US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch
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Seattle, Washington 98124-2255
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FINAL REGIONAL CONDITIONS, 401 WATER QUALITY CERTIFICATION CONDITIONS, COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSES, FOR NATIONWIDE PERMITS FOR THE SEATTLE DISTRICT CORPS OF ENGINEERS FOR THE STATE OF WASHINGTON

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Introduction: This is a joint special public notice (SPN) issued by the U.S. Army Corps of Engineers (Corps) Seattle District, the U.S. Environmental Protection Agency (EPA), the Puyallup Tribal Nation (Puyallup Tribe), the Chehalis Confederated Tribe (Chehalis Tribe), and the Washington State Department of Ecology (Ecology) to announce final regional conditions, Section 401 Water Quality Certification (401 Certification) decisions, and Coastal Zone Management (CZM) Consistency Responses for the Corps Nationwide Permits. This public notice also explains how the Nationwide Permit (NWP) program will operate within the State of Washington (State). Regional conditions limit the use of certain nationwide permits such that they individually and cumulatively result in minimal impacts.

The permittee considering use of a NWP must compare the proposed project's features with the NWP's requirements and national conditions of the NWP, the Corps and 401 regional general conditions, NWP specific regional conditions, and whether or not the 401 Certification and/or CZM Consistency Response have been denied. If the project is within the terms, national conditions, regional conditions, 401 Certification limits, and CZM concurrence for waters under State jurisdiction, the permittee may proceed with the project subject to any notification requirements.

Abbreviations Used in this Special Public Notice:

401 Certification	-	Section 401 Water Quality Certification
BA	-	Biological Assessment
BE	-	Biological Evaluation
Chehalis Tribe	-	Chehalis Confederated Tribe
Corps	-	U.S. Army Corps of Engineers
CBSA	-	Commencement Bay Study Area
CZM	-	Coastal Zone Management
Ecology	-	Washington State Department of Ecology
EPA	-	U.S. Environmental Protection Agency
ESA	-	Endangered Species Act
HPA	-	Hydraulic Project Approval
NMFS	-	National Marine Fisheries Service
NPDES	-	National Pollution Discharge Elimination System
NRCS	-	Natural Resources Conservation Service
NWP	-	Nationwide Permit
PCN	-	Pre-Construction Notification
Puyallup Tribe	-	Puyallup Tribal Nation
SPN	-	Special Public Notice
State	-	State of Washington
TMDL	-	Total Maximum Daily Load
USFWS	-	U.S. Fish and Wildlife Service
WDFW	-	Washington State Department of Fish and Wildlife
WDNR	-	Washington Department of Natural Resources
WDOT	-	Washington State Department of Transportation

Background: The Clean Water Act states, "No general permit . . . shall be issued for a period of more than five years . . . ." On December 13, 1996, at the national level, the Corps published in the *Federal Register* in Part VII the Final Notice of Issuance, Reissuance and Modification of Nationwide Permits. These NWPs became effective on February 11, 1997, and, except for those NWPs modified and revoked with the current proposal as outlined in this SPN, will expire on February 11, 2002. In this proposal, the Corps also proposed for NWP 26 to expire on December 13, 1998.

On July 1, 1998, October 14, 1998, and July 21, 1999, the Corps published proposals for new and modified NWPs to replace NWP 26. The Seattle District published SPNs on July 2, 1998, September 30, 1998, and July 21, 1999, announcing the various proposals. The SPNs dated July 2, 1998, and July 21, 1999, also announced proposed regional conditions, CZM Consistency Responses, and 401 Certification conditions with the comment periods ending August 29, 1998, and September 7, 1999, respectively. Public Hearings were held nationally to obtain public comments on the NWPs. The Seattle District held two public hearings and two public meetings on August 6, 1998, to obtain public comments and answer questions.

In the State, the Seattle District and the certifying agencies (EPA, Puyallup Tribe, Chehalis Tribe, and Ecology) met with other Federal and State resource agencies over the past several years to develop the final regional conditions, 401 Certification, and CZM Consistency Responses. The objectives of these agencies were to create conditions that are reasonable and enforceable, make sense to the regulated public, provide the necessary level of resource protection, and are sensitive to the workloads of all parties involved.

The final version of the new and modified NWPs was issued on March 9, 2000, and became effective on June 7, 2000. These 5 new and 6 modified NWPs will expire on June 7, 2005. The NWP 26 also expired on June 7, 2000. With this SPN, the Seattle District, EPA, Puyallup Tribe, Chehalis Tribe, and Ecology set forth the parameters and conditions through which the agencies will implement the NWPs within the State. This SPN will be the basis through which the NWP program will operate until revised, rescinded, or revoked. Any such actions will be announced through future public notices.

401 Certification: Applicants wanting to perform work involving discharges of dredged or fill material into waters of the U.S. must apply for a Section 404 permit from the Corps. Section 401 of the Clean Water Act requires applicants for those permits to also receive 401 Certification from the appropriate certifying agency. This 401 Certification can cover both the construction and operation of the proposed project. Conditions of the 401 Certification become conditions of the Corps 404 permit. After the Corps has issued a NWP for the proposed work, the applicant cannot do the work until the 401 Certification is approved, conditioned, or waived by the certifying agency.

Definitions of 401 Water Quality Certification and Coastal Zone Management Consistency Response Decisions: The 401 Certification and the CZM Consistency Response statements in this public notice take three forms: 1. "approved" (or "concur" for the CZM Consistency Response); 2. "denied without prejudice"; and 3. "partially denied without prejudice."

1. "**Approved**" (or "**Concur**") means a project is authorized under the NWP and must meet the terms and conditions of the nationwide permit. For such permits, the 401 Certification and/or the CZM Consistency Response have been approved for all actions authorized by that NWP.

2. "**Denied without prejudice**" means that the 401 Certification and/or the CZM Consistency Response have been denied for that NWP and all activities potentially authorized under that particular NWP. An individual 401 Certification and/or CZM Consistency Response, or waiver, is required before work can be done under the NWP. For example, a permittee proposing a hydropower project (see NWP 17) would need an individual 401 Certification or waiver and, if located within a coastal zone county, an individual CZM Consistency Response or waiver (both from Ecology) before this NWP could be used. These would be required since the EPA, Puyallup Tribe, Chehalis Tribe, and the State have denied 401 Certification and CZM Consistency Response for NWP 17 - Hydropower Projects.

3. "**Partially denied without prejudice**" means that the 401 Certification, or the CZM Consistency Response, or both have been denied for some of the activities that could be authorized under a particular NWP. A discussion of these limitations is found after each NWP in their 401 Certification and/or CZM Consistency Response sections. An individual 401 Certification and/or CZM Consistency Response as appropriate, or waiver, is required before work can be done under the NWP if the proposed activity exceeds the limitations of the 401 Certification and/or the CZM Consistency Response approval. For example, in NWP 12, a permittee proposing a utility line requiring excavation in any Category I wetlands (defined in Definition section of this public notice), more than 1/2 acre or 500 linear feet of Category II wetlands, an impact area greater than 40 feet wide, or excavating in open water, would need an individual 401 Certification, or waiver, from Ecology and, if located within the coastal zone, an individual CZM Consistency Response, or waiver, before this NWP could be used. These would be required since the State has partially denied without prejudice the 401 Certification and the CZM Consistency Response for projects that do not meet the stated limits for NWP 12.

Neither "denied without prejudice" nor "partially denied without prejudice" mean the proposed project will not be permitted. They mean the EPA, Puyallup Tribe, Chehalis Tribe, or the State have decided such projects require individual review and approval. Additional conditions and/or mitigation may be required with the individual 401 Certification.

A **waiver** means the EPA, Puyallup Tribe, Chehalis Tribe, or Ecology did not make its 401 Certification Decision and/or CZM Consistency Decision within the allowable time period of 180 days from the receipt of a complete application and issuance of a public notice for a proposed project.

The Certifying Agencies and the NWP Program: The four certifying agencies are: Ecology (for the State), EPA, and the Puyallup and Chehalis Tribes. Each of the certifying agencies reviews the NWPs and determines their decisions for the time period NWPs are in effect (5 years). If approved, no further 401 Certification review by the agencies is required. If partially denied without prejudice, an individual certification from the certifying agency is required when the project does not meet the restrictions. If denied without prejudice, an individual certification is required for all activities under that NWP.

Since the **State** 401 Certification jurisdiction consists of all public and private lands in the State except those under EPA, Puyallup Tribe, or Chehalis Tribe jurisdiction (see below), the certifying agency relevant to most applicants is Ecology. Ecology has reviewed each of the NWPs to determine whether a project that can be authorized under a specific NWP by the Seattle District will meet the applicable State regulations. Their responses are as follows:

- Partially denied without prejudice NWPs 3, 4, 5, 6, 7, 12, 13, 14, 15, 18, 19, 20, 22, 23, 25, 27, 29, 30, 32, 33, 34, 36, 38; 39, 40, and 42; and

- Denied without prejudice NWPs 16, 17, 21, 31, 37, 41, 43, and 44.

For projects covered under NWPs that require individual certification, Ecology has up to six months after receipt of necessary project information and issuance of an Ecology public notice to make its individual certification decision. See the map on the following page for points of contact.

401 certification is based on compliance with applicable sections of federal and state water quality standards and other appropriate requirements of state law. All NWPs in Washington State subject to 401 certification require compliance with these State Regional General 401 Conditions, as applicable. These conditions are necessary to ensure that projects or activities authorized under the NWP Program result in minimal impacts and meet the state water quality standards.

Department of Ecology Federal Permits Unit

Water Quality Certification, Nationwide Permits, Coastal Zone Consistency Determination

WASHINGTON STATE DEPARTMENT OF ECOLOGY

6/00

State Deptartment of Transportation Projects:
Sandra Manning, (360) 407-6912
sman461@ecy.wa.gov
Loreé Randall, (360) 407-6068
lora461@ecy.wa.gov
FAX (360) 407-6904

Navigation Dredging Projects:
Rick Vining (360) 407-6944;
FAX (360) 407-6904
rvin461@ecy.wa.gov

401/CZM Policy:
Tom Luster (360) 407-6918
FAX (360)407-6904
tlus461@ecy.wa.gov

Note: In some instances, other documents or Implementation Agreements may replace the proposed NWP conditions. These are noted in the State General Conditions where applicable, and include the following:

- The Ecology-approved Washington Department of Transportation (WDOT) Highway Runoff Manual for WDOT projects or activities.

- The "Implementing Agreement between the Washington Department of Transportation and the Washington Department of Ecology Concerning Wetlands Protection and Management".

- The Washington Department of Fish and Wildlife Fish Passage Policy (Policy #M1501).

- The Ecology-approved stormwater retrofit policy for WDOT projects or activities.

The **EPA** 401 Certification jurisdiction consists of Native American Indian Tribal land (excluding that of the Puyallup Nation and Chehalis Confederated Tribe) and Federal land with exclusive jurisdiction (North Cascades, Olympic, and Rainier National Parks) within the State of Washington.

EPA has reviewed each of the NWPs to determine whether a project that can be authorized under a specific NWP by the Corps will meet the applicable EPA regulations. Their responses are as follows:

- Partially denied without prejudice NWPs 3, 4, 5, 6, 7, 12, 13, 15, 18, 19, 20, 22, 25, 27, 29, 30, 32, 33, 36, and 38;

- Denied without prejudice NWPs 14, 16, 17, 21, 23, 31, 34, 37, 39, 40, 41, 42, and 43.

The **Puyallup Tribe** 401 Certification jurisdiction consists of the tribal lands of the Puyallup Tribe. The Puyallup Tribe has denied without prejudice all 401 Certifications for all Section 404 NWPs.

The **Chehalis Tribe** 401 Certification jurisdiction consists of the tribal lands of the Chehalis Tribe. The Chehalis Tribe has denied without prejudice all 401 Certifications for all Section 404 NWPs.

CZM Consistency Response: Washington's 15 coastal counties are as follows:

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

Consistency with the state's Coastal Zone Management (CZM) Program is meant to provide protection of coastal resources and requires compliance with the enforceable policies of that program. The requirements most commonly applicable to activities authorized under NWPs include:

- State Environmental Policy Act, Chapter 43.21C RCW
- Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- State Water Quality Standards, Chapter 90.48 RCW
- State Shoreline Management Act, Chapter 90.58 RCW

The state CZM Program also requires compliance with the Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), the Washington Clean Air Act (Chapter 70.94 RCW), the state Energy Facility Site Evaluation Council (Chapter 80.50 RCW), the Ocean Resource Management Act (Chapter 43.143 RCW), and Transport of Petroleum Products – Financial Responsibility Act, (Chapter 88.40 RCW).

Ecology reviews proposed projects for consistency with the above laws and generally includes its CZM Consistency Response with its 401 Certification. The CZM Consistency Response must be made within 6 months, or it is considered waived and the permittee may proceed if the NWP and 401 Certification requirements are met.

CZM Consistency Responses and the Nationwide Permit Program:

Ecology has reviewed the NWP Program to determine whether it is consistent with the CZM Program. Ecology has objected to the Corps' determination that the NWP program is consistent with the State CZM program because the necessary information regarding protection of coastal resources, including fish species listed under the ESA has not been provided.

The Corps has determined Ecology's objection means CZM has been partially denied without prejudice for the NWPs, except for those already denied without prejudice. Once the Corps has completed the necessary ESA consultation, a final verification of the NWP can be issued and Ecology can complete the CZM Consistency Response.

The status of CZM is as follows:

- Partially denied without prejudice NWPs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 22, 23, 25, 27, 28, 29, 30, 32, 33, 34, 36, 38, 39, 40, and 42; and
- Denied without prejudice NWPs 8, 16, 17, 21, 31, 35, 37, 41, and 43.

Shoreline Management Act: Any work or activity authorized by NWPs and undertaken within shorelines of the State is subject to review under the Shoreline Management Act, 90.58 RCW. Such work or activity must be conducted in accordance with the requirements of the shoreline master program of the applicable local government.

Hydraulic Project Approval: The Washington State Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) (under 75.20 RCW) for work in waters of the State. To ensure compliance with HPA requirements, persons planning to conduct work under a NWP should contact WDFW at:

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

State Aquatic Land: Projects proposed on State aquatic land may require separate authorization from the Washington Department of Natural Resources. Applicants should call (360) 902-1100 for additional permit information.

For further information on state and local permit requirements, you may contact Ecology's Permit Assistance Center at 1-800-917-0043 or by email at ecypac@ecy.wa.gov.

Wetland Delineations: Wetland Delineations must be done in accordance with the currently acceptable methodology. At present, this is the Corps 1987 Wetlands Delineation Manual and all applicable guidance. For agricultural lands continuing in agricultural use, the Natural Resources Conservation Service (NRCS) has the lead for verifying and/or conducting wetland delineations and determinations. For agricultural lands being converted for other uses, the Seattle District has the lead for verifying and/or conducting wetland delineations and determinations. They use the current edition of the National Food Security Act Manual and applicable guidance.

Endangered Species Act: Since May 24, 1999, a number of species of salmon, steelhead, and trout inhabiting Northwest waters were listed in the Federal Register by the NMFS and the USFWS (Services) as endangered, threatened, or proposed species under the Endangered Species Act (ESA) of 1973. In addition, the habitat for some of these species has been designated as critical for their conservation. On April 11, 2000, the Seattle District published a SPN discussing the regulatory program and the ESA.

Under the Corps' Federal permit program, permit applications must be reviewed for the potential impact on threatened and endangered species pursuant to Section 7 of the

ESA. The Seattle District, through informal and formal consultation procedures with the Services, must evaluate information on the presence of listed species (including timing and life stages), habitat for such species and their prey sources, and other ecological parameters. These consultation procedures are outlined in a *March 1998 Consultation Handbook* prepared by the Services. The information required for ESA consultation must be prepared in the form of a Biological Evaluation (BE) or Biological Assessment (BA) which is utilized to assess project impacts to listed, and/or proposed species and designated and/or proposed critical habitat (see enclosure 2 of the April 11, 2000, SPN for a list of required information that must be included in a BE/BA).

As required by the Corps' regulations in 33 CFR, Part 325.2(b)(5), ESA information is required for all pending and future permit applications for work affecting or potentially affecting listed species before a permit decision can be made. Department of the Army permit regulations [33 CFR, 325.1(e)] authorize the District Engineer to obtain additional information from permit applicants deemed essential to making a public interest determination including environmental data such as the ESA information discussed herein. Before the Seattle District can make a permit decision on pending and future permit applications for work affecting listed species or critical habitat, a BE/BA must be prepared by a qualified biologist at the applicant's expense and be provided to the Seattle District so that the required ESA coordination can be conducted with the appropriate Services. Many consulting firms in the area have qualified biologists on staff that can prepare a BE/BA. In the event that an applicant is unable to have a BE/BA prepared, they should contact the Seattle District at telephone (206) 764-3495 for assistance. Additional project information may also be requested before the permit application is processed.

The ESA procedures discussed above must be followed for all pending and future projects affecting or potentially affecting listed species or designated critical habitat, regardless of the size or potential impacts (adverse or beneficial) of a proposed project, whether a project is for new work or the repair or replacement of existing work (i.e., Nationwide Permit 3), or the type of permit process utilized by the Corps. The ESA procedures must be followed for all projects that could be authorized by nationwide permits, including those that did not previously require prior notification to the Corps. This requires submittal of appropriate notification (JARPA, pre-construction notification, or letter) to the Corps including project drawings and a BE/BA.

A BE/BA prepared for a specific project will have one of three conclusions as to its effect on listed species and their designated critical habitat. These conclusions are as follows: (1) no effect; (2) may affect, not likely to adversely affect; or (3) may affect, likely to adversely affect. If the Corps determines that a project will have "no effect" on a listed species, consultation with the Services is not required and the Corps can proceed with the permit process and a permit decision. The Corps, in consultation with the Services, has determined that certain actions would have "no effect" on listed species. A description of actions determined to have "no effect" on listed species or designated critical habitat is provided in enclosure 3 of the ESA SPN. This list will be updated, as needed.

Timing Restrictions

Many proposed for listing and listed threatened and endangered species require special conditions prohibiting work times for the species protection. At this time, the Seattle District is working with both USFWS and NMFS to define many of these work windows for the recently listed salmon species. Some of the current work windows when work is prohibited includes:

Columbia River

Mouth to Bonneville Dam	March 1 - October 30
Bonneville Dam to John Day Dam	March 15 - November 15
Upstream of John Day Dam	April 1 - November 30

Snake River

Mouth to Hells Canyon Dam (ID)	March 1 - December 15

There are many other species besides salmon, steelhead, and trout which require timing restrictions. As these windows are defined, additional special public notices will be published to alert the public of these windows. In the meantime, to ensure compliance with General Condition 11, applicants should contact the Corps regarding time restrictions and/or other conditions needed to ensure compliance with the ESA.

Mitigation: Compensatory mitigation required by WDFW as part of an approved HPA or Ecology as part of a 401 Certification is authorized as a part of a Section 404 NWP and meets General Condition 19 -- Mitigation. This is done without taking away from volume and area limits of the NWP. When compensatory mitigation is approved, but not required by the Corps, it is considered to be in conformance with this mitigation condition.

For example, an HPA issued by WDFW for approval of a bank stabilization project covered under NWP 13 may be conditioned to require placing fill for habitat structures or excavating to open a side channel for fish use. The excavation or placement of fill may go beyond the allowable limits of NWP 13; however, because it is required as project mitigation, it is considered a part of the Corps' NWP authorization.

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

Marine Sanctuaries and Estuarine Reserves: For all projects proposed for areas within federally designated Marine Sanctuaries or Estuarine Reserves, applicants must contact the agency official responsible for the management of that sanctuary or

reserve. Presently, Washington has one marine sanctuary, the Olympic Coast National Marine Sanctuary. Very generally, it extends from the southern boundary of Copalis National Wildlife Refuge north to the U.S./Canada international boundary. The coastal boundary of the Sanctuary reaches to the mean higher high waterline, except when adjacent to either Indian reservations or State-owned land where it extends only to mean lower low water, and cuts across the mouths of any rivers. Contact:

Mr. Todd Jacobs
Olympic Coast National Marine Sanctuary Headquarters
138 West 1st Street
Port Angeles, Washington 98362-2600
Phone: (360) 457-6622

Padilla Bay is a National Estuarine Research Reserve. Generally, it includes Padilla Bay and the northern portion of the Swinomish Channel. Contact:

Padilla Bay National Estuarine Research Reserve
ATTN: Director
1043 Bayview Edison Road
Mount Vernon, Washington 98273

Migratory Birds: Any activity or work authorized under these NWPs does not obviate the permittee from compliance with the Migratory Bird Treaty Act. This act prohibits individuals, government agencies, or corporations from taking a migratory bird, whether the taking is intentional or unintentional. The USFWS is the primary Federal agency responsible for the conservation and management of migratory bird resources.

Conservation measures to minimize potential harm to migratory birds from overhead power lines includes the installation of aviation balls or similar devices with state-of-the-art color patterns. This will help to minimize opportunities of collision with overhead wires or cables. Areas most susceptive to these injuries are aerial crossing of rivers, estuaries, open-waterbodies such as rivers, lakes, estuaries, expansive wetlands, or over linear geomorphological features such as canyons, valleys, etc. where migratory birds, especially waterfowl, shorebirds, and raptors are likely to migrate.

Injury is more likely to occur when birds are nesting, usually during spring and early summer. Applicants should contact USFWS at the following addresses for more information.

Western Washington:

Gerry Jackson, Manager
Western Washington Office
U.S. Fish and Wildlife Service
501 Desmond Dr. Suite 102
Lacey, Washington 98503
(360) 753-9440

For Mid-Columbia River Area:

Mark Miller, Field Supervisor
Eastern Washington Ecological Services Sub-Office
U.S. Fish and Wildlife Service
32 C Street NW
Ephrata, Washington 98823
(509) 754-8580

For Upper-Columbia Area:

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

State Clean-Up Sites: Any activity or work authorized under these NWPs does not obviate the permittee from liabilities that may be incurred if such activity or work is undertaken within waters of the State designated as a State clean-up site under the Model Toxics Control Act (MTCA).

NATIONWIDE PERMITS AND THEIR SPECIFIC REGIONAL CONDITIONS

Legend for NWP Section:

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

Notification Requirement – *Helps to identify requirements for notification of this NWP. (See expanded notification discussion in National General Conditions 13, 25, and 26).*

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

EPA, State, Puyallup Tribe and Chehalis Tribe 401 Certification – *Status of the Clean Water Act 401 Certification. (See previous 401 Certification discussion).*

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

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

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot*

be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.

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

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

3. Maintenance. Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement, are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This nationwide permit authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year

limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the United States to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) **REVOKED**

Maintenance dredging for the primary purpose of navigation and beach restoration are not authorized by this permit. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

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

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

Regional Conditions for NWP 3(ii) –

1. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

2. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   b) *Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   c) *Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   d) *In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

3. *The construction of new or additional bank protection of the repair or replacement of existing permitted bank protection will incorporate the least environmentally damaging practicable methods. These methods would include the use of bioengineering, biotechnical design, root wads, large woody debris, plantings, etc.*

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for any activities requiring excavation or dredging in open water. See also EPA Regional General 401 Conditions for other requirements.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that*

require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

Notification Requirement – *None.*

Regional Conditions – *The commercial harvest of subtidal hardshell clams or intertidal softshell clams by means of a mechanical/hydraulic escalator type of equipment is not authorized by this NWP.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

5. **Scientific Measurement Devices.** Devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Sections 10 and 404)

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

Regional Conditions – *The PCN must also include a delineation of affected special aquatic sites.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

6. **Survey Activities.** Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The

discharge of drilling muds and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

7. Outfall Structures and Maintenance. Activities related to:

(i) construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), and

(ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;
b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and

canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

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

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

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

Regional Conditions – *None.*

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for any project authorized under this NWP if required by any EPA Regional General 401 Condition and for projects that do not meet all of the following conditions:*

1. *The NWP authorizes outfall construction only and does not authorize the discharge of effluent from the outfall. No effluent shall be discharged until the applicant has received a National Pollutant Discharge Elimination System permit, waiver, or other applicable approval from the appropriate Federal, State, or local authority.*

2. *When operating equipment in or near wetlands or other waters of the United States, extreme care shall be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the water. If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease work immediately and notify EPA or the Ecology's appropriate regional office.*

3. *Proper erosion and sediment control measures shall be carried out during all phases of construction to prevent the uncontrolled discharge of turbid water, dredged or excavated material, or soils into waters of the United States.*

4. *Construction debris and excess excavated or dredged material shall be disposed of at a suitable upland location and in a manner to prevent degradation of waters of the United States.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

8. Oil and Gas Structures. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l)). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR Part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

Notification Requirement – *Yes, in all instances. See Regional Condition below and National General Condition 25(b), for specific requirements.*

Regional Conditions – *Notification is required to the Corps for use of this NWP in the State.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

NOTE: *All work proposed under this NWP must have an exploration or development plan that has been determined by Ecology to be consistent with Washington's CZM Program. Other work not subject to this NWP will require an individual statement of consistency from the proponent and the concurrence of Ecology.*

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

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

Regional Conditions – *None.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

(i) *Utility lines*: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) *Utility line substations*: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½ acre of non-tidal waters of the United States.

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

(iv) *Access roads*: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to

preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

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

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

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

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the United States;

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or

(g) Permanent access roads constructed in waters of the United States with impervious materials. (Sections 10 and 404)

NOTE 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

NOTE 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

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

Notification Requirement – *Yes. Refer to notification requirements above, regional conditions below, and for work involving permanent above-grade fills within the 100-year floodplain. See National General Conditions 13 – Notification and 26 – Fills Within 100-Year Floodplains, for specific requirements.*
NOTE: *Also review information in Migratory Bird section above (page 21).*

Regional Conditions for all of NWP 12 –*The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition,*

i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.

Regional Conditions for NWP 12(i) –

1. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.*

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

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

Regional Conditions for NWP 12(ii) –

1. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (See Note below); or*
   b) *Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   d) *In “Protected High-Functioning Wetlands” as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

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

Regional Conditions for NWP 12(iii) –

1. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   b) *Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   c) *Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   d) *In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

Regional Conditions for NWP 12(iv) –

1. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*

b) Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or

c) Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or

d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.

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

2. For the construction of access roads, the permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(a) the loss of greater than 1/10th of an acre;

(b) footprints wider than 12 feet;

(c) mechanized land clearing in a forested wetland

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA Regional General 401 Conditions and for projects or activities that will affect the following:*

1. Any linear wetland impact area more than 40 feet wide (impacts due to trenching, construction, staging areas, etc.).

2. Any excavation or dredging activities affecting open water areas (e.g., trenching across streams).

3. Any project or activity that will replace wetland areas with more than 1/10 of an acre of new or additional permanent impervious surfaces (e.g., concrete, gravel, asphalt, etc).

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition and for projects or activities that will affect the following:*

1. *Any one wetland impact area more than 40 feet wide (impacts due to trenching, construction, staging areas, etc.)*

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2. *Any excavation or dredging activities affecting open water areas (e.g., trenching across streams).*

3. *Any project or activity that will replace wetland areas with more than 1/10th of an acre of new or additional permanent impervious surfaces (e.g., concrete, gravel, asphalt, etc).*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

a. No material is placed in excess of the minimum needed for erosion protection;

b. The bank stabilization activity is less than 500 feet in length;

c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;

d. No material is placed in any special aquatic site, including wetlands;

e. No material is of the type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area;

f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" general condition and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both

individually and cumulatively. This NWP may not be used for the channelization of a water of the United States. (Sections 10 and 404)

Notification Requirement – *Yes. If project is greater than 500 feet in length, if the fill exceeds 1/2 cubic yard per running foot, if the project includes upright structures, or if the work is proposed in a designated critical resource water. See National General Conditions 13 – Notification and 25(b) – Designated Critical Resource Waters, for specific requirements.*

Regional Conditions –

1. *The following bank stabilization activities may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" general condition and the adverse impacts are determined to be minimal:*

   a) *Activities exceeding 1/2 cubic yard per running foot of fill material; or,*

   b) *Proposed projects using any upright structures (e.g., retaining walls, concrete, or timber bulkheads, etc.).*

2. *Alteration or disturbance of existing bank vegetation shall be held to a minimum, and revegetation shall occur in areas where vegetation was destroyed by riprap placement or project construction. Measures such as hydroseeding with annual, or non-invasive grasses may be used for temporary erosion control.*

3. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

4. *The construction of new or additional bank protection or the repair or replacement of existing permitted bank protection will incorporate the least environmentally damaging practicable methods. These methods would include the use of bioengineering, biotechnical design, root wads, large woody debris, plantings, etc.*

EPA 401 Certification – *Partially denied without prejudice. All projects receiving coverage under this NWP are subject to the following conditions and those in the EPA Regional General 401 Conditions:*

1. *An individual 401 Certification is required for projects over 250 feet long or exceeding an average of 1/2 cubic yard of material per running foot.*

2. *The linear distance may be increased to a total project length of 500 feet long if bioengineering, approved by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service, is incorporated into the bank stabilization project.*

3. *The 1/2 cubic yard limitation can be increased to incorporate the placement of fish enhancement structures into the bank stabilization project (i.e. rock barbs). This work shall be approved by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.*

4. *An individual 401 Certification is required for all upright (vertical or near vertical) bank stabilization structures (i.e. poured concrete, concrete block and rock gabion retaining walls, timber bulkheads).*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any State Regional General 401 Condition and for the following:*

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

2. *Proposed projects using any upright structures (e.g., retaining walls, concrete or timber bulkheads, etc.); or,*

3. *Projects that are greater than 500 feet in length.*

For proof of consistency with State 401 Certification Condition 1 above, the applicant may provide a copy of the Hydraulic Project Approval issued for the project, or a letter from WDFW stating that the project design meets WDFW approval for incorporating structures and/or modifications beneficial for fish or wildlife habitat.

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

(1) For public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½ acre of waters of the United States;

(2) For public linear transportation projects in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;

(3) For private linear transportation projects in all waters of the United States, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;

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

(1) The discharge causes the loss of greater than 1/10 acre of waters of the United States; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

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

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

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

Notification Requirement – *Yes. For impacts greater than 1/10th of an acre, in special aquatic sites, expansions, modifications, or improvements in specialized seasonal wetlands, in tidal waters, and for work involving permanent above-grade fills within the 100-year floodplain. See the Regional Conditions below and National General Conditions 13(b) – Notification and 26 – Fills Within 100-Year Floodplains, for specific requirements.*

Regional Conditions for NWP 14 –

1. *The construction of new or additional bank protection or the repair or replacement of existing permitted bank protection will incorporate the least environmentally damaging practicable methods. These methods would include the use of bioengineering, biotechnical design, root wads, large woody debris, plantings, etc.*

2. *This NWP is not authorized for use in "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

3. *Construction of new linear transportation crossings are not allowed in playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system. Expansions, modifications, or improvements to existing linear transportation crossings in these systems require notification to the District Engineer in accordance with General Condition 13.*

4. *Linear transportation crossing activities in tidal waters or non-tidal wetlands adjacent to tidal water may be authorize if the permittee notifies the District Engineer in accordance with the General Condition 13.*

Regional Conditions for NWP 14(a)(3) – *For NWP 14(a)(3) for private linear transportation crossings, fill placed in waters of the United States for footprints greater than 22 feet wide are not authorized. The 200-linear-foot limit remains the same. An individual permit application must be submitted for proposed roads greater than 22 feet wide in waters of the United States.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

Regional Conditions – *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species. Contact the Ecology Regional office for information.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

Notification Requirement – *None.*

Regional Conditions – *None.*

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

(a) Small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the District Engineer in accordance with the "Notification" general condition; or

(b) Hydropower projects for which the Federal Energy Regulatory Commission has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Section 404)

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

Regional Conditions – *None.*

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

a. The quantity of discharged material and the volume of excavated area does not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

b. The discharge, including any excavated area, will not cause the loss of more than 1/10 acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and

special aquatic sites that are drained so that they would no longer be a water of the United States as a result of the project;

c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion.

e. This NWP cannot be used in conjunction with NWP 26 for any single and complete project. (Sections 10 and 404)

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

Regional Conditions – *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species. Contact the Ecology Regional office for information.*

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA Regional General 401 Condition and for the following:*

1. Discharges into waters used by anadromous fish (applies only to EPA 401 Certification); or,

2. Projects that do not incorporate structures and/or modifications approved by WDFW for Ecology, or by NMFS and/or USFWS for EPA, that are beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.); or,

3. Discharges in wetlands within the 100-year floodplain unless the proposed project:

a. Is consistent with the local floodplain management comprehensive plans and ordinances; and,

b. Through design and/or mitigation, results in no increase in water levels and no loss in live storage during flood events up to and including the 100-year flood.

For proof of consistency, the applicant may provide copies of applicable local permits or a letter from the local jurisdiction stating that the above two conditions will be met. (Applies only to State 401 Certification).

The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any State Regional General 401 Condition and for the following:*

1. Discharges into waters used by anadromous fish (applies only to EPA 401 Certification); or,

2. Projects that do not incorporate structures and/or modifications approved by WDFW for Ecology, or by NMFS and/or USFWS for EPA, that are beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc).

For proof of consistency with this condition, the applicant may provide a copy of the Hydraulic Project Approval issued for the project, or a letter from WDFW stating that the project design meets WDFW approval for incorporating structures and/or modifications beneficial for fish or wildlife habitat.

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

Regional Conditions – *Dredging is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species. Contact the Ecology Regional office for information.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA or State Regional General 401 Condition and for discharges into waters that support anadromous fish.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

20. Oil Spill Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR Part 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects without ESA concurrence and located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

21. Surface Coal Mining Activities. Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include a Department of the Interior, Office of Surface Mining or State approved mitigation plan. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or State agency has required one. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)) (Sections 10 and 404)

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

Regional Conditions – *None.*

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" general condition. This NWP does not authorize maintenance dredging, shoal removal, or river bank snagging. Vessel disposal in waters of the United States may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

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

Regional Conditions – *None.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

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

Regional Conditions –

1. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species. Contact the Ecology Regional office for information.*

2. *Notification is required for projects within the state of Washington.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

24. State Administered Section 404 Program. Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. Those activities which do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94-587, 90 Stat. 2917 (33 U.S.C. 59l) (see 33 CFR 322.3(a)(2)). (Section 10)

There is no State administered Section 404 program in Washington.

25. Structural Discharges. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, homes, parking areas, storage areas and other such structures. Housepads or other building pads are also not included in this NWP. The structure itself may require a Section 10 permit if located in navigable waters of the United States. (Section 404)

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

Regional Conditions – *None.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

26. Expired

27. Stream and Wetland Restoration Activities.

Activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Any Federal land; or

(3) Reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(4) Any private or public land;

(b) **Notification:** For activities on any private or public land that are not described by paragraphs (a)(1), (a)(2), or (a)(3) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Only native plant species should be planted at the site, if permittee is vegetating the project site.

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation;

mechanized landclearing to remove undesirable vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(2) and (a)(4), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(3), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. (Sections 10 and 404)

NOTE: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13,

and the project includes compensatory mitigation for impacts to waters of the United States caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Banks Guidelines.

Notification Requirement – *Yes. Notification required as discussed in (a)(4) above and for work proposed in Department of the Army mitigation sites, CERCLA/MTCA sites, and designated critical resource waters. See National General Conditions 13 – Notification and 25(b) – Designated Critical Resource Waters, for specific requirements.*

Regional Conditions –

1. *If the proposed work results in impacts to a special aquatic sites (e.g., wetlands or riffle and pool complexes), the "Notification" must include a statement of why the impacts are necessary, how the impacts have been minimized, and how the overall project is beneficial, despite these impacts.*

2. *The permittee must notify the District Engineer in accordance with General Condition 13 for proposed projects in stream or wetland restoration and enhancement areas previously authorized as mitigation by a Department of the Army permit.*

3. *The permittee must notify the District Engineer in accordance with General Condition 13 for a stream and wetland restoration projects occurring in a designated Federal Superfund site (Comprehensive Environmental Response, Compensation and Liability Act), hazardous waste clean-up site (Resource Conservation and Recovery Act), or State clean-up site (Model Toxics Control Act).*

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA Regional General 401 Condition and for:*

1. *Discharges of dredged or fill material associated with the reversion of a restored wetland to its prior condition and use.*

2. *Impacts to waters of the U.S. adversely affecting more than 1/3 (one-third) acre.*

3. *Use of this NWP to create open water areas from wetlands.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition and for the following:*

1. *Any use of this NWP for projects or activities in wetlands that does not receive written approval from Ecology.*

2. *Any use of this NWP for projects or activities adversely affecting more than 1/4 (one-quarter) acre of any waterbody (e.g., construction of berms or dikes larger than 1/4 acre, impounding water in an area greater than 1/4 acre, etc.).*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

Regional Conditions –

1. *The applicant must notify the District Engineer in accordance with the "Notification" general condition.*

2. *This NWP is not authorized for projects that will adversely impact areas with eelgrass (Zostera sp.), kelp, or other macroalgae (Macrocystis sp., Nereocystis sp., Ulva sp.).*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

b. The permittee notifies the District Engineer in accordance with the "Notification" general condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ¼ acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined cannot exceed ¼ acre. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership". (Sections 10 and 404)

Notification Requirement – *Yes, in all instances. See National General Conditions 13(b) – Notification and 26(b)(1) – Fills Within 100-Year Floodplains, for specific requirements.*

Regional Conditions –

1. *This NWP is prohibited from use in all open water areas such as, but not limited to rivers, lakes, streams, ponds and playas.*

2. *This NWP is not authorized for use in salt marshes. Salt marshes are defined in the Appendix of this Public Notice.*

3. *In addition to the information required for notification (National General Condition 13), photographic documentation of site conditions is required. Photos should clearly and accurately show the existing site conditions. These photos should be keyed to a site map or drawing. This will help facilitate project review.*

4. *Per Condition h. above, the vegetative buffer shall consist of native emergent, scrub-shrub, or tree species and shall be at least 100 feet wide, unless otherwise approved by the Corps and Ecology.*

5. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA Regional General 401 Condition and for the following:*

1. *Discharges affecting more than 1/4 (one-quarter) acre of wetlands; or,*

2. *Discharges in wetlands within the 100-year floodplain unless the proposed project:*

    a. *Is consistent with the local floodplain management comprehensive plans and ordinances; and,*

    b. *Through design and/or mitigation, results in no increase in water levels and no loss in live storage during flood events up to and including the 100-year flood.*

For proof of consistency, the applicant may provide copies of applicable local permits or a letter from the local jurisdiction stating that the above two conditions will be met. (Applies only to State 401 Certification)

The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.

An individual 401 Certification with approved mitigation is required for such projects. Proposed projects outside the 100-year floodplain and less than 1/4 (one-quarter) acre do not require individual 401 Certification.

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

30. Moist Soil Management for Wildlife. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed and State-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

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

Regional Conditions – *None.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA and State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material for the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that were:

(i) Previously authorized by the Corps by individual permit, general permit, or by 33 CFR 330.3 and constructed; or

(ii) Constructed by the Corps and transferred to a local sponsor for operation and maintenance.

The maintenance is limited to that approved in a maintenance baseline determination made by the District Engineer. The prospective permittee will provide the District Engineer with sufficient evidence for the District Engineer to determine the approved and constructed baseline. Subsequent to the determination of the maintenance baseline and prior to any maintenance work, the permittee must notify the District Engineer in accordance with the Notification general condition.

All dredged material must be placed in an upland site or a currently authorized disposal site in waters of the United States, and proper siltation controls must be used. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses. (Activities that involve only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, does not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)(ii)). Only constructed channels within stretches of natural rivers that have been previously authorized as part of a flood control facility could be authorized for maintenance under this NWP.

Maintenance Baseline. Upon receipt of sufficient evidence, the District Engineer will determine the maintenance baseline. The maintenance baseline is the existing flood control project that the District Engineer has determined can be maintained under this NWP, subject to any case-specific conditions required by the District Engineer. In determining the maintenance baseline, the District Engineer will consider the following factors: the approved facility, the actual constructed facility, the Corps constructed project that was transferred, the maintenance history, if the facility has been functioning at a reduced capacity and for how long, present vs. original flood control needs, and if sensitive/unique functions and values may be adversely affected. Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR Part 330.5. This NWP cannot be used until the District Engineer determines the maintenance baseline and the need for mitigation and any regional or activity-specific conditions. The maintenance baseline will only be determined once and will remain valid for any subsequent reissuance of this NWP. However, if the project is effectively abandoned or reduced due to lack of proper maintenance, a new determination of

a maintenance baseline would be required before this NWP could be used for subsequent maintenance.

Mitigation. In determining the need for mitigation, the District Engineer will consider the following factors: any original mitigation required, the current environmental setting, and any adverse effects of the maintenance project that were not mitigated in the original construction. The District Engineer will not delay needed maintenance for completion of any required mitigation, provided that the District Engineer and the applicant establish a schedule for the identification, approval, development, construction and completion of such required mitigation. (Sections 10 and 404)

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

Regional Conditions – *This NWP does not include projects originally authorized under emergency procedures and does not authorize sand and gravel mining projects.*

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

a. The unauthorized activity affected no more than 5 acres of nontidal wetlands or 1 acre of tidal wetlands;

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

c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this nationwide permit and the settlement agreement, including a specified completion date; or,

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

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

Notification Requirement – *None.*

Regional Conditions – *None.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA and State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

NOTE: *The Corps will coordinate with Ecology and the EPA during negotiations with the violator to determine appropriate mitigation.*

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

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

Regional Conditions –

1. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

2. *Temporary fills may be in place for up to six months only, unless the applicant requests and receives approval for an extension from the District Engineer. Additional timing adjustments may be included to lessen impacts during critical times for migratory species.*

3. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

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

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA or State Regional General 401 Condition and that:*

1. Impair surface water flow into or out of a wetland; or,

2. Affect more than 1/3 (one-third) acre of waters of the U.S.

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the United States, including wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,

c. The activity does not result in a net loss of wetland acreage.

This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid. (Section 404)

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

Regional Conditions – *None.*

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

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

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

1. *The proposed expansion area:*

    a. *Does not include forested wetland with trees of 8" Diameter or greater at Breast Height or provide 30% or greater of the areal canopy coverage of that wetland;*

    b. *Is not within 50 feet of the Pacific County Drainage Ditch 1; and*

    c. *Is located within the geographic area as described below (see map on page 70, based on USGS maps 46124-G1-TF-024 (Grayland, WA – revised 1984) and 46124-F1-TB-024 (North Cove, WA – revised 1984):*

    Beginning at the intersection of Smith Road (aka Smid and/or Cranberry Road) and State Route 105 and running thence south and southeast along SR 105 to the intersection of SR 105 and Smith Anderson Road; thence north to the intersection of Smith Anderson Road and Lungren Road; thence north 1320.0 feet along Smith Anderson Road; thence west 450.0 feet; thence north 1680.0 feet; thence 13 degrees west of the northerly direction approximately 11,280.0 feet to the intersection of the

east section line of Section 6 and the west section line of Section 5 (Township 15 North, Range 11 West Meridian) and Smith Road; thence west on Smith Road to the point of beginning.

or

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

   a. *Evidence of the presence of old dikes around the boundary of the proposed expansion (dated photographs, dated video, topographic surveys);*

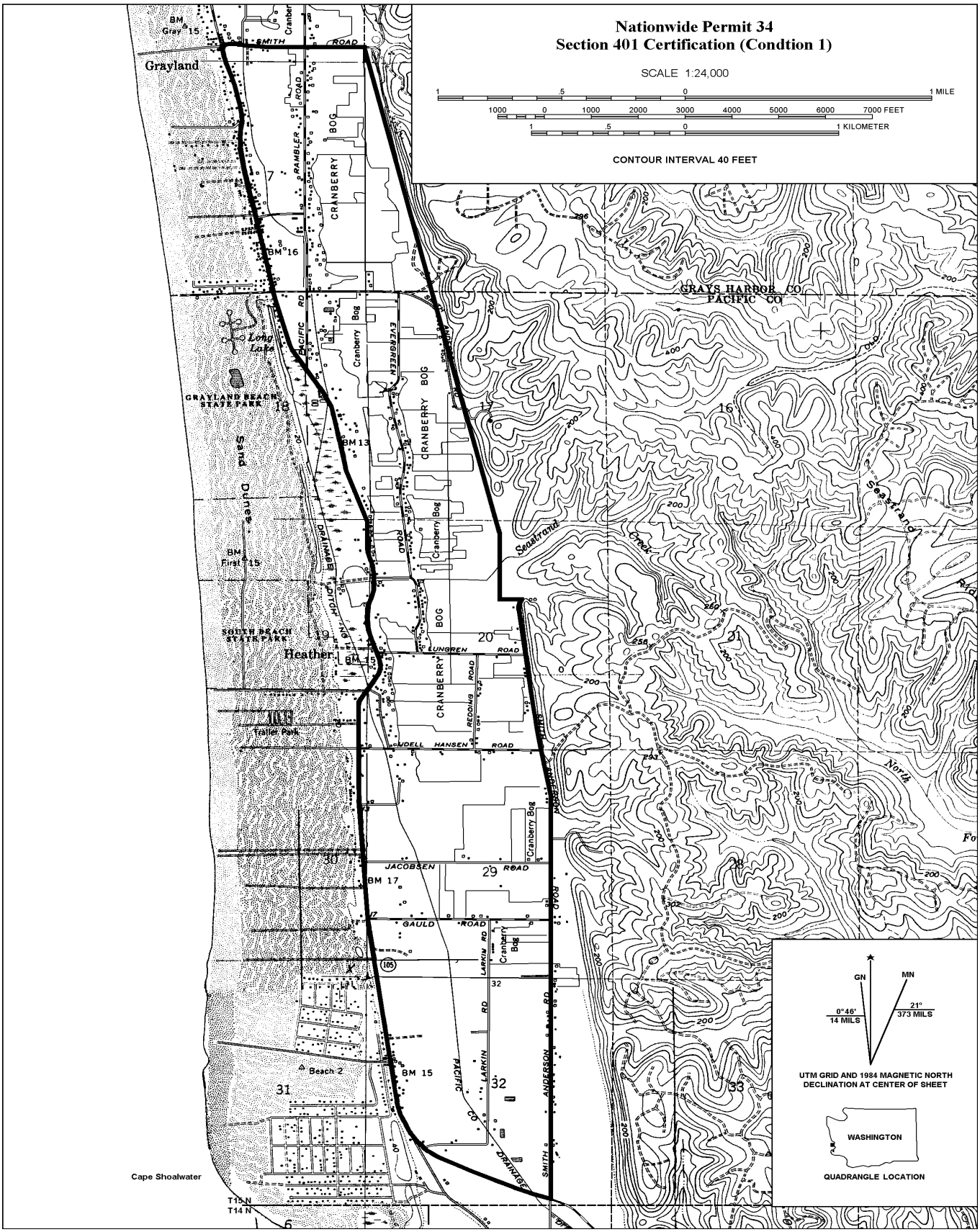
   b. *Old aerial photographs showing cranberry bogs within the proposed expansion area;*

   c. *Old maps drawn by registered engineers/surveyors showing the presence of cranberry bogs in the proposed expansion area; or*

   d. *Evidence that established plants of cultivated (not native) cranberry varieties are present within the proposed expansion area.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification, for projects without ESA concurrence, and located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*


Nationwide Permit 34
Section 401 Certification (Condtion 1)
SCALE 1:24,000
1 MILE
7000 FEET
1 KILOMETER
CONTOUR INTERVAL 40 FEET
Grayland
GRAYS HARBOR CO
PACIFIC CO
CRANBERRY BOG
GRAYLAND BEACH STATE PARK
SOUTH BEACH STATE PARK
Heather
Trailer Park
Long Lake
Sand Dunes
Seaside
Beach 2
Cape Shoalwater
T15N
T14 N
GN
MN
0°46'
14 MILS
21°
373 MILS
UTM GRID AND 1984 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET
WASHINGTON
QUADRANGLE LOCATION

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

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

Regional Conditions –

1. *Prior to performing any maintenance dredging, the applicant must complete dredged material sampling and analyses that are required by Federal, State, or local agencies. The applicant should contact the Seattle District Corps of Engineers Dredged Material Management Office (telephone (206) 764-3768) to determine testing requirements.*

2. *The applicant must notify the District Engineer in accordance with the "Notification" general condition and provide:*

    a. *The results of any required testing; and,*

    b. *The location of the upland disposal area.*

EPA, State, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

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

b. The boat ramp does not exceed 20 feet in width;

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

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

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

Dredging to provide access to the boat ramp may be authorized by another NWP, regional general permit, or individual permit pursuant to Section 10 if located in navigable waters of the United States. (Sections 10 and 404)

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

Regional Conditions –

1. *The ramp shall be constructed only of pre-cast concrete planks or slabs.*

2. *The width of the fill shall not exceed 12 feet.*

3. *Material required to stabilize the ramp shall be clean, washed, and free of fines, and shall not exceed 20 cubic yards.*

4. *Boat ramps are not authorized under this NWP on smelt, herring, or salmon spawning beaches. Spawning beach locations are based on information found the most recent Puget Sound Environmental Atlas, prepared for the Puget Sound Estuary Program.*

5. *Only one boat ramp per contiguous property ownership is authorized by this NWP.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA or State Regional General 401 Condition or is located in limited or scarce riparian habitat, as identified by the Tribal, USFWS, or NMFS Habitat Biologist (EPA) or by the WDFW Habitat Biologist (State), for the project area.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by the NRCS qualifying as an "exigency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13) provided the District Engineer is notified in accordance with the "Notification" general condition. (Also see 33 CFR 330.1(e)). (Sections 10 and 404)

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

Regional Conditions – *None.*

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities

undertaken entirely on a CERCLA site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

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

Regional Conditions – *None.*

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required unless authorized through a cleanup order from Ecology or EPA. An individual 401 Certification is required for all other activities.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition unless the project or activity is authorized through a cleanup order from Ecology or EPA (see page 14 regarding State Regional General 401 Conditions).*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification, for projects without ESA concurrence, and located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

39. Residential, Commercial, and Institutional Developments.

Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential

development). The construction of new ski areas or oil and gas wells is not authorized by this NWP. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

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

   (1) The discharge causes the loss of greater than 1/10 acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters; or

   (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below).

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the United States. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the United States. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the United States exceeding 1/10 acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of 1/10 acre or less of waters of the United States, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information:

(1) The name, address, and telephone number of the permittee;

(2) The location of the work;

(3) A description of the work;

(4) The type and acreage of the loss of waters of the United States (e.g., 1/12 acre of emergent wetlands); and

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

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

k. Stream channelization or stream relocation downstream of the point on the stream where the annual average flow is 1 cubic foot per second is not authorized by this NWP.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will normally be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement

for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the United States to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the United States on the project site in excess of the acreage limit for NWP 39 (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed ½ acre).

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to paragraph (c) of this NWP is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/10 acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed ½ acre is not authorized by this NWP, unless the District Engineer exempts a particular subdivision or parcel by making a written determination that the individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to July 21, 1999, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate the property owner's investment-backed expectations. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 39. For the purposes of NWP 39, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof. (Sections 10 and 404)

NOTE: Areas where there is no wetland vegetation are determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the United States based on this criteria would require a PCN even though water is infrequently present in the stream channel (except for ephemeral waters).

Notification Requirement – *Yes. Notification required for impacts greater than 1/10th of an acre, loss of open water, work in intermittent and ephemeral streams, or permanent above-grade fills above the headwaters and within the flood fringe of the 100-year floodplain. See the Regional Conditions below and National General Conditions 13 – Notification and 26(b)(1) – Fills Within 100-Year Floodplain, for specific requirements.*

Regional Conditions –

1. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   b) *Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   d) *In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

2. *The permittee must notify the District Engineer in accordance with General Condition 13 for any proposed work located in intermittent or ephemeral streams.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition and for any use of this NWP pursuant to Corps approval of projects and activities under the Subdivision provision of this NWP (see page 77).*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the purpose of improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is a USDA program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than ½ acre of non-tidal wetlands on a farm tract;

(3) The permittee must have an NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information:

(a) The name, address, and telephone number of the permittee;

(b) The location of the work;

(c) A description of the work;

(d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3 acre of emergent wetlands); and

(e) The type, acreage (or square feet), and location of compensatory mitigation (e.g., 1/3 acre of emergent wetlands on the farm tract); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA program participant (or a USDA program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than ½ acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10 acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the United States; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than ½ acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; or

d. Any activity in other waters of the United States is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams; and

e. Activities located in 100-year floodplains identified by FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps must comply with General Condition 26.

The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the United States on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph (a) of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs (b), (c), and/or (d) of this NWP. USDA program participants requesting authorization for discharges of dredged or fill material into waters of the United States authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the United States associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the ½ acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the Clean Water Act, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended,

may be required. Activities authorized by paragraphs (a) through (d) may not exceed a total of ½ acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs (a), (b), or (c) of this NWP to authorize activities in waters of the United States to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the United States on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed ½ acre. (Section 404)

Notification Requirement – *Yes. Notification required for improvements to agricultural production impacting greater than 1/0th of an acre, construction of building pads, combining 40(a) with 40(c) and 40(d), and permanent above-grade fills above the headwaters and within the flood fringe of the 100-year floodplain. See National General Conditions 13 – Notification and 26(b)(1) – Fills Within 100-Year Floodplains, for specific requirements.*

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

1. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

2. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   b) *Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   d) *In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

41. Reshaping Existing Drainage Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in these waters. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity or expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.). The permittee must notify the District Engineer in accordance with General Condition 13, if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the United States, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches

constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

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

Regional Conditions –

1. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

2. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   a) *Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   b) *Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   c) *Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   d) *In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. For discharges causing the loss of greater than 1/10 acre of non-tidal waters of the United States, the permittee notifies the District Engineer in accordance with General Condition 13;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project; and

f. Compensatory mitigation will normally be required to offset the losses of waters of the United States. The notification must also include a compensatory mitigation proposal which provides for 1:1 replacement to offset authorized losses of waters of the United States.

For the purposes of this NWP, the term "recreational facility" is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include: hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). The construction or expansion of golf courses and the expansion of ski areas may be authorized by this NWP, provided the golf course or ski area does not substantially deviate from natural landscape contours and is designed to minimize adverse effects to waters of the United States and riparian areas through the use of such practices as integrated pest management, adequate

stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables, that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

Notification Requirement – *Yes. Notification required for impacts greater than 1/10th of an acre, golf courses and ski areas, and permanent above-grade fills above the headwaters and within the flood fringe of the 100-year floodplain. See Regional Conditions below and National General Conditions 13 – Notification and 26(b)(1) – Fills Within 100-Year Floodplains, for specific requirements.*

Regional Conditions –

1. *The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

2. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   - *a) Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   - *b) Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   - *c) Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   - *d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

3. *Golf courses and ski areas require notification to the District Engineer in accordance with General Condition 13.*

4. *For the expansion of golf courses and ski areas, the ½ of an acre limit applies to the cumulative totals for the development which occurred after 1 July 1977.*

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

State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. The discharge of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

d. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10 acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, the permittee notifies the District Engineer in accordance with General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with State and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the United States. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., district engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities which are exempt from Section 404 permit requirements);

e. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e., why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

f. The stormwater management facility must comply with General Condition 21 and be designed using best management practices (BMPs) and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

g. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

h. The discharge is part of a single and complete project. (Section 404)

Notification Requirement – *Yes. Notification required for impacts greater than 1/10th of an acre, work proposed in intermittent or ephemeral streams, and permanent above-grade fills above the headwaters and within the flood fringe of the 100-year floodplain. See Regional conditions below and National General Conditions 13 – Notification and 26(b)(1) – Fills Within 100-Year Floodplains, for specific requirements.* ***NOTE:*** *Also review information in Migratory Bird section above (page 21).*

Regional Conditions –

1. *In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:*
   - *a) Wetlands adjacent to lower perennial riverine systems (see Note below); or*
   - *b) Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or*
   - *c) Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or*
   - *d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.*

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

2. *The permittee must notify the District Engineer in accordance with the General Condition 13 for any proposed work located in intermittent or ephemeral streams.*

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

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

CZM Consistency Response – *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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

CONDITIONS FOR NATIONWIDE PERMITS

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

1. **Navigation**. No activity may cause more than a minimal adverse effect on navigation.

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

3. **Soil Erosion and Sediment Controls**. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

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

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

6. **Regional and Case-By-Case Conditions**. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

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

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

9. **Water Quality**.

(a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.

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

11. **Endangered Species**.

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions,

etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.gov/prot__res/esahome.html, respectively.

12. **Historic Properties**. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. **Notification**.

(a) **Timing**: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) **Contents of Notification**: The notification must be in writing and include the following information:

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

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the

appropriate FEMA or FEMA-approved local floodplain construction requirements.

(c) **Form of Notification**: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) **District Engineer's Decision**: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) that the project is authorized under the NWP with specific modifications or conditions.

Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) **Agency Coordination**: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½ acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) **Wetlands Delineations**: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. **Compliance Certification**. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will include:

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

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

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

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

16. **Water Supply Intakes**. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. **Shellfish Beds**. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. **Suitable Material**. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. **Mitigation**. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

    (a) Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.

    (b) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

    (c) The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than 1/3 of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 39, ¼ acre of wetlands cannot be created to change a ½ acre loss of wetlands to a ¼ acre loss; however, ½ acre of created wetlands can be used to reduce the impacts of a 1/3 acre loss of wetlands). If

the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(d) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. **Spawning Areas**. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. **Management of Water Flows**. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. **Adverse Effects From Impoundments**. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. **Waterfowl Breeding Areas**. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. **Removal of Temporary Fills**. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. **Designated Critical Resource Waters**. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

    (a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

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

26. **Fills Within 100-Year Floodplains**. For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

    (a) *Discharges Below Headwaters*. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (i.e., below headwaters) are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the

prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) *Discharges in Headwaters* (i.e., above the point on a stream where the average annual flow is five cubic feet per second).

(1) *Flood Fringe*. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) *Floodway*. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.

Section 10 Only Condition

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

Special Condition

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

Corps Regional General Conditions

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

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

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

2. **Mature Forested Wetlands**. The use of NWPs is specifically prohibited in mature forested systems or just the mature forested component of a wetland system (as defined in the Definition section of this Public Notice), except for projects provided coverage under the following NWPs:

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

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

3. **Revegetation**. Though applying to all NWPs where wetland vegetation is temporarily removed, this condition most often applies to NWPs 12, 13, 14, and 33 which require restoration and/or revegetation of the temporarily impacted areas or work areas. This condition does not apply to any NWP authorizations which require a separate mitigation plan.

   Upon completion of the work authorized by the NWP, the site shall be replanted with the appropriate native upland or wetland vegetation during the first available planting season. Vegetation removal or destruction shall be held to the absolute minimum necessary. The applicant shall take appropriate measures to ensure revegetation success, as defined below.

Success is defined as 80% of the planted area being covered with native species five years after construction is completed. If this standard is not equaled or exceeded, remedial measures (e.g., replanting, soil amendments, additional monitoring, etc.) may be required until success is achieved. Measures such as hydroseeding with annual or non-invasive grasses or groundcovers may be used for temporary erosion control.

4. **Commencement Bay**. An individual permit is required in the Commencement Bay Study Area (CBSA) for activities which would have qualified for the following NWPs:

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

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

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

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

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

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

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

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

The Mill Creek SAMP applies to all areas and tributaries drained by Mill Creek, (Auburn), Mullen Slough, Midway Creek, Auburn Creek, and the area bounded by 4th Street Northeast in Auburn on the south, and the Ordinary High Water mark of the Green River on the east and north.

6. **Prohibited Work Times for Bald Eagle Protection**. For compliance with National General Condition 11, the following construction activity prohibitions apply to protect bald eagles, listed as threatened under the Endangered Species Act:
   (a) No construction activity authorized under a NWP shall occur within 1/4 mile of an occupied bald eagle nest, nocturnal roost site, or wintering concentration area, within the following seasonal work prohibition times.

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

   Work prohibition times:
   (1) Nesting between January 1 and August 15 each year.
   (2) Wintering areas between November 1 and March 31 each year.

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

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

West of Cascades:	Olympia Office - (360) 753-9440
East of Cascades:	Ephrata - (509) 754-8580
	or Spokane - (509) 893-8002

Mainstem of the Columbia River downstream from McNary Dam:
Portland - (503) 231-6179

NOTE: If the bald eagle is delisted (6 July 2000 at the earliest), this regional condition will no longer be valid.

Regional General 401 Conditions

State

1. **Soil Erosion and Sediment Controls**.

(a) *For in-water construction activities:* An individual 401 Certification is not required under this condition for projects or activities authorized under NWPs that will meet the following requirements of the water quality standards (WAC 173-201A-110):

(1) All necessary local and State permits have been obtained;

(2) Best Management Practices have been implemented; and,

(3) Turbidity does not extend beyond the following limits:

(a) Up to 100 feet downstream from the activity in waters flowing up to 10 cfs (cubic feet per second) at the time of construction;

(b) Up to 200 feet downstream from the activity in waters flowing between 10 cfs to 100 cfs at the time of construction;

(c) Up to 300 feet downstream from the activity in waters flowing above 100 cfs at the time of construction; or,

(d) A radius of up to 150 feet for projects or activities within or along lakes, ponds, wetlands, estuaries, marine waters or other non-flowing waters.

For WDOT in-water construction projects or activities, an individual 401 certification is not required for those projects or activities in compliance with the Ecology approved Implementing Agreement regarding compliance with the State of Washington Surface Water Quality Standards.

Applicants whose projects or activities will not or do not meet the above requirements must contact Ecology to request issuance of an individual 401 Certification or a modification to the water quality standards pursuant to WAC 173-201A-110.

(b) *For upland and wetland construction activities:* An individual 401 Certification is not required under this condition for projects or activities authorized under NWPs that meet the applicable turbidity standards in adjacent waterbodies (per WAC 173-201A-030).

For WDOT projects or activities authorized under NWPs, an individual 401 certification is not required under this condition for projects or activities that are in compliance with the most current applicable WDOT Highway Runoff Manual and the Ecology-approved Temporary Erosion and Sediment Control (TESC) document for project site plans.

Applicants whose projects or activities will not or do not meet the above requirements must contact Ecology to request issuance of an individual 401 Certification or a modification to the water quality standards pursuant to WAC 173-201A-110.

2. **Stormwater Provisions**. An individual 401 Certification is not required under this condition for any project or activity authorized under NWPs complying with applicable provisions of:

(a) the stormwater-related conditions of an HPA issued for the project or activity; or,

(b) the most current Ecology-approved version of the Puget Sound Stormwater Manual, the WDOT Highway Runoff Manual, or any other Ecology-approved local stormwater manual. Compliance may be determined by submitting a letter signed by a professional engineer certifying that the stormwater design meets the applicable manual.

3. **Compliance with requirements of the National Pollutant Discharge Elimination System (NPDES)**. An individual 401 Certification is required for and project or activity authorized under NWPs that are not in compliance with all applicable requirements of a general or individual NPDES permit.

4. **Projects or Activities Discharging to Impaired Waters**. An individual 401 Certification is required for projects or activities that will discharge to a waterbody on the state's list of impaired waterbodies (the 303(d) list) if the discharge will result in further exceedances of the 303(d)-listed contaminant or will result in further impairment of the listed reason for impairment of that waterbody, except as described below:

(a) *For projects or activities that will discharge to a 303(d)-listed waterbody that has an approved Total Maximum Daily Load (TMDL)*, an individual 401 Certification is not required under this condition if the applicant provides documentation for Ecology approval showing that the discharge is within the limits established in the TMDL.

(b) *For projects and activities that will discharge to a 303(d)-listed waterbody that does not have an approved Total Maximum Daily Load (TMDL)*, an individual 401 Certification is not required under this condition if the applicant provides documentation for Ecology approval showing that the project or activity will not result in further discharges of the listed contaminant or further impairment of the listed reason for impairment.

Note: For example, if a waterbody is on the 303(d) list for exceeding the water quality criteria for fecal coliform, applicants must provide documentation showing that the proposed project will not result in further fecal coliform exceedances in that waterbody or individual 401 Certification will be required.

When an individual 401 Certification is required for projects or activities that would result in further exceedances or impairment in 303(d)-listed waterbodies, Ecology may issue a 401 Certification if mitigation is provided that would result in a net decrease in listed contaminants or less impairment in the waterbody. This determination would be made during individual 401 Certification review.

5. **Notification**. For projects or activities that will require individual 401 Certification, applicants must provide Ecology with the documentation provided to the Corps (as described in Corps National General Condition 13), including, when applicable:

(a) Delineation of special aquatic sites, including wetlands. [**Note:** delineation should also be provided for areas described in local Critical Areas Ordinances, such as riparian zones, locally-significant wetlands, shorelines of statewide significance, etc.]

(b) Proposed compensatory mitigation or restoration plans.

(c) Proposed water quality and water quantity management measures (e.g., proposed stormwater management plan and designs, proposed BMPs, etc.).

(d) Endangered or threatened listed species that may be affected by the proposed work.

(e) Historic properties listed or eligible for listing in the National Register of Historic Places.

(f) Site plans showing the 100-year floodplain.

(g) Other applicable requirements of Corps National General Condition 13, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request for 401 Certification is not complete until the applicable documents noted above have been provided to Ecology and Ecology has received a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program.

6. **Compliance Certification**. Applicants must provide a copy of the compliance certification to Ecology whenever it is required to be submitted to the Corps (as described in Corps National General Condition 14).

7. **Mitigation**. 401 Certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects or activities authorized under the NWP Program. An individual 401 Certification is required for projects or activities authorized under NWPs that do not receive written approval from Ecology of proposed mitigation plans for the following:

   (a) Any fill-related impacts to Category I wetlands or other high-quality wetlands including bogs, mature forested wetlands, vernal pools, camas prairie wetlands, playas, and prairie potholes.

   (b) Any fill-related impacts to tidal waters or to non-tidal wetlands adjacent to tidal waters.

   (c) Any Corps-required proposed compensatory mitigation plan (as described in Corps National General Condition 13) under NWPs 14, 39, 40, 42, and 43 for any fill-related impacts greater than ¼ acre.

   Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals* (Ecology Publication 94-29) and shall, at a minimum, include the following:

   (a) Evidence of wetland hydrology at the mitigation site.

   (b) Completion and submittal of an “as-built report” upon construction of the mitigation.

   (c) Completion and submittal of monitoring reports at Years 3 and 5 showing the results of monitoring for wetland hydrology, vegetation types, and areal coverage of vegetation.

   (d) For projects proposing mitigation at an Ecology-approved mitigation bank, applicants shall provide a copy of the proposed impact and mitigation bank credit determination.

In addition to the above, WDOT projects and activities authorized under NWPs must comply with applicable provisions of the "Implementing Agreement between the Washington Department of Transportation and the Washington Department of Ecology Concerning Wetlands Protection and Management".

8. **Temporary Fills**. An individual 401 Certification is required for any project or activity authorized under NWPs that does not receive written approval from Ecology allowing temporary fill to remain in wetlands or other waterbodies for more than 90 days. The 90-day period begins when fill is first placed in the wetland or other waterbody.

9. **Designated Critical Resource Waters**. An individual 401 Certification is required for any project or activity authorized under NWPs in waterbodies on the most current list of the following Designated Critical Resource Waters (as described in Corps National General Condition 25 on page 101):

   (a) NOAA-designated marine sanctuaries.

   (b) National Wild and Scenic Rivers.

   (c) State natural heritage sites.

   In addition, an individual 401 Certification is required for any project or activity authorized under NWPs in any aquatic reserve established by WDNR or in any outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment.

10. **Fills Within 100-Year Floodplains**. An individual 401 Certification is required for any proposed project or activity authorized under NWPs that includes permanent, above-grade fill within the 100-year floodplain.

11. **Standard 401 Certification Requirements**. All permittees whose projects or activities receive 401 Certification are subject to the applicable requirements below:

    (a) *Spill prevention and response*: When operating equipment in or near wetlands or other waters of the State, extreme care shall be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the wetlands or other waterbodies. If a spill occurs, the operator shall immediately cease work, take steps to contain the material, and notify Ecology's appropriate regional office.

(b) *Equipment fueling*: Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored to prevent spills into state waters. Fueling is to be done only in areas designed to contain spills and not within 50 feet of wetlands.

(c) *No wash water discharges*: Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains, unless authorized through a separate NPDES permit or state waste discharge permit.

(d) *Disposal of material*: Construction debris and excess excavated or dredged material shall be disposed of at an upland location in a manner to prevent degradation of State waters.

(e) *Clean fill*: Fill material used in projects or activities authorized under NWPs shall not result in exceedances of state water quality standards (WAC 173-201A), including exceedances of the surface water quality numeric criteria, beyond the approved area of fill.

Note: For example, fill material should not contain contaminants or toxic substances that would leach through the material and into wetlands or other surface waters of the state at rates or concentrations that exceed the surface water quality numeric criteria.

(f) *Identifying construction boundaries*: Prior to clearing and grading in wetlands, the adjacent wetlands and waterbodies shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and other waterbodies to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or other waterbodies that are not authorized to be impacted.

(g) *Access*: 401 Certification is based on NWP permittees providing access to project and mitigation sites upon request of Ecology personnel for site inspections, monitoring, or data collection to determine compliance with 401 certification conditions.

(h) *Liability*: Any 401 Certification issued for projects or activities authorized under NWPs does not absolve the applicant from liability for contamination occurring as a result of construction or operations and for subsequent cleanup of surface waters or sediments.

EPA

1. **Soil Erosion and Sediment Controls**. 401 Certification determination is based on the project or activity meeting established turbidity levels. EPA will be using as guidance, the State water quality standards [WAC 173-201A-110(3)]. Projects or activities that are expected to exceed these levels or that do exceed these levels will require individual 401 Certification.

   The water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices have been implemented (e.g., properly placed and maintained filter fences, hay bales and/or other erosion control devices, adequate detention of runoff to prevent turbid water from flowing off-site, providing a vegetated buffer between the activity and open water, etc.), and only up to the following limits:

   (a) Up to 100 feet downstream from the activity in waters flowing up to 10 cfs (cubic feet per second) at the time of construction;

   (b) Up to 200 feet downstream from the activity in waters flowing between 10 cfs to 100 cfs at the time of construction; or

   (c) Up to 300 feet downstream from the activity in waters flowing above 100 cfs at the time of construction.

2. **Compliance with Stormwater Provisions**. 401 Certification of projects and activities authorized under NWP permits will use the applicable provisions of the most current Ecology-approved version of the Puget Sound Stormwater Manual, or the Washington State Department of Transportation Highway Runoff Manual on highway projects as guidance to meet water quality standards.

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

4. **Projects or Activities Discharging to Impaired Waters**. Projects or activities that will discharge to a waterbody on the state's list of impaired waterbodies (the 303(d) list) require individual 401 Certification if the discharge may result in further exceedances of the 303(d)-listed contaminant or will result in further impairment. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.wa.gov/ecology or by contacting Ecology's Federal Permits staff.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved Total Maximum Daily Load (TMDL), the applicant must provide documentation for EPA approval showing that the discharge will not result in further exceedances of the listed contaminant or impairment.

For projects or activities that will discharge to a 303(d)-listed waterbody that does have an approved TMDL, the applicant must provide documentation for EPA approval showing that the discharge is within the limits established in the TMDL.

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

5. **Notification**. For projects that will require individual 401 certification determination, applicants must provide EPA with the same documentation provided to the Corps (per Corps National General Condition 13), including when applicable:

   (a) Delineation of special aquatic sites, including wetlands.

   (b) Proposed compensatory mitigation or restoration plans.

   (c) Proposed water quality and water quantity management measures.

   (d) Endangered or threatened listed species that may be affected by the proposed work.

   (e) Historic properties listed or eligible for listing in the National Register of Historic Places.

   (f) Site plans showing the 100-year floodplain.

   (g) Other applicable requirements of Corps National General Condition 13, Corps Regional Conditions, or notification conditions of the applicable Nationwide Permit.

   A request for 401 Certification is not complete until the applicable documents noted above have been provided to the certifying agency.

6. **Compliance Certification**. Applicants must provide a copy of the compliance certification to EPA whenever it is required to be submitted to the Corps (per Corps National General Condition 14).

7. **Suitable Material**. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

8. **Mitigation**. 401 Certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects and activities authorized under the NWP Program. Compensatory mitigation is required under Corps General Condition 13 for projects and activities authorized under NWPs 14, 39, 40, 42, and 43. 401 Certification is subject to the applicant receiving written approval from EPA of the mitigation plan for projects and activities resulting in any of the following:

   (a) Any impacts to Category I wetlands;

   (b) Any impacts to tidal waters or non-tidal waters adjacent to tidal waters (applies to NWP 14); or,

   (c) Any impacts to wetlands greater than ¼ acre.

   Compensatory mitigation plans submitted for EPA review and approval shall be based on the guidance provided in *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals* (Ecology Publication 94-29) and shall, at a minimum, include the following:

   (a) Evidence of wetland hydrology at the mitigation site;

   (b) Completion and submittal of an “as-built report” upon construction of the mitigation;

   (c) Completion and submittal of reports at Years 3 and 5 showing the results of monitoring for wetland hydrology, vegetation types, and areal coverage of vegetation.

   Projects and activities that do not receive written approval of their mitigation plan, or do not meet the conditions stated above, will require an individual 401 Certification.

   Note: Characterization of wetlands shall be based on field identification and using the “Washington State Wetlands Rating System, Western Washington, Second Edition”, dated August 1993 (Publication 93-74) and “Washington State Wetlands Rating System, Eastern Washington”, dated October 1991 (Publication 91-58) as guidance. Copies are available through Ecology's Publications Office at (360) 407-6000.)

9. **Management of Water Flows**. 401 Certification of projects and activities authorized under NWP permits is based on guidance and/or compliance with the applicable provisions of the most current Ecology-approved version of the Puget Sound Stormwater Manual. Projects and activities not meeting the applicable provisions will require individual 401 Certification.

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

11. **Designated Critical Resource Waters**. An individual 401 Certification is required for any proposed project or activity in waterbodies on the most current list of the Designated Critical Resource Waters per Corps National General Condition 25.

    Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, and outstanding national resource waters or other waters officially designated by a Tribe as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

12. **Fills Within 100-Year Floodplains**. An individual 401 Certification is required for any proposed project that would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

    The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.

DEFINITIONS

National

Best Management Practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

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

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

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

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

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

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

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

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

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

Loss of Waters of the United States: Waters of the United States that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States.

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

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

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

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

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

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

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

Single and Complete Project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.

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

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

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the United States, despite the modifications to increase the rate of water flow.

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

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

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

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

Seattle District

Bogs and Bog-like Wetlands: The wetlands protected by this regional condition have been named many different things over the years including bogs, fens, peat lands, sphagnum bogs, minerotrophic wetland communities, floating mat bogs, etc. The wetlands protected by this regional condition can be found throughout Washington and they all contain organic soils in the form of either peat or muck. However, the vegetation communities can vary greatly depending upon the landscape position, climate, hydro-period, nutrients, chemistry, etc. If organic soils are present, the Corps must be contacted for verification of the jurisdictional determination and therefore, the applicability of this regional condition.
To assist in identifying these areas, the document titled *Preliminary Classification of Native, Low Elevation, Freshwater Wetland Vegetation in Western Washington* dated March 1994 from Washington State Department of Natural Resources can be helpful. The presence of bogs **may** also be determined by using the following identification key. The identification key below does not always capture the bogs identified as needing protection. Additional keys may be developed in the future which may capture all of the desired systems. The regional condition will be revised if that occurs.

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

	Question	Response	Action
1.	Area is dominated by mosses, low grass-like or shrubby vegetation.	Yes No	Go to #4 Go to #2
2.	Area has a mixture of stunted trees (e.g. sitka spruce, western hemlock, western red cedar, lodgepole pine, Englemann's spruce, western white pine, aspen or crab apple)	Yes No	Go to #4 Go to #3
3.	Area is forested with sitka spruce, western red cedar, western hemlock, lodgepole pine, quaking aspen, or western white pine	Yes No	Go to #4 Not a bog.
4.	Area has organic soils, either peats or mucks, deeper than 16 inches. Organic soils are defined as follows based on the information in *Soil Taxonomy* (1992):	Yes No	Go to #6 Go to #5

(1) Soils with an organic carbon content of 18% or more (excluding live roots) if the mineral fraction contains more than 60% clay;

(2) Soils with an organic carbon content to 12% if the mineral fraction contains no clay;

(3) Soils with an organic carbon content between 12-18% based on the percentage of clay present (multiply the actual percentage of clay by 0.1 and add to 12%).

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

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

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

Characteristic Bog Species In Washington State:

Scientific Name:	Common Name:
Andromeda polifolia	Bog rosemary
Betula glandulosa	Bog birch
Carex brunescens	Brownish sedge
Carex buxbaumii	Brown bog sedge
Carex canescens	Hoary sedge
Carex chordorhiza	Creeping sedge
Carex comosa	Breaded sedge
Carex lasiocarpa	Wolly-fruit sedge
Carex leptalea	Bristly-stalk sedge
Carex limosa	Mud sedge
Carex livida	Livid sedge
Carex paupercula	Poor sedge
Carex rostrata	Beaked sedge
Carex sexatilis	Russet sedge
Carex sitchensis	Sitka sedge
Carex interior	Inland sedge
Carex pauciflora	Few-flower sedge
Cladina rangifera	Reindeer lichen
Drosera rotundifolia	Sundew
Eleocharis pauciflora	Few-flower spike rush
Empetrum nigrum	Black crowberry
Eriophorum chamissonis	Cottongrass
Eriophorum polystachion	Coldswamp cottongrass
Fauria crista-galli	Deer-cabbage
Gaultheria shallon	Salal
Gentiana douglasiana	Swamp gentian
Juncus supinformis	Hairy leaf rush
Kalmia occidentalis	Bog laurel
Ledum groenlandicum	Labrador tea
Lysichitum americanum	American skunk cabbage
Malus fusca	Pacific crabapple
Menyanthes trifoliata	Bog bean
Myrica gale	Sweet gale
Pedicularis groenlandica	Elephant's-head lousewart
Picea engelmannii	Engelmann's spruce
Picea sitchensis	Sitka spruce
Pinus contorta	Lodgepole pine
Pinus monticola	Western white pine
Platanthera dilatata	Leafy white orchid
Populus tremula	Quaking aspen
Potentilla palustris	Marsh cinquefoil
Pteridium aquilinum	Bracken fern

Characteristic Bog Species In Washington State (continued):

Scientific Name	Common Name
Rhynchospora alba	White beakrush
Salix commutata	Under-green willow
Salix eastwoodiae	Mountain willow
Salix farriae	Farr willow
Salix myrtillifolia	Blue-berry willow
Salix planifolia	Diamond leaf willow
Sanquisorba officinalis	Great burnet
Sphagnum spp.	Sphagnum mosses
Spiraea douglasii	Douglas' spiraea
Spiranthes romanzofianna	Hooded ladies'-tresses
Thuja plicata	Western red cedar
Tofieldia glutinosa	Sticky false-asphodel
Tsuga heterophylla	Western hemlock
Vaccinium occidentale	Western huckleberry
Vaccinium oxycoccus	Bog cranberry

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

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

a. Parallel ridge system: Its characteristic dune form is the dune ridge (stabilizing fore dune). These ridges are arranged in a parallel series starting from the waterward fore dune and extending inland up to 2 km. For clarification, the fore dune is a ridge of sand parallel to the beach just above the limit of ordinary wave action. Swales occur between closely spaced ridges. Some of these swales are filled with depressional areas supporting wetland habitat and open water. (From Weidemann (1984)).

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

Kettle: A kettle is a particular type of usually deep bowl shaped depression formed by glacial action during periods of glacial retreat. One explanation for their formation is that in some circumstances, a large block of ice broke off from the retreating glacier. Although clay, silt, sand, gravel, or coarser material was generally washing out of the

glacier with its melt water, there was not enough to fill the location of the large ice blocks that eventually melted. What remained was a relatively deep "hole" or depression, often shaped like a "kettle". Kettles are almost always permanently ponded. Their hydrology may be epiaquic (wet from the top down) or endoaquic (wet from the bottom up) but, like "prairie potholes", they tend to be endoaquic and intercept the regional water table. Because of their depth, they tend to be vegetated only around their shallower edges. They also tend to be in headwater positions with little or no input of surface runoff. Their soils are usually less fertile than those in prairie potholes. As a result, more acidic soil conditions are not unusual and kettles tend to be in the types of locations in which raised bogs form. Bogs are defined above and are also offered special protection.

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

a. Western Washington:

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

b. Eastern Washington:

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

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

List of invasive/exotic plant species for Mature Forested Wetlands in Western and Eastern Washington

Scientific Name	*Common Name*
Agropyron repens	Quackgrass
Alopecurus pratensis, A. aequalis	Meadow Foxtail
Arcticum minus	Burdock
Bromus tectorum, B. rigidus, B. Brizaeformis, B. secalinus, B. japonicus, B. mollis, B. commutatus, B. inermis, B. erectus	Bromes
Cenchrus longispinus	Sandbur
Centaurea solstitialis, C. repens, C. cyanus, C. maculosa, C. diffusa	Knapweeds
Circium vulgare, C. arvense	Thistles
Cynosursus cristasus, C. echinatus	Dogtail
Cytisus scoparius	Scot's Broom
Dactylis glomerata	Orchardgrass
Dipsacus sylvestris	Teasel
Digitaria sanguinalis	Crabgrass
Echinochloa crusgalli	Barnyard Grass
Elaeagnus augustifolia	Russian Olive
Euphorbia peplus, E. esula	Spurge
Festuca arundinacea, F. pratensis	Fescue
Hedera helix	English Ivy
Holcus lanatus, H. mollis	Velvet Grass
Hordeum jubatum	Foxtail Barley
Hypericum perforatum	St. John's Wort
Iris pseudacorus†	Yellow Iris
*Juncus effusus**	Soft Rush
Lolium perenne, L. multiflorum, L. temulentum	Ryegrass
Lotus corniculatus	Birdsfoot Trefoil
Lythrum salicaria	Purple Loosestrife
Matricaria matricarioides	Pineapple Weed
Medicago sativa	Alfalfa
Melilotus alba, M. officinalis	Sweet Clover
Phalris arundinacae	Reed Canarygrass
Phleum pratense	Timothy
Phragmites australis	Reed
Poa compressa, P. palustris, P. pratensis	Bluegrass
Polygonium aviculare, P. convolutus, P. cuspidatum, P. lapathifolium, P. persicaria	Knotweeds
Ranunculus repens	Creeping Buttercup
Rubus discolor, R. laciniatus, R. vestitus, R. macrophyllus	Non-native Blackberries
Salsola kali	Russian Thistle
Setaria viridis	Green Bristlegrass
Sisymbrium altissimum, S. loeselii, S. officinale	Tumblemustards
Tanacetum vulgare	Tansy
Trifolium dubium, T. pratense, T. repens, T. arvense, T. subterraneum, T. hybridium	Clovers
Cultivated species:	Wheat, Corn, Barley, rye, etc.

† In Western Washington only

* In Eastern Washington only

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

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

a. Lower Perennial Riverine: The gradient is low and water velocity is slow. There is not tidal influence, and some water flows throughout the year. The substrate consists mainly of sand and mud. Oxygen deficits may sometimes occur, the fauna is composed mostly of species that reach their maximum abundance in still water, and true planktonic organisms are common. The gradient is lower than that of the Upper Perennial subsystem and the floodplain is well developed.

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

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

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

Scientific Name	Common Name
Abronia latifolia	Yellow sand verbena
Aster subspicatus	Douglas' aster
Atriplex patula	Orache
Cakile edentula	American searocket
Cotula coronopifolia	Brass buttons, Mud-disk
Distichlis spicata	Seashore saltgrass
Eleocharis parvula	Small spike-rush
Glaux maritima	Sea milk-wort
Grindelia integrifolia	Entire-leaved gumweed
Honkenya peploides	Seabeach sandwort
Jaumea carnosa	Fleshy jaumea
Juncus geradii	Mud rush
Orthocarpus castillejoides	Paintbrush owl-clover
Plantago maritima	Sea plantain
Puccinellia pumila	Dwarf alkali-grass
Salicornia virginica	American glasswort
Scirpus maritimus	Seacoast bulrush
Spartina anglica	Spartina
Spartina alternifolia	Spartina
Spergularia canadensis	Canadian sand-spurry
S. marina	Salt marsh sand-spurry
Stellaria humifusa	Salt marsh starwort
Triglochin concinnum	Slender arrow-grass
T. maritimum	Sea arrow-grass

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

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

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

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

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

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

Characteristic Native Species present in Camas Prairie Wetlands:

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

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

b. Playa: A playa is a land form usually found in more arid regions of the west and is usually a large, shallow depression with no outlet that is intermittently ponded during those unpredictable periods of sufficient duration that enable their surface to be wet and water to accumulate. They pond water because either their surface, or a near subsurface horizon, is impervious usually due to high clay content (There may be sand on the “surface”, but an impervious layer will not be very far below). Playas are typically less vegetated, more alkaline or saline, with typically larger pools sizes and watersheds than “vernal pools”. Conditions tend to be too extreme (too dry, too wet, too high salt concentration, etc.) for dense or vigorous plant growth in the central basin of the playa.

When ponded, playas can form large, shallow “lakes” that can be very valuable to migrating waterbirds in otherwise very arid regions. Playas fill from epiaquic (wet from the top down) wetting.

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

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

Columbia Basin. A vernal pool in the Columbia Basin is usually a small depression that ponds water in the colder, lower evaporation periods of winter and loses it standing water either prior to or early in the growing season. These vernal pool depressions within the Columbia Basin are inundated for only a very short time, often less than 90 days of which only 3-4 weeks may be within the growing season. These vernals are often found in a mosaic and are flooded in mid-winter and then during late winter/early spring when they briefly drain into one another or other landscape channels. The regions winters are cold and dry with most precipitation coming in the form of snow. During winter time, the pools soils and any standing water will be frozen but usually offer the first open water during late winter. Columbia Basin vernal pools typically have very shallow soils (less than 20 cm) underlain by basalt or impervious subsoil (such as high clay content horizon or ash horizon) which can effectively eliminate downward

percolation. Columbia Basin vernals can also have soils deeper than 20 cm and with hydrology supported by interflow early in the growing season. Evaporation and transpiration are the primary source of water loss through some loss to a downgradient interflow zone and underlying basalt fracture zones. Their plant community, if present, is usually dominated by short-lived native wetland annuals; later in the growing season non-wetland annual and biennial species dominate the pool environment. Columbia basin vernal pools may be inhabited with plant and animal species that are especially adapted to this ephemeral environment. When ponded, Columbia Basin vernal pools provide important foraging habitat to various species of migratory birds during the winter. Additional information regarding venal pools in eastern Washington can be found in *Vernal Pools of the Columbia Plateau* prepared by Curtis R. Björk for the Nature Conservancy dated November 1997.

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

1. Upland or facultative upland annual and biennial species **are dominant** within the wetland boundary late in the growing season;

2. Average water level is very shallow early in the growing season (<20 cm within first two months of the growing season);

3. Typically very shallow soils, or absence of soils, immediately on top of basalt substrate. However, some vernals have soils deeper than 20 cm and are supported by shallow groundwater flow (interflow);

4. Dominant wetland plants (facultative, facultative-wet, obligate) are annuals and are low growing. If perennial wetland plants are present they are low growing (<30 cm high) and not dominate.

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

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

Other vernal pools. A vernal pool is usually a closed depression that ponds water in the cool, low evaporation periods of winter and spring in regions with cool moist winters, and dries out during the hot dry summers. Vernal pools are underlain with an impervious subsoil or near-surface parent material (such as high clay content horizon or a durapan, and/or basalt) which effectively eliminates downward percolation. Evaporation and transpiration are the only significant source of water loss. Their plant community is usually dominated by short-lived native annuals. Vernal pools are typically inhabited with plant and animal species which are especially adapted to this ephemeral environment. Some of the plant species may be considered rare. When ponded, vernal pools can provide foraging habitat to various species of migratory birds. "Classic" vernal pools are epiaquic (wet from the top down) and not endoaquic (wet from the bottom up).

Ecology

100-Year Floodplain: The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.

Best Management Practices: Physical, structural, and/or managerial practices approved by Ecology that, when used singularly or in combination, prevent or reduce pollutant discharges (from the State Water Quality Standards, WAC 173-201A). These include source control BMPs used to prevent stormwater from coming into contact with pollutants. Source control BMPs are generally less expensive than BMPs used to treat polluted stormwater, and include such actions as staging construction in small areas, avoiding work in wet conditions, covering surfaces with erosion control mats, spill control catchbasins, oil-water separators, etc.

Category I wetlands: The highest quality wetlands in the State's wetland tiered rating system. The system is fully described in the "Washington State Wetlands Rating System, Western Washington, Second Edition", dated August 1993 (Publication 93-74) and "Washington State Wetlands Rating System, Eastern Washington", dated October 1991 (Publication #91-58). Copies are available through Ecology's Publications Office at (360) 407-6000.)

Total Maximum Daily Load (TMDL): The Total Maximum Daily Load or Water Cleanup Plan process is established by section 303(d) of the Clean Water Act (CWA). Federal law requires states to identify sources of pollution in waters that fail to meet state water quality standards, and to develop Water Cleanup Plans to address those pollutants. The Water Cleanup Plan (TMDL) establishes limits on pollutants that can be discharged to the waterbody and still allow state standards to be met [see also Ecology's web page at: http://www.wa.gov/ecology.]