpose and Need: This is a fundamental requirement of any project proposal to determine if an alternative is practicable.

As detailed above, the Corps agrees that these five criteria are appropriate for the alternatives analysis. Through the EIS process, alternative sites were identified within the greater Seattle area. Off-site (e.g., off of the proposed alternative site) alternatives for a performing acts facility include:

- (1) King George Site
- (2) Miles Quarry
- (3) Meade Quarry
- (4) Combined Quarry
- (5) Horse Farm Site
- (6) Sand Point Site
- (7) Fort Lawton/Discovery Park Site
- (8) Highway 18 Site
- (9) Orillia Road Site
- (10) Vashon Island Site

(1) King George Site. This site is located at the northwest corner of the reservation. The usable portion of the property is only 60 acres. The owners of the property have indicated they are unwilling to sell the site to the Tribe. The site is currently used for firework sales by a number of different owners. Because this site is unavailable and is not large enough to meet the project purpose, it was dismissed from further study.

(2) Miles Quarry. This site is located at the northwest corner of the reservation. The usable portion of the property is less than 65 acres. In the past, the Tribe has attempted to acquire the property but has been unsuccessful. However, during March 2002, the Tribe was able to purchase this property. However, because this site is not large enough to meet the project purpose it was dismissed from further study.

(3) Meade Quarry. This site is located at the northwest corner of the reservation. The usable portion of the property is about 60 acres. In the past the Tribe has attempted to acquire the property but has been unsuccessful. The operator of the existing gravel mine recently purchased the property for approximately \$4 million to continue mining gravel. Because this site is unavailable and the site is not large enough to meet the project purpose it was dismissed from further study.

(4) Combined Quarry. This alternative is a combination of the three properties described above. As stated previously, the Tribe has attempted to purchase these properties but the owners have been unwilling to sell. Only recently has the Miles Quarry been purchased. Even with owning the Miles Quarry site, additional acreage from the other two unavailable sites would be required to meet the size requirement. Therefore, this alternative is not available. Also, assuming the two smaller parcels each cost \$1 million, the combined cost for purchasing the properties would likely be over \$6 million. In comparison, the cost of the proposed alternative site was between \$1 – 3 million. This alternative would be almost twice the cost of the proposed site. Even though the site is unavailable, because the site size criterion was met, this site was reviewed for further study as a possible alternative for the purposes of the EIS under NEPA.

However, under the Guidelines, alternatives may be dismissed if they are unavailable to the project proponent or if they are not practicable, based on cost, technology and logistics. For the Corps' analysis under this Record of Decision, this alternative was dismissed from further study because this alternative is not available because two of the parcels are not for sale.

(5) Horse Farm Site. The Tribe owns the land. The site is approximately 75 acres, of which 10 acres are wetlands. Adjacent to this site is a 20-acre parcel of which a significant portion is wetlands. Therefore, to meet the size criteria, at least 10 acres of wetlands would need to be filled while the proposed alternative would involve filling only 0.33 of an acre of wetlands. Therefore, in regards to wetland impacts, the Horse Farm Site is not the least environmentally damaging alternative and was dismissed from further study.

(6) Sand Point Site. This site consists of several distinct areas. The north portion is owned by the National Oceanic and Atmospheric Administration and consists of a number of actively used buildings. The southwest portion of the property consists of recently constructed student housing and the remainder of the site is Magnuson Park, a city of Seattle public park. The size of the park would be suitable for the development. However, the city of Seattle would not permit the development of an amphitheater. The current zoning is single family residential and the likelihood of changing the zoning would be small. Because the City has extensive plans to retain this area as an enhanced park, the sale of this property is unlikely. Also, the Sand Point site is not available for purchase by the Tribe because through negotiations on a different issue, the Tribe waived most of its interest in the property in return for other compensation. The Tribe would not specify the type of compensation.

In the past, the park has been used for infrequent concerts. The concerts were of a much smaller size than 20,000 patrons and, for the largest concert, bussing to the site was required because no on-site parking was allowed. Bussing 20,000 patrons would be a logistical improbability. Because the site is not available for purchase and the difficult logistics of the site, this site was determined to not be practicable and was dismissed from further study.

(7) Fort Lawton/Discovery Park Site. No specific portion of the park was suggested as an alternative. The portion of the park that is currently leased to the United Indians of All Tribes is 20 acres and is not large enough to accommodate the amphitheater. Other areas of the park consist of protected tidal beaches, open meadows, sea cliffs, forest groves, sand dunes, and streams. The city of Seattle would not permit the development of an amphitheater. The current zoning is single family residential and the likelihood of changing the zoning would be small given the history of other proposed uses that were prohibited from the site. The property is owned by the city of Seattle and is used as a natural area public park. Sale of this property is very unlikely.

Because this site did not meet the size criteria and is not available for purchase, this site was determined to not be practicable and was dismissed from further study.

(8) Highway 18 Site. This site was suggested during the scoping process and no specific location was suggested. The general location is the area where Highway 18 intersects with Interstate Highway 90 near North Bend. This area is an undeveloped forest having steep slopes, narrow streambeds and/or flat wet floodplains along the forks of the Snoqualmie River. Any project site in this area would require work in wetlands, floodplains, or on a steep slope. Because a specific location was not identified, a thorough analysis cannot be completed. However, because of the undeveloped natural state of the site, use of this area would not be the least environmentally damaging alternative. Therefore, this site was dismissed from further study.

(9) Orillia Road Site. The site is 134 acres and is zoned residential and industrial. The site is bisected by South 200th Street near Kent. The local governments recently widened this street. The site consists of a farmed field and a stream. The field consists of prior converted cropland and several acres of pasture wetlands. The entire site is located entirely within the floodplain of the Green River. Because of impacts to wetlands, a stream, and floodplains, this site is not the least environmentally damaging alternative. Also, because a road and a creek bisect the site, logistically, the siting of the amphitheater would be difficult. Because this is not the least environmentally damaging alternative and there are logistical problems, this site was dismissed from further study.

(10) Vashon Island Site. The Tribe owns the property. The site is approximately 90 acres and consists of steep bluffs along the waterfront of Vashon Island. The site was purchased by the Tribe to allow traditional Tribal shellfish gathering activities. The usable acreage is less than the 81 acres necessary because of the steep topography of the site. The only access to this site is on the state ferry system. The ferries servicing Vashon Island can carry a maximum of 120 cars and 1200 passengers. Therefore, the logistics of transporting 20,000 patrons by the ferry would overwhelm the system. Because this site does not meet the size criteria and because of logistical concerns, this site was determined to not be practicable and was dismissed from further study.

c. On-site Alternatives.

- (1.) 20,000 Seat Enclosed Alternative. There are several differences between an enclosed and an open-air 20,000-seat facility. A 20,000 seat enclosed facility would have a larger footprint than the proposed alternative. This would require additional impacts to wetlands. Construction costs of an enclosed facility would be substantially greater than the proposed alternative. There would be less concert noise to the surrounding area. Other environmental

impacts would be the same or similar. Traffic impacts would be greater because the facility could be operated year round, as opposed to the open air facility which would only operate during 6 months of the year. Because of greater expense and wetland impacts, this is neither practicable in terms of cost nor is it the least environmentally damaging alternative and was dismissed from further study.

- (2.) 20,000 Seat Open Air Alternative - Proposed Alternative. The original project had proposed impacts to 3.7 acres of wetlands. The Tribe modified the project to reduce impacts to 1.6 acres of wetlands. Upon further study, the Tribe was able to minimize the project impacts to only 0.33 of an acre of wetlands. The configuration of the amphitheater and parking areas were modified. The impacts associated with the project are addressed in detail in the FEIS and this ROD.

(d) No Action Alternative. The amphitheater would not be constructed and the entire site would be restored to preproject conditions, a pasture and a forested wetland. For the stated project purpose, there are no other practicable alternative sites for a performing arts facility of this size in the greater Seattle area available to the Tribe. The project purpose would not be met if no action were taken; therefore, this alternative was dismissed from further study.

The proposed alternative meets the project purpose and is available and practicable in terms of costs, logistics, and technology. The Tribe has avoided and minimized impacts to wetlands to the maximum extent practicable. Mitigation measures described in Section 6.0 the FEIS also help to reduce the extent of environmental impacts. The applicant has rebutted the presumption that a less environmentally damaging alternatives exists. The applicant has demonstrated that the proposed location and configuration is the least environmentally damaging practicable alternative available to the applicant. Therefore, I have determined that this project meets the alternative test of this Section 404(b)(1) Guidelines Evaluation.

4. Potential Impacts of Physical and Chemical Characteristics of the Aquatic Ecosystem (Subpart C). Many of the impacts described in this section are also discussed in Section 4.4 of the FEIS.

- a. Substrate Impacts (230.20). Wetlands and uplands were and will be mechanically landcleared and excavated to create the bowl portion of the amphitheater. Wetlands and uplands were and will be mechanically landcleared, graded, and filled for building areas, roadways, and the parking lot. Wetlands and uplands were filled for the construction of the berm surrounding the bowl. The berm was constructed of the excavated material. Wetlands and uplands were excavated and filled for the construction of a stormwater detention pond.

Due to these activities, the original wetland substrate was or will be excavated or filled. The existing work disturbed 3.7 acres of wetland substrate. The substrate of 3.4 acres of wetlands will be restored. Until the restoration is complete there will be a temporary disturbance to 3.4 acres of wetlands. There will be a permanent change to 0.33 of an acre of wetland substrate. This impact will be offset by the creation of 2 acres of wetlands on- and off-site.

b. Suspended Particulate/Turbidity (230.21). The initial groundwork included mechanized land clearing of trees and grading in wetlands. This work commenced without the installation of appropriate sedimentation measures. During the initial work phase (several months), there was likely a high amount of turbid water draining off of the site through ditches into the unnamed tributary that flows into Pussyfoot Creek. This turbid water impacted the organisms in the unnamed tributary and Pussyfoot Creek during this period. Aquatic organisms included a variety of fish species and invertebrates. The turbid water likely resulted in sedimentation in the unnamed tributary and Pussyfoot Creek. Subsequently, sedimentation measures including a silt fence and straw bales were installed. Additional proposed construction work will involve earthmoving activities, which would result in sediments entering the nearby-unnamed tributary creating turbidity. This impact will be minimized by the implementation of Construction Pollution Prevention Plan as required by the NPDES permit.

c. Water Quality Impacts (230.22). The fill in 0.33 of an acre of wetlands permanently reduces the capability of those wetlands to filter sediments and contaminants that could enter both creeks and the White River. The loss of this capability would adversely affect the water quality of the creeks and river. Proposed stormwater facilities on-site, however, will have a net improvement on the quality of the water leaving the site.

d. Alterations of Current Patterns and Water Circulation (230.23). Existing wetland swales traverse the project area and drain off-site. Many of these narrow swales will be filled as part of the proposed work. This will reduce the extent of water circulation on the site.

e. Alteration of Normal Water Fluctuations (230.24). The fill in 0.33 of an acre of wetlands eliminates normal water fluctuations within these wetland areas. Water will be channeled into wetlands from the amphitheater roof and drainage swales. During the rainy season, the water levels in the wetlands will be higher than pre-project levels due to this redirection of water.

f. Alteration of Salinity Gradients (230.25). Not applicable.

5. Potential Impacts on Biological Characteristics of the Aquatic Ecosystem (Subpart D). Some of the impacts described in this section are also discussed in Section 4.4 of the FEIS.

a. Effects on Threatened/Endangered Species (230.30). Threatened or endangered species have been identified in the project area. The Puget Sound chinook and bull trout may occur in Pussyfoot Creek which is located downstream from the project area. The bald eagle occurs within the vicinity of the site. A Biological Assessment with the findings of: may affect, likely to adversely affect the Puget Sound chinook and bull trout; may affect, not likely to adversely affect the bald eagle; and may affect, not likely to adversely affect the critical habitat of Puget Sound chinook, was sent to the NMFS and the FWS. BIA was the lead Federal agency for this coordination. On 7 December 2001, the NMFS issued a Biological Opinion. On 9 January 2002, the FWS issued a Biological Opinion. NMFS stated that the proposed action is not likely to jeopardize the continued existence of Puget Sound chinook salmon or result in the destruction or adverse modification of their critical habitat. The FWS stated that the proposed action is not likely to result in jeopardy to Puget Sound bull trout and concurred that the project may affect, not likely to adversely affect bald eagles.

b. Effects on the Aquatic Food Web (230.31). The initial work involved impacts to 3.7 acres of wetlands. Of this, 3.4 acres will be restored. However, there will be a temporal loss of wetland functions from the time of impact to the time restoration is completed. Complete restoration of the emergent wetlands may take up to 5 years and complete restoration of the forested wetland may take up to 50 years. This temporal loss includes a decrease in the amount of organic detritus created in the 3.7 acres of wetlands that would flow off-site, into Pussyfoot Creek and subsequently into the White River. This will result in a loss of a potential food source for fish. The discharge of fill into 0.33 of an acre of wetlands will permanently remove wetland habitat in which organic detritus, the base of the food web, forms. This impact will be offset by the creation of 2 acres of wetlands on- and off-site. There will be a temporal loss until the created wetlands are fully established.

c. Effects on Wildlife (230.32). The wetlands on-site potentially provided habitat for songbirds, woodpeckers, owls, small mammals, deer, and possibly amphibian and invertebrate species. Hawks, falcons, and eagles may have used the wetlands for foraging habitat. There are no fish on-site. Amphibians that may have used the wetlands would be permanently displaced. The initial work involved impacting 3.7 acres of wetlands. Of this, 3.4 acres of wetlands will be restored. However, there will be a temporal loss of the habitat function of the wetlands during the time of impact to the time restoration is completed. Complete restoration of the emergent wetlands may take up to 5 years and restoration of the forested wetland may take up to 50 years. The loss of habitat for this time period could result in the permanent relocation or elimination of certain species. The loss of 0.33 of an acre of wetlands permanently removes this wildlife habitat from these portions of the site. The permanently impacted wetlands were primarily grass-dominated wetlands. These impacts will eventually be offset by

the creation of 2 acres of wetlands on- and off-site. There will be a temporal loss until the created wetlands are fully established.

6. Potential Impacts on Special Aquatic Sites (Subpart E).

a. Sanctuaries and Refuges (230.40). Not applicable.

b. Wetlands (230.41). The initial work impacted 3.7 acres of wetlands. Of this, 3.4 acres of wetlands will be restored. Until the restoration and mitigation is completed, there will be a temporal loss of 3.7 acres of wetlands and their associated functions. There will be a permanent loss of 0.33 of an acre of emergent wetlands. This impact will be offset by the creation of 2 acres of wetlands on- and off-site. Detailed impacts to the various functions of wetlands are in this Appendix. This is also discussed in Section 4.4 of the FEIS.

c. Mudflats (230.42). Not applicable.

d. Vegetated Shallows (230.43). Not applicable.

e. Coral Reefs (230.44). Not applicable.

f. Riffle and Pool Complexes (230.45). Not applicable.

7. Potential Effects on Human Use Characteristics (Subpart F).

a. Effects on Municipal and Private Water Supplies (230.50). There are 23 recorded residential water wells within one-half mile of the site. These wells constitute private water supplies. These wells draw their water from a deep aquifer. The filling of 0.33 of an acre of wetlands on-site would reduce the amount of water infiltrating the soil. However, this would not impact private water supplies because well water is drawn from a deep aquifer.

b. Recreational and Commercial Fisheries Impact (230.51). The permanent loss of 0.33 of an acre of wetlands results in a reduction of the wetlands functional support of the food web. Reduction in this food base could adversely impact fish and other aquatic organisms, decreasing populations. This impact will be offset by the creation of 2 acres of wetlands on- and off-site.

c. Effects on Water-Related Recreation (230.52). There will be no affect on water-related recreation.

d. Aesthetic Impacts (230.53). The initial work involved impacting 3.7 acres of wetlands. A majority of the impacted wetlands were part of a forested system. The temporal loss of the forested wetland reduces the natural aesthetics of the site. The parking lot would be visible from SR 164. The height of the amphitheater is significantly higher than and different in form from the

neighboring structures and the roof will be visible for several miles from the south and east of the site. The restoration of the land cleared forested wetlands will partially offset this impact.

e. Effects on Parks, National and Historical Monuments, National Seashores, and Similar Preserves (230.54). Mount Rainier National Park is located approximately 35 miles to the southeast of the project area. SR 164 is one of the main roadways to access the Park. There are no direct effects on the Park due to the filling of wetlands on the project site. There may be indirect effects due to an increase in traffic on the highways and roads located near the park. Indirect effects may include impacts on air quality due to congestion in traffic.

8. Evaluation of Dredged or Fill Material (Subpart G). The fill material in wetlands was from the excavated area on-site. The fill is neither known nor suspected to contain any contaminants.

9. Actions to Minimize Adverse Impacts (Subpart H). The original project plan impacted 3.7 acres of wetlands. The plan was modified to permanently impact 1.6 acres. After further modification, the final project plan permanently impacts 0.33 of an acre of wetlands. Alternative sites were analyzed. Alternative sites were either not practicable and/or impacted more wetlands, waters of the U.S., or floodplains. The applicant has rebutted the presumption that practicable alternatives exist which do not impact wetlands. Compensatory mitigation will be implemented. This wetland mitigation is detailed in the Final Mitigation Plan dated 29 May 2002. Actions to minimize adverse effects are discussed in the following section.

10. Factual Determinations (230.11). The following determinations are based on information contained in Sections 4 through 9 above.

a. Physical Substrate Determinations (230.11(a)). The original wetland substrate was or will be excavated or filled. This will permanently change 0.33 of an acre of wetland substrate. On-site and off-site mitigation is proposed to compensate for wetland impacts. A total of 1.06 of an acre of wetlands will be created on-site and 1.01 acres of wetlands will be created nearby off-site. This will offset the loss of 0.33 of an acre of wetland substrate. Therefore, the impact is not significant.

b. Water Circulation, Fluctuation, and Salinity Determinations (230.11(b)). Most of the wetland swales will be filled. However, two major wetland drainage swales will remain. These swales will allow water to continue to flow through and off of the site. Also, a drainage swale around the western perimeter of the site will be constructed to more effectively circulate water on the site. The project will alter water circulation patterns, but will not eliminate circulation. This impact is not significant.

c. Suspended Particulate/Turbidity Determinations (230.11(c)). Drainage off of the site would include runoff water from work in wetlands and uplands. At discharge points off of the site, hay bales and silt fences have been installed to contain any sediment that may drain off the property during construction. A Construction Pollution Prevention Plan will be completed before construction activities resume as required by the NPDES permit. This plan will detail means to reduce if not eliminate turbidity impacts. Upon completion of the project, water will be directed to stormwater detention basins prior to discharge off of the site. The stormwater detention basins will remove any turbidity and sediments before the water is discharged to the creek and river. Therefore, the impact is not significant.

d. Contaminant determinations (230.11(d)). The discharge consists of existing soil on-site. No apparent release of contaminants from filling occurred.

e. Aquatic Ecosystem and Organism Determinations (230.11(e)). The initial impact on 3.7 acres of wetlands includes the mechanized land clearing of forested wetlands. A temporal loss of habitat and storm water control has occurred. The permanent loss of 0.33 of an acre of wetlands would permanently remove the detrital food source for downstream fish. On-site and off-site mitigation is proposed which will compensate for wetland impacts. A total of 1.06 of an acre of wetlands will be created on-site, with upland buffers ranging from 3 to 6 feet. The amount of detrital input into the aquatic ecosystem should increase because the acreage of wetlands (and amount of wetland vegetation) will be increasing by 0.76 of an acre. Also, the off-site wetland mitigation includes the creation of 1.01 acres of wetlands and enhancing an adjacent wetland area with shrubs and trees. The off-site mitigation will drain into Pussyfoot Creek. Therefore, there will be a substantial increase in the detrital input into the creek. This increase in detrital input will help to sustain food sources for aquatic organisms, particularly fish species. While the temporal losses still exist and are not immediately offset, the mitigation will more than compensate for the loss of the wetlands in the long term. Therefore, the impact is not significant.

f. Proposed Disposal Site Mixing Zone Determinations (230.11(f)). Not applicable.

g. Determination of Cumulative Effects on the Aquatic Ecosystem (230.11(g)). The fill will permanently eliminate 0.33 of an acre of wetland habitat. A total of 1.06 of an acre of wetlands will be created on-site. Additionally, 1.01 acres of wetlands will be created nearby off-site. The wetland mitigation will compensate for the acreage loss of wetlands as well as the functions lost by the filled wetlands. The operation of the amphitheater will involve the discharge of storm water into Pussyfoot Creek and the White River. A detailed monitoring and contingency plan was developed by the applicant and approved by the FWS and

NMFS, which will ensure that the ongoing discharges will not adversely affect fish and their critical habitat in the aquatic ecosystem. There will be no cumulative adverse effects on the aquatic ecosystem due to this project. For details refer to Section 5.4.1 of the FEIS.

h. Determination of Secondary Effects on the Aquatic Ecosystem (230.11(h)). The discharge of fill in wetlands will allow the completion of the amphitheater. Use of the amphitheater and the associated parking lot would result in an increase in motor vehicles on the site. This may increase amounts of oil and grease entering the stormwater detention basin. Because the oil/water separators of the detention ponds will be properly maintained there should be no release of oil and grease into the downstream creek or river. There are no secondary effects on the aquatic ecosystem. For details refer to Section 5.4.1 of the FEIS.

i. Determination of Other Effects.

Municipal and Private Water Supplies. There is a regional aquifer that encompasses the site. However, based on monitoring well testing on-site, the subsurface water system is a shallow perched ground water table (on glacial till) not the water table of the deep aquifer. The dense glacial till with low permeability would limit the amount of infiltration into the deep aquifer. Therefore, filling wetlands on-site would only affect the shallow perched ground water table and not affect the quality, supply or recharge of the deep aquifer supplying private water wells in the area. There are no significant impacts to private water supplies.

Aesthetics. The temporal loss of the forested wetland reduces the natural aesthetics of the site. The parking lot and amphitheater will be visible from SR 164. Due to the height of the amphitheater, the roof will be visible for several miles to the south and east of the site. The forested wetlands will be restored which, over time, will provide a visual buffer along the south portion of the site. The frontage area along the highway will be planted with trees creating a partial visual blockage. The project will have an adverse aesthetic impact on the rural community. This impact is not significant. For details refer to Section 5.10 of the FEIS.

Parks. A small percentage of concertgoers will approach the amphitheater from Yakima County, traversing through the Mount Rainier National Park. Therefore, traffic congestion within the park should be minimal. The Proposed Alternative was found to conform to all requirements of the Clean Air Act Amendments of 1990 by the EPA; therefore, air impacts at the park 35 miles away, are not significant.

11. Review of Conditions for Compliance with the Guidelines (230.10)

a. Availability of Practicable Alternatives (230.10(a)). The project involves the retention and discharge of fill in 0.33 of an acre of wetlands for an amphitheater. The project involves the discharge of fill in a special aquatic site for a non-water dependent purpose. Alternatives were evaluated and not considered to be practicable due to availability, cost, logistics, and conflicts with the project purpose. Several alternatives also had more environmental impacts. Please refer to Section 3 of this Appendix for details. The applicant has rebutted the presumption that less environmentally damaging practicable alternatives are available. The project is in compliance with this portion of the Guidelines.

b. Compliance With Pertinent Legislation (230.10(b)).

(1) Water Quality Standards and Federal Toxic Effluent Standards (Section 307 of the Clean Water Act). On 28 October 1999, the Environmental Protection Agency (EPA) certified that the work complies with the applicable provisions of Section 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, provided certain conditions are followed.

(2) National Pollutant Discharge Elimination System Permit. Under the CWA, the EPA has the authority for the regulation of discharges of pollutants into waters of the United States. The Tribe obtained a NPDES General Permit approval on 17 March 1998 from the EPA for the stormwater discharge system on the proposed project site. Subsequently, the stormwater discharge system was modified. On 30 May 2002, the Tribe submitted the required forms to be re-authorized by a NPDES General Permit approval from EPA.

(3) Threatened and Endangered Species Act of 1973. The appropriate coordination was conducted. A concurrence and Biological Opinions were issued by the FWS and NMFS.

(4) Marine Sanctuaries (Marine Protection, Research and Sanctuaries Act of 1972). Not applicable.

c. Extent of Degradation of the Waters of the United States (230.10(c)). The initial impact on 3.7 acres of wetlands includes the mechanized land clearing of forested wetlands. A temporal loss in wetland functions occurred. The existing and proposed wetland fill would permanently eliminate 0.33 of an acre of wetlands. A total of 1.06 of an acre of wetlands will be created on-site. Additionally, 1.01 acres of wetlands will be created nearby off-site. The wetland mitigation will compensate for the acreage loss of wetlands as well as the functions lost by the filled wetlands and the temporal loss of wetlands. The work will not substantially degrade waters of the United States. The discharge is in compliance with this portion of the Guidelines.

d. Steps to Minimize Potential Adverse Impacts on the Aquatic Ecosystem (230.10(d)). The original project impacted 3.7 acres of wetlands. The plan was initially modified to only impact 1.6 acres of wetlands. The plan was finalized to impact only 0.33 of an acre of wetlands. The Tribe has avoided and minimized impacts to wetlands to the maximum extent practicable. The storm water ponds will ensure that the quality and quantity of water discharged to the creek and river will not significantly affect the water quality of waters of the United States. The discharge is in compliance with this portion of the Section 404(b)(1) Evaluation because adverse impacts to the aquatic ecosystem have been minimized.

12. Findings (230.12). Based on the information provided in Sections 2 through 11 above, the project with Special Conditions complies with the Guidelines. The applicant has rebutted the presumption that practicable alternatives that cause less environmental damage are available. The applicant has taken appropriate steps to minimize potential adverse impacts on the aquatic ecosystem. Also, the work is in compliance with other Federal laws and regulations. Retention and placement of the fill in wetlands would not result in significant degradation of the aquatic environment.