



**US Army Corps
of Engineers**
Seattle District

Effective Date: March 1, 2018

User's Guide for Nationwide Permits in Washington State

March 2017 – March 2022

Includes:

- **Nationwide Permit General Conditions**
- **Seattle District Regional General Conditions**
- **Seattle District Regional Conditions for Specific NWPs**
- **Section 401 Water Quality Certification General Conditions**
- **Section 401 Water Quality Certifications for Specific NWPs**
- **Coastal Zone Management Act Federal Consistency Determinations**

Note: Bookmarks are functional for this document. On the left hand margin of the Acrobat window, the "blue ribbon" icon will let you navigate to a specific section of this document. The table of contents will also take you to each section.

Who Should Use This Guide?

The User's Guide is designed for broad use by anyone that utilizes, or seeks information about, the Nationwide Permit (NWP) program in Washington State. Members of the regulated public, environmental consultants, Tribes, and local, State, and Federal agencies will find this guide useful to understanding the requirements of using NWPs within the Seattle District regulatory boundaries. Anyone constructing, or planning projects within waters of the U.S. can use this guide as a first step toward seeking approval from the Department of the Army (DA).

What this guide does

This guide combines several published documents into a single document for convenience. The complete NWP User's Guide includes the following:

- Nationwide Permits (2017)
- Nationwide Permit General Conditions
- Seattle District Regional General Conditions
- Seattle District Regional Conditions for Specific NWPs
- Section 401 Water Quality Certification General Conditions
- Section 401 Water Quality Certifications for Specific NWPs
- Coastal Zone Management Act Federal Consistency Determinations

This guide also contains "User Notes," to provide additional information that might aid in the permitting process.

What this guide does not do

This guide does not supersede any Federal or State policy or public notice.

This guide is not a permit.

Corps of Engineers Regulatory project managers are available for questions about the requirements for a DA permit. To speak with a Regulatory project manager at the Seattle District, please call the regulatory hotline at (206) 764-3495.

For more information on the Seattle District's Regulatory program, including the published Nationwide Permits, visit our web page, at:

<http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/>

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Section 1: Understanding the Nationwide Permits

Introduction

Pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (Corps), is responsible for administering a Regulatory Program that evaluates and permits activities in waters of the United States, including wetlands, streams, lakes and marine waters. Under Section 404, the Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Under Section 10, the Corps regulates structures and/or work in or affecting the course, condition, or capacity of navigable waters of the United States. A list of navigable waters in Washington State is available in the Permit Guidebook on our website at: www.nws.usace.army.mil (select the Regulatory Branch/Permit Information button, then Permit Guidebook, Streams, Rivers, and Tidal Waters). Detailed information about the permitting program is located throughout the Permit Guidebook.

The Regulatory Program is committed to protecting the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions. A proposed project's impacts to aquatic waterbodies will determine what permit type is required. An individual, or standard permit, is required when projects have more than minimal individual or cumulative impacts. These permits are evaluated using environmental criteria, and involve a comprehensive public interest review. General permits, which include the Nationwide Permits, allow for a streamlined review for structures, work, and/or discharges that result in no more than minimal adverse environmental effects. The Nationwide Permits are the subject of this User's Guide.

Nationwide Permits (NWP)

Activities requiring Corps authorization that are similar in nature and have minimal individual and cumulative adverse environmental effects may qualify for authorization by a Nationwide Permit (NWP). On January 6, 2017, the Corps issued 52 NWPs (the "2017 NWPs"). On March 19, 2017, the Seattle District issued regional conditions to ensure the NWPs result in no more than minimal adverse environmental effects.

The information in this User's Guide summarizes how the NWP program is implemented in Washington State, unless the 2017 NWPs are revised, rescinded, or revoked. The 2017 NWPs will expire on March 18, 2022.

For a project to be authorized by NWP, project proponents must meet the conditions described in the NWP itself, as well as all of the NWP general conditions issued by Corps Headquarters, and all of the regional general conditions for Seattle District. The regional conditions for Seattle District are described in Section 3 of this guide.

The general conditions issued by Headquarters are described in Section 4. The terms and conditions of each NWP itself are described in Section 5.

Pre-Construction Notification (PCN)

Most NWP actions require the submission a Pre-Construction Notification ([PCN](#)) to the Corps, prior to commencing any work. The requirements of a PCN can be found in general condition 32 (see Section 4 [NWP general condition 32 – Pre-Construction Notification](#)). In the Seattle District, a completed Joint Aquatic Resources Permit Application (JARPA) or federal form ENG 4345 is acceptable to meet the requirements of a PCN. Submission of a JARPA or ENG 4345 is not mandatory, but all PCNs must meet the requirements of [NWP general condition 32 – Pre-Construction Notification](#).

Per [NWP general condition 18 – Endangered Species](#), and [NWP general condition 20 – Historic Properties](#), submittal of a PCN and receipt of written approval from the Corps before work commences is required for all NWP activities which involve the potential to affect a threatened or endangered species, listed critical habitat, and/or historic properties. Because of the presence of threatened or endangered species and/or their critical habitat in many waters of the U.S. in Washington State, if you will be performing an activity in fish bearing waters you should contact the Seattle District to determine if a PCN will be required before you commence work. Additionally, because Native American Tribes currently and historically utilizing fish bearing waters in Washington State, there is a potential for the presence of historic properties in and near all waters of the U.S.

User Note: The most recent JARPA form can be accessed on the Washington State Governor's Office of Regulatory Innovation and Assistance (ORIA) web page, at: <http://www.epermitting.wa.gov>. The most recent ENG 4345 can be found on the Corps of Engineers' homepage, at: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>

District Engineer's (DE) Decision

In reviewing the PCN for the proposed activity, the district engineer will determine whether the proposed activity will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP. Further information on the DE Decision is located in [Section 6](#).

Clean Water Act Section 401 Water Quality Certification (WQC)

Under Section 401 of the Clean Water Act (CWA), an activity involving a discharge into waters of the U.S. authorized by a Federal permit must receive a CWA Section 401

Water Quality Certification (WQC) from the appropriate certifying agency or Tribe. The issuance of a WQC means the agency or Tribe has reasonable assurance that water quality standards will be met for a given proposal.

Per 33 USC 1341, a WQC is required for construction and operation of facilities which may result in a “discharge” into navigable waters. Under the CWA, a “discharge” may include the re-suspension of sediments, the discharge of oils and grease, or the discharge of other potential pollutants. Activities which only require a permit under Section 10 of the Rivers and Harbors Act (i.e. activities which do not result in a discharge of dredged or fill material under Section 404 of the CWA) may still require a WQC, as Ecology and the EPA have determined that there may be other “discharges” associated with those activities. For any authorization, the Corps NWP verification letter will describe if a WQC will be required, and agency contact information will be provided to the permittee. It is the permittee’s responsibility to ensure they have WQC prior to starting work.

In Washington State, two agencies and nine tribes currently have WQC authority. The [EPA](#) has WQC authority in Indian country for Tribes who do not have treatment as a state and on lands with exclusive Federal jurisdiction. [Ecology](#) is authorized to make WQC decisions for activities on all other federal, public, and private lands in Washington State. Indian Country includes reservation lands, trust lands, and Dependent Indian Communities.

To date, the EPA has approved treatment as a state to nine tribes (Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S’Klallam Tribe, Puyallup Tribe of Indians, Spokane Tribe of Indians, Swinomish Tribe and Tulalip Tribes) and these tribes have WQC authority over activities on their respective tribal lands.

Where the State, Tribe, or EPA has determined specific NWP activities require individual “Section 401 review,” those activities are denied WQC. Where NWPs are “certified subject to conditions,” the WQC is denied if the specified thresholds are exceeded.

A WQC decision of "certified subject to conditions" or "denied without prejudice" does not mean a proposed project cannot be authorized by NWP. Rather, it means the proposed activity requires individual review and approval by the certifying agency or Tribe on a case-by-case basis. Individual WQC may result in additional conditions and/or mitigation requirements.

Coastal Zone Management Act (CZMA) Consistency

The Coastal Zone Management Act (CZMA) requires coastal states to review all Federal permits for consistency with the State’s coastal management program. Ecology

is the agency responsible for CZM Federal Consistency review in Washington's 15 coastal counties:

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

Ecology reviews proposed projects to determine if the project activities are consistent with Washington's [Coastal Zone Management](#) Program's Enforceable Policies. In the case that CZMA Consistency cannot be determined, project proponents will be responsible to obtain individual CZMA Consistency from Ecology. It is the permittee's responsibility to ensure they have CZMA Consistency prior to starting work. Individual CZMA Consistency Determinations may result in additional conditions and/or mitigation requirements.

Section 2: Related Laws and Information

Tribal Rights

In the geographic limits of the Seattle District there are 29 Federally-recognized Tribes, most with treaty-reserved rights, including, but not limited to reserved water rights as well as treaty fishing, hunting, and gathering rights. In addition to their reservation and trust lands, these rights often extend to adjacent fresh and marine waters, and may potentially include upland areas. The Seattle District must determine if a proposed project may affect the treaty-reserved rights of a Tribe as required by NWP general condition 17 - Tribal Rights. If a project may affect treaty-reserved rights, all concerns must be addressed before a NWP can be verified. This may add additional time to the verification process.

Endangered Species Act (ESA)

The Endangered Species Act (ESA) provides a program for the conservation of threatened and endangered plants and animals and the habitats on which they depend. The [U.S. Fish and Wildlife Service](#) and the [National Marine Fisheries Service](#) (together, the Services) lead ESA implementation. The ESA protects vulnerable species through provisions to identify and list them as threatened and endangered. The ESA prohibits “take” of listed species. In addition, the ESA enables conservation of listed species by enabling designation of critical habitat and prohibiting the destruction or adverse modification of critical habitat.

The prohibition against taking listed species includes prohibiting “harm” of listed species. The Services have separate regulations defining “harm.” Those regulations can be summarized as habitat modification to an extent that impairs the normal behaviors of listed species.

The ESA extends the prohibition against take to actions permitted, funded, or carried out by Federal Agencies (action agencies). For actions that may affect listed species and/or their critical habitat, the law requires action agencies to consult with one or both of the Services. The consultation process enables the Services and action agencies to ensure that 1) take from those actions will not jeopardize listed species, 2) that adverse effects on habitat do not amount to destruction or adverse modification of critical habitat, and 3) that the adverse effects of actions on listed species and critical habitat are appropriately minimized.

The Corps is an action agency when it issues a Department of the Army permit (including NWP verification), when an activity may affect an ESA-listed species or designated critical habitat. To facilitate the consultation process and comply with this law, the Corps requests project proponents prepare a biological assessment (BA) of the work they propose. A BA describes the impacts a proposed project will have on listed

and/or proposed-for-listing ESA species and designated and/or proposed critical habitat. More detailed information on the ESA, including how to prepare and submit a BA and details on programmatic consultations, can be found on the Seattle District's web page, at: www.nws.usace.army.mil (select Regulatory/Permits, then Permit Guidebook, Endangered Species). Applicants may also contact the Seattle District at (206) 764-3495 for assistance.

The ESA procedures discussed above are required for all work affecting or potentially affecting ESA listed species or designated critical habitat. These procedures apply regardless of the nature, scope, or environmental impact of the work. Please refer to [NWP general condition 18 – Endangered Species](#) and [NWP general condition 32 – Pre-Construction Notification](#), for additional requirements and procedures. Project proponents should be aware that Section 7 coordination and/or consultation may add time to the permit application review process. Special conditions may be added to individual NWP verifications to ensure compliance with the ESA.

Magnuson-Stevens Fishery Conservation and Management Act (MSA)

The MSA governs marine fisheries management in the U.S. The MSA mandates the identification of Essential Fish Habitat (EFH) for federally managed species as well as the development of measures to conserve and enhance the habitat necessary for fish to carry out their life cycles. It requires Federal agencies to consult with NMFS before authorizing, funding, or conducting an activity that may adversely affect EFH. When consulted, NMFS provides guidance, in the form of conservation recommendations, to help federal agencies minimize the impact of their actions on EFH. Compliance with the MSA is a requirement of all NWP verifications in Washington State pursuant to Seattle District [Regional General Condition 9](#).

National Historic Preservation Act (NHPA)

Section 106 of the NHPA requires federal agencies to determine how a proposed project may affect recorded or undiscovered cultural resources and/or historic properties within the permit area. Section 106 directs federal agencies with jurisdiction over a proposed federal undertaking (i.e., federal permit) to take into account the effect of the undertaking on any historic property listed, or eligible for listing, in the National Register of Historic Places. Compliance with Section 106 is a requirement of all NWP verifications pursuant to [NWP general condition 20 – Historic Properties](#).

A cultural resource/historic property survey, conducted by a professional archaeologist, may be necessary before a NWP verification can be completed. Applicants should be aware that Section 106 coordination and/or consultation may add substantial time to the permit application review process.

Hydraulic Project Approval (HPA)

Pursuant to Washington's Hydraulic Code, the Washington State Department of Fish and Wildlife (WDFW) requires an HPA for any work that would affect the bed or flow of state waters including all work in salt water or fresh water, which often includes wetlands. For more information, please visit WDFW's web page, at: <http://wdfw.wa.gov/hab/hpapage.htm> or contact the WDFW at Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA, 98501-1091; or by phone at: (360) 902-2200.

Activities on State-Owned Aquatic Lands

All projects proposed to occur on state-owned aquatic lands require separate authorization from the Washington Department of Natural Resources (WDNR). The WDNR is the manager of 2.6 million acres of state-owned aquatic lands. WDNR's administrative rules (WAC 332-30-107 (6)) require that substantial and/or irreversible impacts to state-owned aquatic lands be fully mitigated. For further information, contact the WDNR's Aquatic Resources Division at (360) 902-1100 or visit their Leasing & Land Transactions webpage at: <http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions>

Marine Sanctuaries, Estuarine Reserves, and Freshwater Reserves

The WDNR presently manages eight aquatic reserves in Washington State located at Cherry Point in Whatcom County, Cypress Island in Skagit County, Fildago Bay in Skagit County, Maury Island in King County, Protection Island in Jefferson County, Smith and Minor Islands in Island County, Nisqually Reach in Thurston and Pierce Counties, and Lake Kapowsin in Pierce County. Applicants with projects occurring on state-owned aquatic lands within designated aquatic reserve boundaries must be in compliance with the site specific management plan. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or view their Aquatic Reserves Program website at: <http://www.dnr.wa.gov/managed-lands/aquatic-reserves>

Mitigation

Adverse effects to the aquatic environment can often be offset by mitigation, which may include restoring, enhancing, creating and preserving aquatic functions and values. Mitigation is a sequential process that requires applicants to first avoid and minimize impacts to waters of the U.S, prior to providing compensatory mitigation. Compensatory mitigation is used to offset losses that cannot be otherwise avoided or minimized. A compensatory mitigation plan is used to compensate for the unavoidable loss of waters of the U.S. (wetlands, streams, rivers, etc.) and to ensure that those losses minimize adverse effects to the aquatic environment.

Mitigation plans must be prepared in accordance with the Federal Compensatory Mitigation for Losses of Aquatic Resources Final Rule (33 CFR Parts 325 and 332, April 10, 2008), located on the Corps' webpage at:

http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig_info.aspx

In the Seattle District, you can prepare your wetland compensatory mitigation plan in accordance with the Washington State Department of Ecology Publication #06-06-011a, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance and Part 2: Developing Mitigation Plans* (Version 1), dated March 2006. This publication is available on Ecology's webpage.

Not all projects will require compensatory mitigation. Please call the regulatory hotline at (206) 764-3495 to speak to a project manager with questions related to compensatory mitigation requirements for specific projects.

Wetland and Eelgrass Delineations

Wetland delineations are an important component of any jurisdictional determination involving wetlands. Wetland delineations must be conducted in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and all applicable regional supplements and guidance, including the Arid West Regional Supplement Version 2.0 dated September 2008 and the Western Mountains, Valleys, and Coast Regional Supplement Version 2.0 dated May 2010, or the most recent approved version. Please refer to *Components of a Complete Wetland Delineation Report* for more details. This document can be found on our webpage at: <http://www.nws.usace.army.mil> (select the Regulatory Permit Information button, then select Forms and Templates under the Quick Links menu)

A wetland should also be assessed using the *Washington State Wetland Rating System*, which assigns a wetland into one of four categories based on the type and extent of functions it performs, sensitivity to disturbance, rarity, and practicability of being replaced. A wetland rating can provide important information to regulatory agencies reviewing permit applications. Documents and forms for both the eastern and western Washington rating systems are available on Ecology's webpage.

Vegetated shallows supporting eelgrass are considered special aquatic sites under the Clean Water Act (40 C.F.R. § 230.43). The Seattle District has interim procedures to assist permittees when a delineation of eelgrass is needed to evaluate work in marine waters. The procedure titled *Components of a Complete Eelgrass Delineation Report* can be found on the Seattle District's web page, at: www.nws.usace.army.mil (select the Regulatory Permit Information button, then select Forms and Templates under the Quick Links menu).

Dredged Material Management Program

The Corps' Dredged Material Management Office (DMMO) is consulted for all proposed activities involving excavation or dredging of a water of the U.S. Based on this consultation, you may have to provide additional information regarding the chemical and biological content of the proposed excavated or dredged material as part of your permit application.

Toxic Clean Up Sites

Any activity or work authorized under these NWP's will not preclude the permittee from cleanup-related liabilities where this work is undertaken at a cleanup site designated under the Model Toxics Control Act (MTCA, Chapter 173-340 WAC) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known also as Superfund).

User Note: For cleanup site locations, visit Ecology's What's In My Neighborhood search tool, or contact Ecology's Aquatic Lands Cleanup Unit at (360) 407-7536. Information on MTCA can be found on Ecology's web page.

Section 3: Regional General Conditions (RGCs) for the Seattle District.

The following conditions apply to all Nationwide Permits (NWP)s for the Seattle District in Washington State, unless specified.

1. Project Drawings

Drawings must be submitted with pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the U.S. will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

2. Aquatic Resources Requiring Special Protection

Activities resulting in a loss of waters of the United States in mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, wetlands in coastal lagoons, and wetlands in dunal systems along the Washington coast cannot be authorized by a NWP, except by the following NWPs:

- NWP 3 – Maintenance
- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste

In order to use one of the above-referenced NWPs in any of the aquatic resources requiring special protection, prospective permittees must submit a PCN to the Corps of Engineers (see NWP general condition 32) and obtain written authorization before commencing work.

3. New Bank Stabilization in Tidal Waters of Puget Sound

Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within the areas identified on [Figures 1a through 1e](#)) cannot be authorized by NWP.

User Note: For the purposes of this condition, replacement of existing, currently serviceable, previously authorized bank stabilization within the original footprint is not considered “new” bank stabilization.

4. Commencement Bay

The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see [Figure 2](#)):

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

5. Bank Stabilization

All projects including new or maintenance bank stabilization activities require PCN to the Corps of Engineers (see NWP general condition 32).

For new bank stabilization projects only, the following must be submitted to the Corps of Engineers:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

6. Crossings of Waters of the United States

Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the Corps of Engineers (see NWP general condition 32).

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design*

Guidelines (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, project proponents must provide a monitoring plan with the PCN that specifies how the proposed culvert will be assessed over a five-year period from the time of construction completion to ensure its effectiveness in providing passage at all life stages at all flows where the salmonid species would naturally seek passage.

Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

7. Stream Loss

A PCN is required for all activities that result in the loss of any linear feet of stream beds. No activity shall result in the loss of any linear feet of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. A stream may be rerouted if it is designed in a manner that maintains or restores hydrologic, ecologic, and geomorphic stream processes, provided there is not a reduction in the linear feet of stream bed. Streams include brooks, creeks, rivers, and historical waters of the U.S. that have been channelized into ditches. This condition does not apply to ditches constructed in uplands.

Stream loss restrictions may be waived by the district engineer on a case-by-case basis provided the activities result in net increases of aquatic resource functions and services.

8. Mitigation

Pre-construction notification is required for any project that will result in permanent wetland losses that exceed 1,000 square feet. In addition to the requirements of General Condition 23 (Mitigation), compensatory mitigation at a minimum one-to-one ratio will be required for all permanent wetland losses that exceed 1,000 square feet. When a PCN is required for wetland losses less than 1,000 square feet, the Corps of Engineers may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

Compensatory mitigation for impacts to marine waters, lakes, and streams will be determined on a case-by-case basis. If temporary impacts to waters of the U.S. exceed six months, the Corps of Engineers may require compensatory mitigation for temporal effects.

9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat

Essential Fish Habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If EFH may be adversely affected by a proposed activity, the prospective permittee must provide a written EFH assessment with an analysis of the effects of the proposed action on EFH. The assessment must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) that may be affected. If the Corps of Engineers determines the project will adversely affect EFH, consultation with NOAA Fisheries will be required.

Federal agencies should follow their own procedures for complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. If PCN is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

10. Forage Fish

For projects in forage fish spawning habitat, in-water work must occur within designated forage fish work windows, or when forage fish are not spawning. If working outside of a designated work window, or if forage fish work windows are closed year round, work may occur if the work window restriction is released for a period of time after a forage fish spawning survey has been conducted by a biologist approved by the Washington State Department of Fish and Wildlife (WDFW). Forage fish species with designated in-water work windows include Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallas*), and surf smelt (*Hypomesus pretiosus*).

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

11. Notification of Permit Requirements

The permittee must provide a copy of the nationwide permit authorization letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work prior to the commencement of any work in waters of the U.S. The permittee must ensure all appropriate contractors and any other parties performing the authorized work at the project site have read and understand relevant NWP conditions as well as plans, approvals, and documents referenced in the NWP letter. A copy of these documents must be maintained onsite throughout the duration of construction.

12. Construction Boundaries

Permittees must clearly mark all construction area boundaries before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

13. Temporary Impacts and Site Restoration

a. Temporary impacts to waters of the U.S. must not exceed six months unless the prospective permittee requests and receives a waiver by the district engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.

b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the district engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).

c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas must include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.

d. The permittee must revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation must begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps of Engineers. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.

e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation (SAV) that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved by the end of the monitoring period, contingencies must be implemented, and additional monitoring will be required.

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

Section 4: Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements.

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas.

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

4. Migratory Bird Breeding Areas.

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

5. Shellfish Beds.

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material.

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

7. Water Supply Intakes.

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

8. Adverse Effects From Impoundments.

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

9. Management of Water Flows.

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and

permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.

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

12. Soil Erosion and Sediment Controls.

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

13. Removal of Temporary Fills.

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

14. Proper Maintenance.

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

(a) No NWP 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.

(b) If a proposed NWP activity will 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, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>

17. Tribal Rights.

No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

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

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The

respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has

intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

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

(a) 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, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands

compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

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

26. Coastal Zone Management.

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

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

28. 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.

29. Transfer of Nationwide Permit Verifications.

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

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

(Transferee)

(Date)

30. Compliance Certification.

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act

(see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and 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, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to

delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will 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, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable

information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of

any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

Section 5: Nationwide Permits - Including Seattle District Regional Conditions (RCs), 401 WQC Conditions, and CZM Determination

1. Aids to Navigation.

The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 1 Specific Regional Conditions – None

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

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)). (Authority: Section 10)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 2 Specific Regional Conditions – None

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

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

3. Maintenance.

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the

repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

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

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

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act (Sections 10 and 404))

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) impacts to aquatic resources requiring special protection ([Regional General Condition 2](#))
- b) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- c) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- d) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- e) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- f) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- g) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- h) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- i) impacts designated critical resource waters ([NWP General Condition 22](#))
- j) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 3 Specific Regional Conditions – None.

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

1. The project or activities are below the Ordinary High Water Mark (OHWM) with new work being proposed outside the original footprint.
2. The proposed project or activity increases the original footprint of the structure by more than 1/10th acre in wetlands.
3. The project or activity includes adding a new structure, such as a weir, flap gate/tide gate, or culvert to the site.

CZM Consistency Response – Concur with Conditions

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- Activities occur in fish bearing waters of the U.S. that extend beyond their prior footprint, or
- Activities require excavation or dredging in open water.

User Note: To facilitate the review of the applicability of NWP 3 to your project, information on previous Corps authorizations, current state of the existing structure or fill, and current and proposed use of structure or fill can be submitted with a PCN.

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, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- b) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- c) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- d) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- e) impacts designated critical resource waters ([NWP General Condition 22](#))
- f) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 4 Regional Condition 1 listed below for notification requirements.

NWP 4 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) if the activity involves grading, berm construction, placement of substrate, and other activities involving a discharge of dredged or fill material.

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

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

5. Scientific Measurement Devices.

Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation 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. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 5 Regional Condition 2 listed below for notification requirements.

NWP 5 Specific Regional Conditions:

1. Devices and any structures or fills associated with the devices must be completely removed within 30 days upon completion of the use of the device to measure and record scientific data and the site restored.

2. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for the construction of weirs and flumes.

3. The quantity of discharged material must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line. The volume of area excavated must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

6. Survey Activities.

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 1/10-acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 6 Regional Condition 1 listed below for notification requirements.

NWP 6 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for exploratory trenching activities and any project involving oil or natural gas exploration.
2. The quantity of discharged material must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line. The volume of area excavated must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line.

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

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

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activity involves oil or natural gas exploration, or
- The project or activity requires trenching in waters of the U.S.

7. Outfall Structures and Associated Intake Structures.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 7 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The projects have an associated outfall to a special aquatic site (e.g., mud-flat, vegetated shallows, wetland), or
- The project or activities could affect submerged aquatic vegetation in marine waters or forage fish.

User Note 1: To facilitate the review of the applicability of NWP 7 to your project, information on current NPDES compliance can be submitted with a PCN.

User Note 2: Information on impacts to submerged aquatic vegetation, including eelgrass, refer to [Section 2](#) of the User's Guide.

8. Oil and Gas Structures on the Outer Continental Shelf.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authority: Section 10)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 8 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized by this NWP.

EPA 401 Certification – Certified

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. (Authority: Section 10)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- c) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- d) impacts designated critical resource waters ([NWP General Condition 22](#))
- e) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 9 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

User Note: Anchorage and fleeting areas in Seattle District are listed in the Coast Guard anchorage regulations, 33 CFR 110.228 through 230.

10. Mooring Buoys.

Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 10 Regional Condition 1 listed below for notification requirements.

NWP 10 Specific Regional Conditions:

1. A pre-construction notification (PCN) must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32). The PCN must include a map, aerial photo, or project drawing identifying all existing mooring buoys within a 250-foot radius of the proposed buoy.
2. NWP 10 must not be used in marine waters if it would result in a concentration of more than one mooring structure per acre, unless waived by the district engineer. Mooring structures include buoys, piers, floats, and boatlifts.
3. The buoy system must contain an embedded anchor and mid-line float where site conditions allow. If an embedded anchor cannot be used, the project proponent must provide a written statement with the PCN describing why site conditions prohibit use of an embedded anchor.
4. Mooring buoys must be permanently marked with the Corps reference number in print large enough to be read from a distance of 20 feet.
5. NWP 10 may not be used in any area the Washington State Department of Health has designated as “closed” to shellfish harvesting (due to the number of boats moored in the area).
6. NWP 10 may not be used in any area the Washington State Department of Health has designated as “threatened” (due to the number of boats moored in the area).

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

User Note 1: Information on shellfish and closures from the Department of Health can be found on their web page, at:

<http://www.doh.wa.gov/CommunityandEnvironment/Shellfish>

User Note 2: All projects impacting State-owned aquatic lands require separate authorization from WDNR and WDNR has specific guidance for installation of mooring buoys on state-owned aquatic lands. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or visit DNR online at:

<http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions>

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 managers must approve each buoy or marker individually. (Authority: Section 10)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –

PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 11 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

12. Utility Line Activities.

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

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

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

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

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

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

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line

right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: 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, in accordance with the requirements for temporary fills.

Note 5: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 6: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: For NWP 12 activities that require pre-construction notification, the PCN must include 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, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- c) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- d) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- e) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- f) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- g) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- h) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- i) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way
- j) a section 10 permit is required
- k) the utility line in waters of the United States, excluding overhead lines, exceeds 300 feet
- l) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area
- m) discharges that result in the loss of greater than 1/10-acre of waters of the United States
- n) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet
- o) permanent access roads are constructed in waters of the United States with impervious materials

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 12 Regional Conditions 1, 2, and 3 listed below for notification requirements.

NWP 12 Specific Regional Conditions:

1. Pre-construction notification (PCN) must be submitted to the district engineer (see NWP general condition 32) if the activity involves mechanized land clearing in a forested wetland for the construction of a substation and/or access roads.

2. A PCN must be submitted to the district engineer (see NWP general condition 32) if the utility line exceeds 300 linear feet in waters of the U.S. for each single and complete project.

3. For projects subject to PCN, the PCN must include drawings and/or a description of the measures that will be used to prevent permanent drainage of adjacent areas by the backfilled trench and/or along the buried utility line.

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

1. The project or activity impacts more than 1/3 acre of waters of the state.
2. The project or activity is in or adjoining a known contaminated or cleanup site.
3. The project or activity requires a Federal Energy Regulatory Commission (FERC) license.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- Any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or
- There are any permanent access roads, temporary structures or fill associated with the utility line activities, or
- The project is authorized under one or more nationwide permit that result(s) in greater than 1/10 acre of impacts to aquatic resources, results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or greater than 300 linear feet of stream.

User Note: Utility lines constructed over, in, or under Section 10 navigable waters of the U.S. require a permit from the Corps.

13. Bank Stabilization.

Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be

placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and [Regional General Condition 5 \(Bank Stabilization\)](#) for notification requirements.

NWP 13 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified subject to conditions.

1. An individual Section 401 Certification is required for new, or expansion of existing, bank stabilization in marine and estuarine waters of the Salish Sea.
2. Ecology Section 401 review is required for projects or activities authorized under this NWP if:
 - a. The project or activity is greater than 500 feet in length.
 - b. The project or activity has not been designed and stamped by a professional Engineer or Engineering Geologist.
 - c. The project or activity exceeds an average of one cubic yard per running foot below the Ordinary High Water Mark or High Tide Line.
 - d. The project or activity involves discharges of dredged or fill material into special aquatic sites.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

14. Linear Transportation Projects.

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include 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, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- c) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- d) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- e) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- f) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- g) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- h) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- i) a discharge in a special aquatic site, including wetlands
- j) crossings in tidal waters

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and Regional Condition 2 below for notification requirements.

NWP 14 Specific Regional Conditions:

1. Private residential driveways in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP. For this requirement, "footprint" refers to the bottom width of the roadway fill prism.
2. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for linear transportation project crossings in tidal waters.

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

1. The project or activity impacts more than more than 1/3 acre of waters of the state.
2. The project includes fill related to a residential and/or commercial development.
3. The project or activity is in or adjoining a known contaminated or cleanup site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

15. U.S. Coast Guard Approved Bridges.

Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under section 9 of the Rivers and Harbors Act of 1899 or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and [Regional General Condition 6 \(Crossings of Waters of the United States\)](#) for notification requirements.

NWP 15 Specific Regional Conditions – None.

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

1. The project or activity triggers an individual U.S. Coast Guard bridge permit.

NOTE: An Advance Approval from the U.S. Coast Guard is not considered a

bridge permit and would not trigger Ecology review.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Certified

User Note: A list of navigable waters of the United States in Washington State is available on the Seattle District web site, at: www.nws.usace.army.mil (select Regulatory/Permits, then Permit Guidebook, Streams, Rivers, and Tidal Waters).

16. Return Water From Upland Contained Disposal Areas.

Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 16 Specific Regional Conditions – None.

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

1. The project or activity is in or adjoining a known contaminated or cleanup

site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

User Note: All projects impacting State-owned aquatic lands require separate authorization from WDNR. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or visit DNR online at: <http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions>

17. Hydropower Projects.

Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authority: Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 17 Regional Condition 1 listed below for notification requirements.

NWP 17 Specific Regional Condition:

1. Project proponents must submit documentation of their FERC license or exemption as part of the pre-construction notification.

STATE Section 401 Certification – Denied without prejudice. A Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

18. Minor Discharges.

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

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

(b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 32.) (**Authorities:** Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- c) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- d) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- e) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- f) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- g) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- h) impacts designated critical resource waters ([NWP General Condition 22](#))
- i) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- j) the discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line
- k) the discharge is in a special aquatic site, including wetlands

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 18 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

19. Minor Dredging.

Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. ([Authorities](#): Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- e) dredging proposed to occur in special aquatic sites (i.e., wetlands, vegetated shallows, riffle and pool complexes, or mudflats)

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 19 Regional Condition 1 below for notification requirements.

NWP 19 Specific Regional Condition:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for dredging proposed to occur in special aquatic sites (i.e., wetlands, vegetated shallows, riffle and pool complexes, or mudflats).

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

1. The project or activity is in or adjoining a known contaminated or cleanup site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Certified

User Note: All projects impacting State-owned aquatic lands require separate authorization from WDNR. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or visit DNR online at:
<http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions>

20. Response Operations for Oil or Hazardous Substances.

Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation

efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) impacts to aquatic resources requiring special protection ([Regional General Condition 2](#))
- b) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- c) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- d) impacts designated critical resource waters ([NWP General Condition 22](#))
- e) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 20 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

21. Surface Coal Mining Activities.

Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

(a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

(b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal individual and cumulative adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(c) The discharge is not associated with the construction of valley fills. A “valley fill” is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 21 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

User Note: All projects impacting State-owned aquatic lands require separate authorization from WDNR. For further information contact the WDNR’s Aquatic Resources Division at (360) 902-1100 or visit DNR online at: <http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions>

22. Removal of Vessels.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the “Historic Properties” general condition is completed. (**Authorities:** Sections 10 and 404)

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

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- b) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- c) impacts designated critical resource waters ([NWP General Condition 22](#))
- d) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- e) the activity is conducted in a special aquatic site, including coral reefs and wetlands

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 22 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

23. Approved Categorical Exclusions.

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

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

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

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

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf> . Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 23 Regional Condition 1 listed below for notification requirements.

NWP 23 Specific Regional Condition:

1. A pre-construction notification (PCN) must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32). The PCN must include a statement or form bearing the signature of an official of the Federal agency that issued the categorical exclusion, or of an official with delegated authority from that Federal agency verifying the proposed work is categorically excluded.

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

1. The project or activity has fill impacts to waters of the state greater than ½ acre.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activities involve greater than 1/10 acre of impacts to aquatic resources, or greater than 300 linear feet of stream.

24. Indian Tribe or State Administered Section 404 Programs.

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

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

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

NWP 24 Specific Regional Conditions – None.

STATE Section 401 Certification – *This NWP is not used in Washington State.*

CZM Consistency Response – *This NWP is not used in Washington State.*

EPA 401 Certification – Certified

User Note: *This NWP is not used in Washington State.*

25. Structural Discharges.

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- b) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- c) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- d) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- e) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- f) impacts designated critical resource waters ([NWP General Condition 22](#))
- g) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 25 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

26. [Reserved]

27. Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To be authorized by this NWP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

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

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat

type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

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

the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 32), except for the following activities:

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

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

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

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Authorities: Sections 10 and 404)

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances, except those listed in the [Notification section](#) above.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 27 Regional Conditions 1, 2, 3 and 4 listed below for notification requirements.

NWP 27 Specific Regional Conditions:

1. A pre-construction notification (PCN) must be submitted to the district engineer (see NWP general condition 32) for any proposed project located in a Department of the Army permit compensatory mitigation site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund) site, Resource Conservation and Recovery Act hazardous waste clean-up site, Washington State Department of Ecology compensatory mitigation site, or Washington State Model Toxics Control Act clean-up site.
2. For projects subject to PCN, if there is a loss of waters of the U.S., the project proponent must explain in the PCN why the loss is necessary and show how it would be fully offset by the beneficial elements of the project.
3. The PCN must contain a description of pre-project site conditions (including photographs), aquatic functions the site provides, and benefits anticipated from project construction.
4. The project proponent must include maintenance and monitoring plans with the PCN.
5. Restoration projects involving shellfish seeding must use shellfish native to the watershed.

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

1. The project or activity involves fill in tidal waters.
2. The project or activity affects ½ acre or more of wetlands.
3. The project or activity is a mitigation bank or an advanced mitigation site.
4. The project or activity is in or adjoining a known contaminated or cleanup site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activities impact greater than ½ acre of wetlands or 300 linear feet of fish bearing stream, or
- Any activity in tidal wetlands or waters.

User Note: *Stream Habitat Restoration Guidelines are available from WDFW on their website, at: <http://wdfw.wa.gov/publications/01374/wdfw01374.pdf>*

28. Modifications of Existing Marinas.

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 28 Regional Condition 1 listed below for notification requirements.

NWP 28 Specific Regional Condition:

1. A pre-construction notification must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32).

STATE Section 401 Certification – Certified subject to conditions. Ecology Section 401 review is required for projects or activities authorized under this NWP that have a potential to discharge to waters of the state and/or have a potential to re-suspend sediments if:

1. The project or activity is in or adjoining a known contaminated or cleanup site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Certified

29. Residential Developments.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 29 Regional Condition 1 listed below for notification requirements.

NWP 29 Specific Regional Condition:

1. Pre-construction notification must identify if the project is an individual lot within a subdivision or part of a multiphase development.
2. Private residential driveways in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP. For this requirement, “footprint” refers to the bottom width of the roadway fill prism.

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

1. The residential development has impacts to waters of the state greater than ¼ acre.
2. The project is a subdivision. (NOTE: “Subdivision” is the division or redivision of land into lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.)

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

User Note 1: To minimize impacts, low impact development methods, such as, but not limited to, pervious surfaces, rain gardens, and native landscaping can be utilized for residential developments.

User Note 2: For projects that may impact endangered species the amount of new impervious surfaces (including access roads, buildings, parking lots, etc.), amount of new semipervious surfaces (i.e., landscaped areas), best management practices, proposed stormwater treatment and design criteria, and mitigation measures for stormwater impacts can be included in the PCN to facilitate the review process.

30. Moist Soil Management for Wildlife.

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

of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- b) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- c) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- d) impacts designated critical resource waters ([NWP General Condition 22](#))
- e) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 30 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Certified

31. Maintenance of Existing Flood Control Facilities.

Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees

associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

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

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a

determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

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

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material.
(Authorities: Sections 10 and 404)

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect (March 19, 2017, to March 18, 2022) the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and the [Notification paragraph of NWP 31](#) listed above for notification requirements.

NWP 31 Specific Regional Conditions – None.

STATE Section 401 Certification – Certified, if all applicable State General Conditions are met.

CZM Consistency Response – Concur

EPA 401 Certification – Conditioned

An individual certification is required for activities in waters of the U.S. authorized under this NWP if:

- Levee maintenance activities involve native woody vegetation removal resulting in a discharge of dredge or fill material along salmon bearing streams or rivers.

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 activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

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

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

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

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

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 32 Specific Regional Conditions – None.

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

1. The project or activity has impacts to waters of the state greater than $\frac{1}{4}$ acre.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Certified

33. Temporary Construction, Access, and Dewatering.

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion

of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (**Authorities:** Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#), the [NWP 33 Notification paragraph](#) above, and NWP 33 Regional Condition 1 below for notification requirements.

NWP 33 Specific Regional Condition:

1. A pre-construction notification must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32).

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

1. Temporary fills are placed in more than ½ acre of waters of the state and left in place for more than 90 days.
2. Temporary fills are left in place for longer than six months.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

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

34. Cranberry Production Activities.

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

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 34 Specific Regional Conditions – None.

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

1. The proposed expansion area:
 - (a) At the time of the State's certification of this NWP, did not or currently 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. The burden of proof is on the applicant to demonstrate that trees meeting the size requirements were not present;
 - (b) Is not within 50 feet of the Pacific County Drainage Ditch 1; and
 - (c) Is located within the geographic area as described below (see attached map, based on USGS maps 46124-G1-TF-024 (Grayland, WA – revised 1984) and 46124-F1-TB-024 (North Cove, WA – revised 1984): Beginning at the intersection of Smith Road (aka Smid and/or Cranberry Road) and State Route 105 and running thence south and southeast along SR 105 to

the intersection of SR 105 and Smith Anderson Road; thence north to the intersection of Smith Anderson Road and Lungren Road; thence north 1320.0 feet along Smith Anderson Road; thence west 450.0 feet; thence north 1690.0 feet; thence 13 degrees west of the northerly direction approximately 11,280.0 feet to the intersection of the east section line of Section 6 and the west section line of Section 5 (Township 15 North, Range 11 West Meridian) and Smith Road; thence west on Smith Road to the point of beginning.

2. Anywhere in Washington, the proposed expansion area has previously been used for cranberry production. Ecology will verify the expansion for these areas upon receipt of appropriate documentation that adequately demonstrates prior cranberry production in the proposed expansion area. Documentation may include one or more of the following:
 - (a) Evidence of the presence of old dikes around the boundary of the proposed expansion (dated photographs, dated video, topographic surveys);
 - (b) Old aerial photographs showing cranberry bogs within the proposed expansion area;
 - (c) Old maps drawn by registered engineers/surveyors showing the presence of cranberry bogs in the proposed expansion area; or
 - (d) Evidence that established plants of cultivated (not native) cranberry varieties are present within the proposed expansion area.

STATE 401 WQC NOTE: *Applicants who do not meet the above criteria may still apply for Section 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 – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

35. Maintenance Dredging of Existing Basins.

The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths

or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 35 Regional Condition 1 below for notification requirements.

NWP 35 Specific Regional Condition:

1. A pre-construction notification (PCN) must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32). The PCN must include the results of any required sediment testing and identify the location of upland disposal area(s).

STATE Section 401 Certification – Certified subject to conditions. Ecology Section 401 review is required for projects or activities authorized under this NWP that have a potential to discharge to waters of the state and/or have a potential to re-suspend sediments if:

1. The project or activity is in or adjoining a known contaminated or cleanup site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Certified

36. Boat Ramps.

Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(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 an area that has no waters of the United States; and,

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 36 Regional Condition 1 listed below for notification requirements.

NWP 36 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32).
2. For contiguous properties under the same ownership, no more than one boat ramp per ownership may be authorized by this NWP, unless waived by the district engineer.
3. The construction of poured-in-place concrete boat ramps is not authorized by this NWP.

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

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

3. The project or activity is in or adjoining a known contaminated or cleanup site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activities exceed 20 feet in width, or the project or activities result in shoreline native tree or shrub removal resulting in discharges of dredge or fill material in waters of the U.S.

37. Emergency Watershed Protection and Rehabilitation.

Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

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

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

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination

to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). (**Authorities:** Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances, except as listed in the [Notification paragraph](#) above.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 37 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. A Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

38. Cleanup of Hazardous and Toxic Waste.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (**Authorities:** Sections 10 and 404)

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 38 Specific Regional Condition:

1. Non-government project proponents must submit a copy of court ordered remedial plans or related settlements with the pre-construction notification.

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

1. The project or activity affects more than ½ acre of waters of the state.
2. The project or activity is not authorized though a Model Toxics Control Act (MTCA) order or a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) order.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activities are not part of an EPA ordered cleanup.

User Note: To facilitate the review of the applicability of NWP 38 to your project, a copy of your court ordered remedial plan or related settlement can be submitted with a PCN.

39. Commercial and Institutional Developments.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional

developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
Authorities: Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 39 Regional Condition 1 listed below for notification requirements.

NWP 39 Specific Regional Condition:

1. Pre-construction notification must identify if the project is an individual lot within a subdivision or part of a multiphase development.

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

1. The project or activity affects ¼ acre or more of waters of the state.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

User Note 1: To minimize impacts, low impact development methods, such as, but not limited to, pervious surfaces, rain gardens, and native landscaping can be utilized for residential developments.

User Note 2: For projects that may impact endangered species the amount of new impervious surfaces (including access roads, buildings, parking lots, etc.), amount of new semipervious surfaces (i.e., landscaped areas), best management practices, proposed stormwater treatment and design criteria, and mitigation measures for stormwater impacts can be included in the PCN to facilitate the review process.

40. Agricultural Activities.

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

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

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authority: Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes

the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 40 Specific Regional Conditions – None.

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

1. The project or activity involves fill or mechanized clearing impacting more than ¼ acre of waters of the state.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

41. Reshaping Existing Drainage Ditches.

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

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

drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- c) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- d) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- e) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- f) impacts designated critical resource waters ([NWP General Condition 22](#))
- g) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- h) the activity involves permanent sidecasting of excavated material into waters of the U.S.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 41 Regional Condition 1 below for notification requirements.

NWP 41 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) if the activity involves permanent sidecasting of excavated material into waters of the U.S.
2. Upon completion of the work, all exposed slopes and channel banks must either be seeded or planted with site-appropriate native herbaceous species.

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

1. The project or activity discharges dredged or fill material into a ditch that receives water from or discharges water to a water of the state within ½ mile of project site.
2. The project or activity occurs within a wetland.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The scope of project is greater than 500 linear feet.

42. Recreational Facilities.

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authority: Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 42 Regional Condition 1 listed below for notification requirements.

NWP 42 Specific Regional Condition:

1. Pre-construction notification must identify if the project is an individual lot within a subdivision or part of a multiphase development.

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

1. The project or activity affects ¼ acre or more of waters of the state.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

43. Stormwater Management Facilities.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features. The maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features that are not waters of the United States does not require a section 404 permit.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges into non-tidal waters of the United States for the construction of new stormwater management facilities or pollutant reduction green infrastructure features, or the expansion of existing stormwater management facilities or pollutant reduction green infrastructure features, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature. (**Authority:** Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- c) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- d) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- e) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- f) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- g) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- h) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and NWP 43 Regional Condition 1 below for notification requirements.

NWP 43 Specific Regional Condition:

1. Pre-construction notification for new facilities must include a long-term maintenance plan if permits for periodic maintenance dredging will be required in waters of the U.S.

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

- 1. The project or activity includes a Category I or Category II, wetland as part of a stormwater or flow control system. Including a Category I or Category II wetland in a stormwater treatment or flow control system is considered an impact and will need to be mitigated.
- 2. The project or activity includes a Category III (with a habitat score of ≥ 5) wetland as part of a stormwater or flow control system.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

44. Mining Activities.

Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

(a) For mining activities involving discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (e.g., rivers, streams, lakes, and ponds) the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and

(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects.

The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction-notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 44 Specific Regional Conditions:

1. This NWP may only be used for aggregate mining activities in perennial streams that meet the following criteria:

- a. Aggregate may not be excavated from a vegetated bar or flowing water, or pushed across a wetted channel.
- b. A 5-foot (horizontal) buffer must be left in an undisturbed state along the river edge of the aggregate bar during excavation. After aggregate material is removed, the area must be graded to restore a natural contour and not trap fish.
- c. Aggregate material may be temporarily stockpiled within the channel above the plane of the water surface for up to 7 days. Aggregate material may not be stockpiled in wetlands or flowing water.
- d. Aggregate material may not be disposed in the channel or where it could re-enter a water of the United States.

STATE 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

45. Repair of Uplands Damaged by Discrete Events.

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district

engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

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

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (**Authorities:** Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances within 12 months of the date of the damage, unless waived by the district engineer per the [Notification paragraph](#) above.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 45 Specific Regional Conditions – None.

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

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

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activity is greater than ½ acre, or
- The project or activity requires restoration waterward of the pre-event High Tide Line or Ordinary High Water Mark before the event occurred.

46. Discharges in Ditches.

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authority: Section 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 46 Specific Regional Conditions – None.

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

1. The project or activity discharges dredged or fill material into a ditch that receives water from or discharges water to a water of the state within ½ mile of project site.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

User Note: Ditches constructed in and/or connecting waters of the U.S. may provide essential fish habitat for anadromous fish in Washington State. For information about EFH in Washington State, please refer to:

<http://wdfw.wa.gov/mapping/salmonscape/index.html>

47. [Reserved]

48. Commercial Shellfish Aquaculture Activities.

Discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish aquaculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A “new commercial shellfish aquaculture operation” is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste; or

(d) Activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) the activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years. If the operator will be conducting commercial shellfish aquaculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information: (1) a map showing the boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per project area or group of contiguous project areas should be submitted for the commercial shellfish operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this NWP. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the district engineer to request a modification of the NWP verification; a new pre-construction notification does not need to be submitted. (Authorities: Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.”

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- c) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- d) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- e) impacts designated critical resource waters ([NWP General Condition 22](#))
- f) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- g) the activity will include a species that has never been cultivated in the waterbody
- h) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and the [NWP 48 Notification section](#) for notification requirements.

NWP 48 Specific Regional Condition:

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

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

1. The project is a new operation, or an expansion of an existing operation, with direct impacts to eelgrass beds in marine waters.

CZM Consistency Response – Concur with Conditions.

1. An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

User Note: To notify the U.S. Coast Guard regarding the project, please contact Timothy L. Westcott, of USCG D13, at timothy.l.westcott@uscg.mil or by phone at 206 220-7285.

49. Coal Remining Activities.

Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process as part of an integrated permit processing procedure, by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and the [NWP 49 Notification paragraph](#) above for notification requirements.

NWP 49 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

50. Underground Coal Mining Activities.

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.
Authorities: Sections 10 and 404)

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

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and the [NWP 50 Notification paragraph](#) above for notification requirements.

NWP 50 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

51. Land-Based Renewable Energy Generation Facilities.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.)
(Authorities: Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove utility lines and/or road crossings, then NWP 12 and/or NWP 14 shall be used if those activities

meet the terms and conditions of NWP 12 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps for activities that result in any of the following:

- a) new or maintenance bank stabilization activities ([Regional General Condition 5](#))
- b) installing, replacing, or modifying crossings of waters of the U. S., such as culverts or bridges ([Regional General Condition 6](#))
- c) activities that result in the loss of any linear feet of stream beds ([Regional General Condition 7](#))
- d) projects that will result in permanent wetland losses that exceed 1,000 square feet ([Regional General Condition 8](#))
- e) permittee-responsible mitigation is proposed ([NWP General Condition 23](#))
- f) if any ESA-listed species, designated critical habitat, or essential fish habitat might be affected or is in the vicinity of the project ([NWP General Condition 18](#) and [Regional General Condition 9](#))
- g) an affect or potential to affect listed historic properties ([NWP General Condition 20](#))
- h) requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or occupy or use a USACE Civil Works project ([NWP General Condition 31](#))
- i) if the discharge results in the loss of greater than 1/10-acre of waters of the United States

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 51 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Conditioned

An individual certification is required for activities authorized under this NWP if:

- The project or activity affects greater than 1/2 acre of aquatic resources or 300 linear feet of stream.

52. Water-Based Renewable Energy Generation Pilot Projects.

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term “pilot project” means an experimental project where the water-based renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The discharge must not cause the loss of greater than 1/2-acre of waters of the United States, including the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre or 300 linear foot limits.

For each single and complete project, no more than 10 generation units (e.g., wind turbines, wave energy devices, or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2-acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the

maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authorities: Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the Chief of Engineers or District Engineer under 33 U.S.C. 408.

Note 3: If the pilot project generation units, including any transmission lines, are placed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

Note 5: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –
PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 52 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

53. Removal of Low-Head Dams.

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term “low-head dam” is defined as a dam built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis. (During a drought, there might not be water flowing over the dam crest.) In general, a low-head dam does not have a separate spillway or spillway gates but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment, and if present, an uncontrolled spillway. A low-head dam provides little storage function.

The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure the authorized activity results in no more than minimal adverse environmental effects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)
(Authorities: Sections 10 and 404)

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area.

Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements – PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

NWP 53 Specific Regional Conditions – None.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response – Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

54. Living Shorelines.

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural “soft” elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures. The following conditions must be met:

(a) The structures and fill area, including sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes, unless the district

engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;

(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity, must be used if the site is planted by the permittee;

(e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

(f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;

(g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and

(h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions.

Authorities: Sections 10 and 404)

Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

Summary of National and Regional Pre-Construction Notification (PCN) Requirements –

PCN must be submitted to the Corps in all instances.

See [NWP General Condition 32 \(Pre-Construction Notification\)](#) and the [NWP 54 Notification paragraph](#) above for notification requirements.

NWP 54 Specific Regional Condition:

1. The construction of breakwaters and reefs is not authorized.

STATE Section 401 Certification – Denied without prejudice. An individual Section 401 Water Quality Certification is required for all projects or activities under this NWP.

CZM Consistency Response — Object

An Individual CZM Consistency Determination must be obtained from the State for projects or activities authorized under this NWP.

EPA 401 Certification – Conditioned

An individual 401 certification is required if the project is located within a special aquatic site (e.g., mudflat, vegetated shallow, wetland) or could affect submerged aquatic vegetation or forage fish.

Section 6: District Engineer's Decision

(Federal Register January 6, 2017, Vol. 82, No. 4)

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal

with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. 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 proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

(Federal Register January 6, 2017, Vol. 82, No. 4)

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see [general condition 31](#)).

Section 7: Water Quality Certification

(Section 401 Water Quality Decisions can be viewed online, at:

<http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/NWPs/>)

Ecology Section 401 Water Quality Certification

In addition to all the U.S. Army Corps of Engineers' National and Seattle Districts' Regional permit conditions, the following State General Section 401 Water Quality Certification (WQC) conditions apply to all Nationwide Permits whether **certified** or **partially certified** in the State of Washington. The Washington State Department of Ecology (Ecology) is authorized to make WQC decisions for activities on some federal lands, and all other public and private lands in Washington State. The EPA has WQC authority in Indian country for Tribes who do not have treatment as a state and on lands with exclusive Federal jurisdiction.

WQCs have general conditions that apply to all NWP, and some NWP have individual conditions. For each NWP, "Certified" means the Section 401 Water Quality Certification has been approved for all actions authorized by that NWP provided the permittee complies with all applicable national and regional NWP conditions and all applicable Section 401 Water Quality Certification General Conditions. The permittee is **not** required to contact the certifying agency in those cases for further authorization or approval. "Certified subject to conditions" or "Partially denied without prejudice" means the Section 401 Water Quality Certification has been approved for some but not all actions authorized under that NWP. Permit applicants may be required to submit an application (JARPA) to the certifying agency or Tribe for review. "Denied" or "Denied without prejudice" means the Section 401 Water Quality Certification has been denied for all activities authorized by that NWP and an individual Section 401 Water Quality Certification is required prior to commencing work. In those cases applicants must submit an application (JARPA) to the certifying agency, and the certifying agency must go through a public process and issue an individual Section 401 Water Quality Certification before the NWP authorization can be valid.

The following General Conditions apply to all NWP:

1. **For in-water construction activities.** Ecology Section 401 review is required for projects or activities authorized under NWP that will cause, or may be likely to cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC).

State water quality standards and sediment management standards are available on Ecology's website.

Note: In-water activities include any activity within a wetland and/or activities below the ordinary high water mark (OHWM).

2. **Projects or Activities Discharging to Impaired Waters.** Ecology Section 401 review is required for projects or activities authorized under NWPs if the project or activity will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listed parameter.

To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

3. **Application.** For projects or activities that will require Ecology Section 401 review, applicants must provide Ecology with a Joint Aquatic Resources Permit Application (JARPA) along with the documentation provided to the Corps, as described in National General Condition 32, Pre-Construction Notification, including, when applicable:

- (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, best management practices (BMPs), and any other Department of the Army or federal agency permits used or intended to be used to authorize any part of the proposed project or any related activity.
- (b) Drawings indicating the Ordinary High Water Mark (OHWM), delineation of special aquatic sites and other waters of the state. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland rating forms are subject to review and verification by Ecology staff.

Guidance for determining the OHWM is available on Ecology's website.

- (c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See State General Condition 5 for details on mitigation requirements.
- (d) Other applicable requirements of Corps Nationwide Permit General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP.
- (e) Within 180 calendar days from receipt of applicable documents noted above **and** a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program Ecology will provide the applicant notice of whether an individual Section 401 will be required for the project. If Ecology fails to act within a year after receipt of **both** of these documents, Section 401 is presumed waived.

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

Ecology Section 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Seattle District Regional General Condition):

- (a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):
 - Estuarine wetlands.
 - Wetlands of High Conservation Value.
 - Bogs.
 - Old-growth and mature forested wetlands.
 - Wetlands in coastal lagoons.
 - Interdunal wetlands.
 - Vernal pools.
 - Alkali wetlands.
- (b) Fens, aspen-dominated wetlands, camas prairie wetlands.
- (c) Marine water with eelgrass (*Zostera marina*) beds (except for NWP 48).
- (d) Category 1 wetlands.
- (e) Category II wetlands with a habitat score ≥ 8 points.

This State General Condition does not apply to the following Nationwide Permits:
NWP 20 – *Response Operations for Oil and Hazardous Substances*
NWP 32 – *Completed Enforcement Actions*

5. **Mitigation.** Applicants are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable. For projects requiring Ecology Section 401 review with unavoidable impacts to aquatics resources, adequate compensatory mitigation must be provided.
- (a) Wetland mitigation plans submitted for Ecology review and approval shall be based on the most current guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (available on Ecology's website) and shall, at a minimum, include the following:

- i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
- ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).
- iii. The rationale for the mitigation site that was selected.
- iv. The goals and objectives of the compensatory mitigation project.
- v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.
- vi. How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
- vii. How the compensatory mitigation site will be legally protected for the long term.

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publications #09-06-032 (Western Washington) and #10-06-007 (Eastern Washington)) for guidance on selecting suitable mitigation sites and developing mitigation plans.

Ecology encourages the use of alternative mitigation approaches, including credit/debit methodology, advance mitigation, and other programmatic approach such as mitigation banks and in-lieu fee programs. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. Information on alternative mitigation approaches is available on Ecology's website.

- (b) Mitigation for other aquatic resource impacts will be determined on a case-by-case basis.

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

Note: This State General Condition does not apply to projects or activities authorized under NWP 33, *Temporary Construction, Access, and Dewatering*

7. **Stormwater pollution prevention:** All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the state.
 - (a) For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology's current stormwater manual.
 - (b) Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

Ecology's Stormwater Management and Design Manuals and stormwater permit information are available on Ecology's website.

8. **State Section 401 Review for PCNs not receiving 45-day response from the Seattle District.** In the event the Seattle District Corps does not issue a NWP authorization letter within 45 calendar days of receipt of a **complete** pre-construction notification, the applicant must contact Ecology for Section 401 review prior to commencing work.

For further information or to apply for individual 401 certification, contact Ecology's Federal Permit Coordinator at (360) 407-6076 or mail to: Washington Department of Ecology, Attn: Federal Permit Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600 or email: ecyrefedpermits@ecy.wa.gov.

EPA Section 401 WQC

In addition to all the U.S. Army Corps of Engineers' National and Seattle District's Regional permit conditions, the following EPA Section 401 water quality certification General Conditions apply to all Nationwide Permits, whether certified or partially certified with conditions. The EPA has WQC authority in Indian country for Tribes who do not have treatment as a state and on lands with exclusive Federal jurisdiction. Indian Country includes reservation lands, trust lands, and Dependent Indian Communities. The Washington State Department of Ecology is authorized to make WQC decisions for activities on all other federal, public, and private lands in Washington State.

EPA GENERAL CONDITIONS:

EPA General Condition 1 – Special Aquatic Sites

Any activities in the following types waters of the United States, including wetlands, require an individual 401 certification: Mature forested wetlands; bogs; peatlands; wetlands in dunal systems along the Washington coast; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; salt marshes; or marine waters with eelgrass or kelp beds.

EPA General Condition 2 – Soil Erosion and Sediment Controls

A 401 certification determination is based on the project or activity meeting established turbidity levels. The EPA will use as guidance, the State of Washington's water quality standards [WAC 173-201A] and sediment quality standards [WAC 173-204], to determine if standards are exceeded. Projects or activities that are expected to exceed these levels will require an individual 401 certification, as determined by EPA.

Washington's water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices (BMPs) 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:

For Fresh Water [WAC 173-201A-200 (1)(e)]	
Stream Flows at the time of construction	Downstream Point of Compliance for Temporary Area of Mixing
Waters with flows up to 10 cubic feet/second (cfs)	100 feet downstream of activity causing turbidity exceedance
Waters with flows above 10 cfs up to 100 cfs	200 feet downstream of activity causing turbidity exceedance
Waters with flows above 100 cfs	300 feet downstream of activity causing turbidity exceedance
Work in waters within or along lakes, ponds, wetlands, reservoirs or other non-flowing waters	Radius of 150 feet or the maximum surface dimension (whichever is less)

For Marine Water [WAC 173-201A-210 (1)(e)]	Point of Compliance for Temporary Area of Mixing
Estuaries or Marine Waters	Radius of 150 feet from the activity causing the turbidity exceedance

EPA General Condition 3 – Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions

All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the U.S.

- a. For land disturbances during construction, the permittee must obtain and implement Construction Stormwater General Permit requirements where required [<https://www.epa.gov/npdes/stormwater-discharges-construction-activities>]
- b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided.

The EPA encourages prevention of discharges by managing stormwater on site through Low Impact Development principles and other prevention techniques. The EPA will use the Washington State Department of Ecology's most recent stormwater management and design manuals as guidance for individual 401 water quality certification conditions [see <http://www.ecy.wa.gov/programs/wq/stormwater/index.html>]

EPA General Condition 4 – Compliance with Requirements of the National Pollutant Discharge Elimination System Permit for Industrial or Municipal Activities

For projects and activities requiring coverage under an industrial or municipal (non-stormwater) NPDES permit, certification is based on compliance with the requirements of that permit. The EPA will determine if the project is compliant. The projects and activities not in compliance with NPDES requirements will require an individual 401 certification, as determined by EPA.

EPA General Condition 5 – Projects or Activities Discharging to Impaired Waters

An individual 401 certification is required for projects or activities authorized under the Nationwide Permits (NWP) if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) **and** the discharge may result in further exceedance of a specific parameter for which the waterbody is listed. The EPA will determine if the discharge results in an exceedance of a specific parameter. The current list of 303(d)-listed waterbodies in Washington State is available at: <http://www.ecy.wa.gov/programs/wq/303d/index.html>.

For projects or activities that will discharge to a 303(d)-listed waterbody that does have an approved Total Maximum Daily Load, the permittee must provide documentation for EPA approval showing that the discharge is within the established limits of the TMDL. Locating a proposed project within a watershed with a TMDL can be done at: on EPA's web site <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10>.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved TMDL or an approved water quality management plan, the permittee must provide documentation for EPA approval demonstrating that the discharge will not result in further exceedance of the listed contaminant or impairment.

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

EPA General Condition 6 – Notification and 401 Water Quality Certification Application

For projects requiring an individual 401 certification, permittees must provide the EPA with the same documentation provided to the Corps (as described in Corps' National General Condition 32, Pre-Construction Notification), including, when applicable:

- a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.
- b. Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps. Eelgrass delineation must be prepared in accordance with current methods recommended by the Corps.
- c. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.
- d. Other applicable requirements of the Corps' National General Condition 32, Regional Conditions, or notification conditions of the applicable NWP.

A request and application for an individual 401 certification is not complete until the EPA is provided the applicable documents noted above and the EPA has received a copy of the Corps' verification letter stating the applicant must contact EPA to obtain a 401 water quality certification.

EPA General Condition 7 – Mitigation

An individual 401 certification is based on adequate compensatory mitigation being provided for unavoidable impacts to aquatic resources and other water quality-related

impacts of projects or activities authorized under the NWP Program.

A 401 certification is contingent upon written approval from the EPA of the compensatory mitigation plan for projects and activities that result in any of the following:

- a. Impacts to any aquatic resources requiring special protection (as defined in EPA General Condition 1)
- b. Any impacts to tidal waters or non-tidal waters adjacent to tidal waters, or
- c. any impacts to aquatic resources greater than 1/10 acre.

Compensatory mitigation plans submitted to the EPA must be based on the requirements established in the 2008 Compensatory Mitigation For Losses of Aquatic Resources Federal Rule (https://www.epa.gov/sites/production/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf) and follow the guidance in *Wetland Mitigation in Washington State, Parts 1 and 2* (Ecology Publications #06-06-011a and #06-06-011b or as updated) and must include, at a minimum, the following:

- A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
- The nature of the proposed impacts (e.g., acreage of wetlands and functions lost or degraded).
- The rationale for the mitigation site that was selected.
- The ecological goals and objectives of the compensatory mitigation project.
- How the mitigation project will be accomplished (work plan), including proposed performance standards for measuring success (e.g., vegetation success criteria and performance standards, hydrology and/or hydrologic regime standards, etc), and the proposed buffer widths.
- How the site will be maintained and monitored through time to assess progress towards goals and objectives.
- Submittal of an “as-built conditions report” upon completion of grading, planting and hydrology establishment at the mitigation site.
- Submittal of monitoring reports at agreed upon intervals showing the results of monitoring to meet performance standards and criteria. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
- Legal site protection mechanism (conservation easement or restrictive covenant) to ensure that the compensatory mitigation site will be legally protected for the long-term.
- Long term management and maintenance plan.
- Financial assurances.

EPA General Condition 8 – 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.

EPA General Condition 9 – Designated Critical Resource Waters

An individual 401 certification is required for any proposed project or activity in waterbodies on the most current list of Designated Critical Resource Waters (per the Corps' National General Condition 22).

EPA General Condition 10 – Fills Within 100-Year Floodplains

An individual 401 certification is required for any proposed project or activity that involves fill in waters of the U.S. and would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

[Note: 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.]

EPA General Condition 11 – Chemically Treated Wood

An individual 401 water quality certification is required if the permittee proposes to use wood products treated with biologically harmful leachable chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol), unless the wood products meet the following conditions:

- a. Wood preservatives and their application must be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act,
- b. Use of chemically treated wood products must follow the Western Wood Preservatives Institute (WWPI) guidelines and best management practices to minimize the preservative migrating from treated wood into the aquatic environment (see: <http://preservedwood.org/HowTo/BestManagementPractices.aspx>)
- c. For new or replacement wood structures, the wood must be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood are encouraged and include untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and
- d. All removal of chemically treated wood products (including pilings) must follow the most recent "EPA Region 10 Best Management Practices for Piling Removal

and Placement in Washington State.”

For further information or to apply for individual 401 certification from the EPA, contact the U.S. Environmental Protection Agency, Region 10 – Aquatic Resources Unit, Office of Environmental Review and Assessment, 1200 Sixth Avenue, Mail Stop OERA-140, Seattle, Washington 98101-3140; telephone (206) 553-6384.

Tribes with 401 Water Quality Certification

To date, the EPA has approved treatment as a state to nine tribes (Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S’Klallam, Puyallup Tribe of Indians, Spokane Tribe of Indians, Swinomish Tribe and Tulalip Tribes) and these tribes have WQC authority over activities on their respective tribal lands.

For each Tribe, the following WQC determinations are in effect:

Confederated Tribes of the Chehalis Reservation

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Director, Natural Resources Department, Confederated Tribes of the Chehalis Reservation, P.O. Box 536, Oakville, Washington 98516; telephone: (360) 273-5911.

Kalispel Tribe of Indians

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Director, Kalispel Natural Resources, Kalispel Tribe of Indians, P.O. Box 39, Usk, Washington 99180-0039; telephone: (509) 445-1147.

Lummi Nation

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Water Resources Manager, Lummi Natural Resources Department, Lummi Nation, 2665 Kwina Road, Bellingham, Washington 98226; telephone: (360) 312-2318.

Makah Tribe

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Makah Fisheries Water Quality Department, Makah Tribe, P.O. Box 115, Neah Bay, Washington 98357-0115; telephone: (360) 645-3151.

Port Gamble S'Klallam

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Port Gamble S'Klallam Tribe Natural Resources Department, 31912 Little Boston Road NE, Kingston, Washington 98346; telephone: (360) 297-6289.

Puyallup Tribe of Indians

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Director of Natural Resources, Puyallup Tribe of Indians, 3009 East Portland Avenue, Tacoma, Washington 98404; telephone: (253) 680-5520.

Spokane Tribe of Indians

Water Quality Certification Administratively Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Water Control Board, Spokane Tribe of Indians, P.O. Box 480, Wellpinit, Washington 99040-0100; telephone: (509) 626-4409.

Swinomish Tribe

Water Quality Certification Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Environmental Director, Swinomish Department of Environmental Protection, Swinomish Indian Tribal Community, 11430 Moorage Way, LaConner, WA 98257; telephone: (360) 466-7201.

Tulalip Tribes

Water Quality Certification Administratively Denied

An individual 401 certification is required for all projects.

To obtain individual 401 certification from this Tribe, contact the Tulalip Tribes Natural Resource Department, 6406 Marine Drive, Tulalip, Washington 98271-9694; telephone: (360) 716-4617.

Section 8: Coastal Zone Management Act (CZMA) consistency determinations for NWPs

In addition to all the U.S. Army Corps of Engineers' (Corps) National and Seattle Districts' Regional permit conditions, the following Coastal Zone Management Act federal consistency conditions apply to all Nationwide Permits in the coastal counties of the State of Washington.

The Coastal Zone Management Act (CZMA) provides coastal states that have approved management programs review of all federal agency activities and development projects (15 C.F.R. 930, subpart C), federal permits or licenses (non-federal applicants) (15 C.F.R. 930, subpart D) and federal financial assistance to state or local agencies (15 C.F.R. 930 subpart F) for consistency with the State's coastal management program enforceable policies. Ecology is the agency responsible for CZMA Federal Consistency review in Washington.

Ecology reviews proposed projects, located in the identified coastal counties below, to determine if the project activities are consistent with Washington's Coastal Zone Management Program (CZMP). For a proposal to be consistent with Washington's CZMP, the project must meet the requirements of the applicable enforcement policies. The enforceable policies of Washington's CZMP can be found on Ecology's webpage.

The coastal counties of the State of Washington include: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom.

Ecology's State General CZMA Consistency conditions for all the NWPs that require a Consistency Determination include the following:

A. General Conditions for Non-Federal Permittees

- 1. Necessary Data and Information.** A Coastal Zone Management Program "Certification of Consistency" is required for projects located within a coastal county. The Certification of Consistency shall include a description of the proposed project or activity, a map of the site location, and evidence of compliance with the applicable enforceable policies of the Washington Coastal Zone Management Program (CZMP).
- 2. Timing.** Within 6 months from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 6-month period, concurrence with the CZMP is presumed.

B. General Conditions for Federal Permittees (Federal Agencies)

- 1. Necessary Data and Information.** Federal agencies shall submit the

determination, information, and analysis required by 15 CFR 930.39 to obtain a federal consistency determination.

2. Timing. Within 60 days from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 60-day period, concurrence with the CZMP is presumed.

Appendix A: Definitions

(Federal Register January 6, 2017, Vol. 82, No. 4)

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

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

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

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

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

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

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

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

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net

threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

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

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

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

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

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

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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

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

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

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

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

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

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

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

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

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

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

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently

moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. 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.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

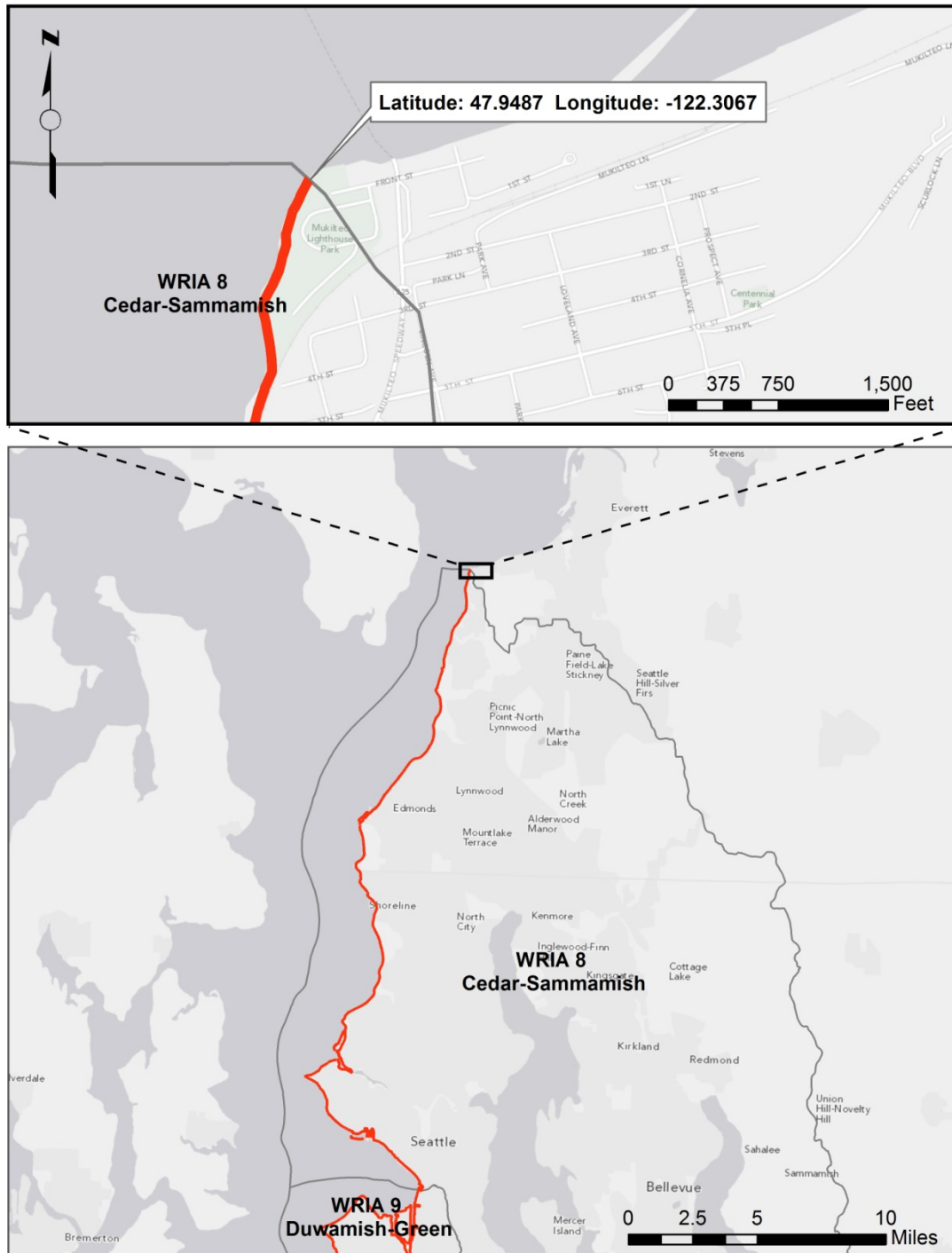
Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater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

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

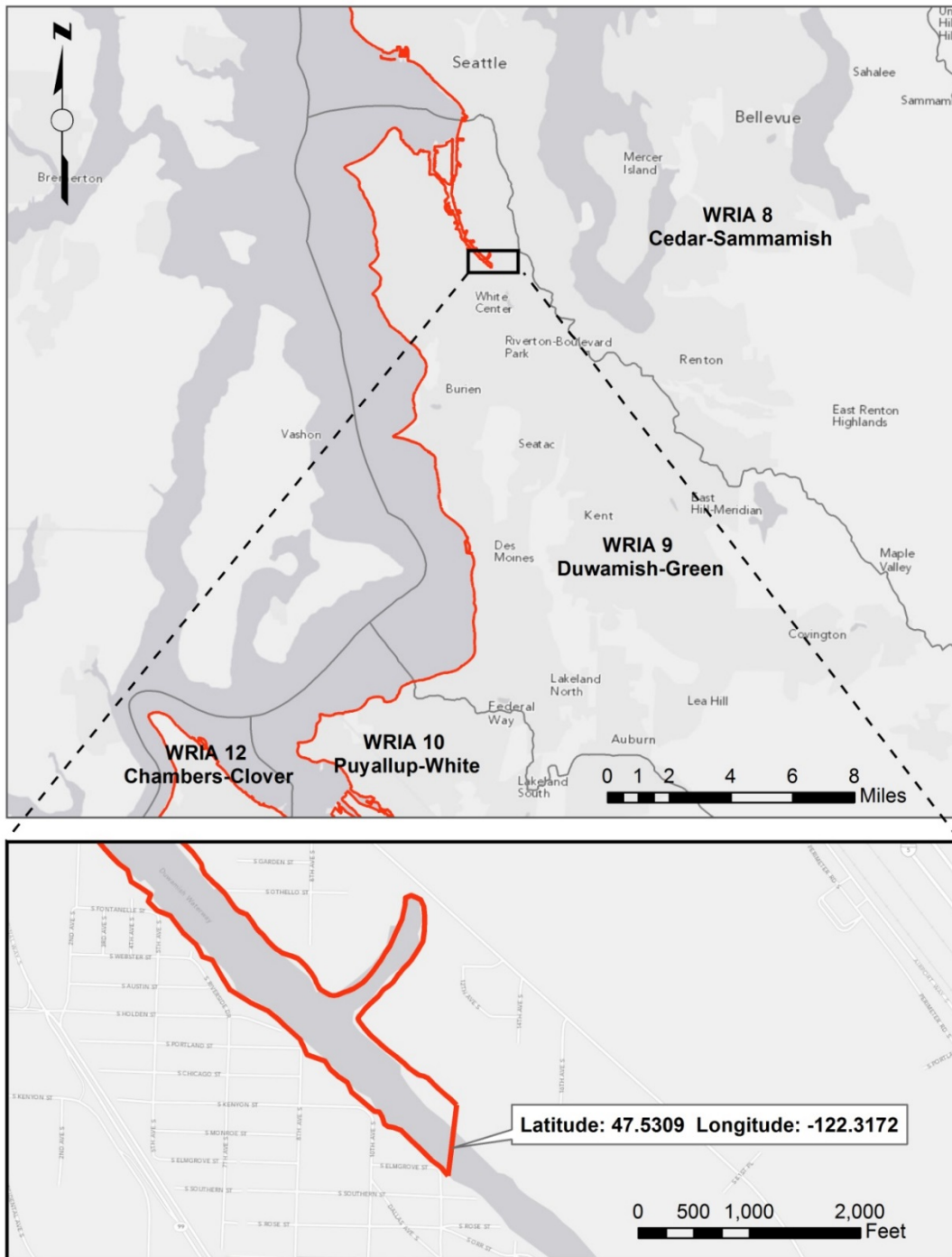
Appendix B: Figures

Figure 1: RGC 3 – WRIAs 8, 9, 10, 11, and 12

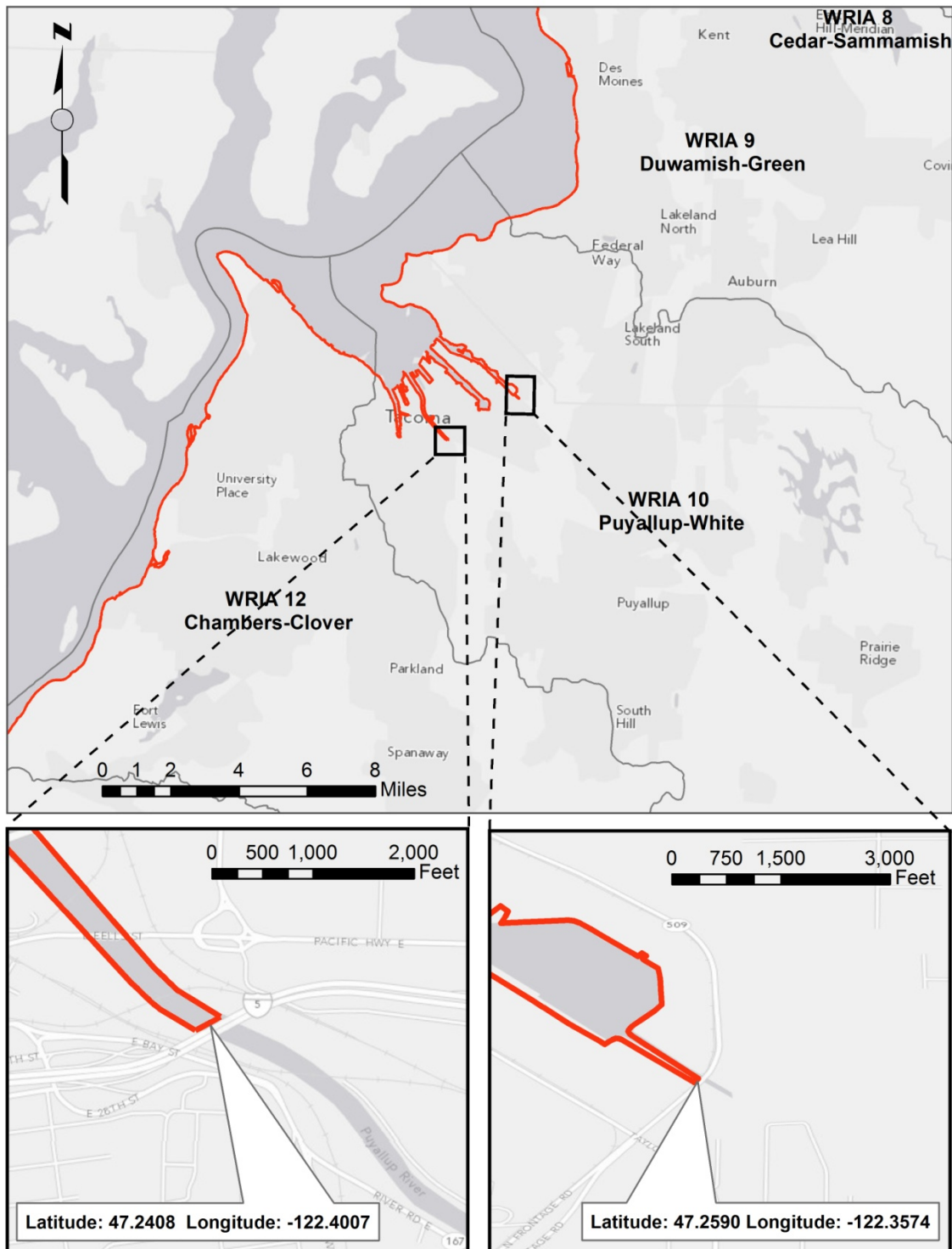
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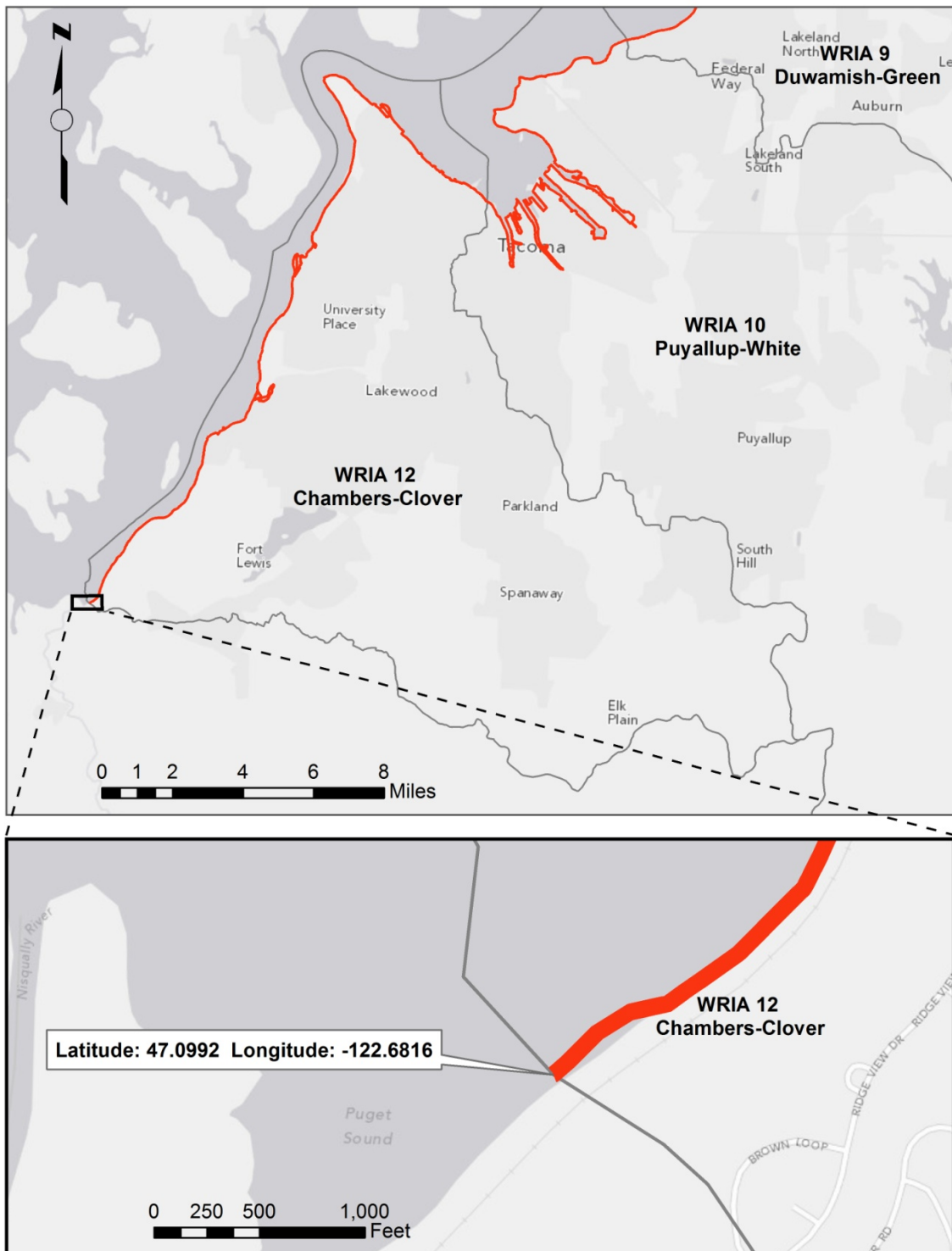
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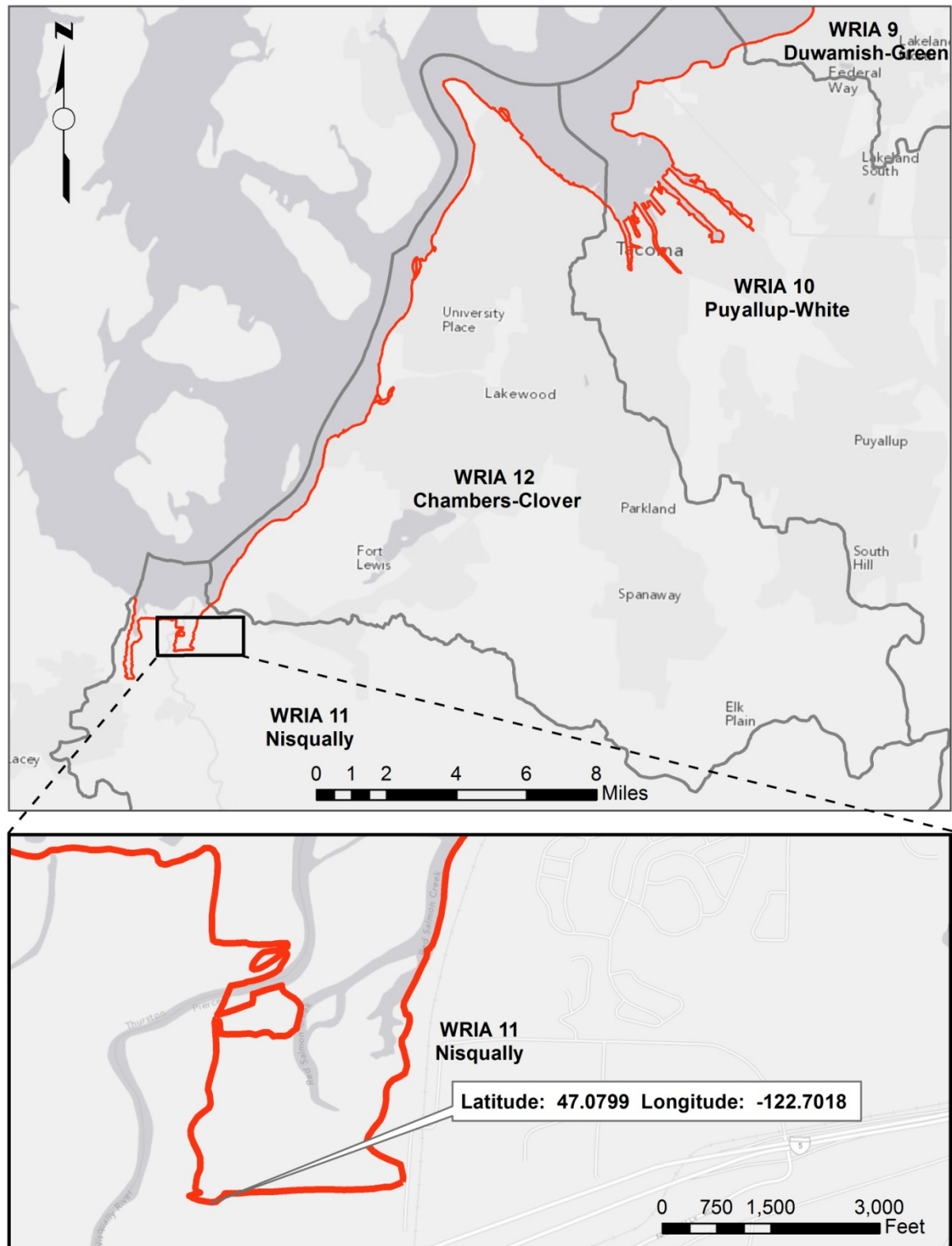
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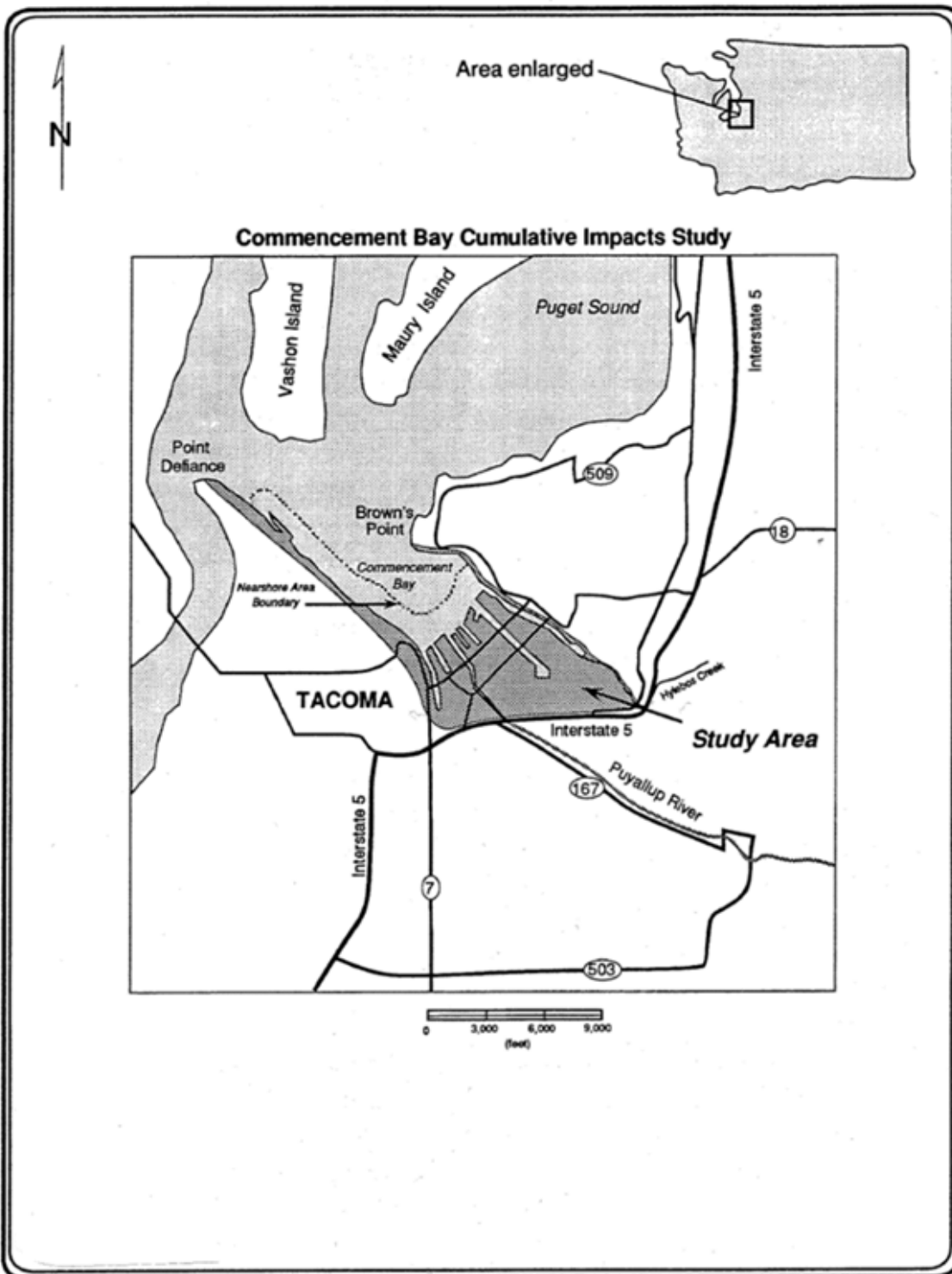
d. WRIA 12



e. WRIA 11



f. Figure 2. RGC 4 – Commencement Bay Study Area



Appendix C: Abbreviations

BE	– Biological Evaluation
Corps	– U.S. Army Corps of Engineers
CBSA	– Commencement Bay Study Area
CZM	– Coastal Zone Management
Ecology	– Washington State Department of Ecology
EPA	– U.S. Environmental Protection Agency
ESA	– Endangered Species Act
HPA	– Hydraulic Project Approval
JARPA	– Joint Aquatic Resource Permit Application
NMFS	– National Marine Fisheries Service
NPDES	– National Pollution Discharge Elimination System
NRCS	– Natural Resources Conservation Service
NWP	– Nationwide Permit
PCN	– Pre-Construction Notification
SPN	– Special Public Notice
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
WQC	– Section 401 Water Quality Certification

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