

SALISH SEA NEARSHORE PROGRAMMATIC (SSNP) CONSULTATIONS  
 LIST OF REQUIREMENTS  
 Version: August 02, 2022

**General Construction Measures (GCM) and Essential Fish Habitat (EFH)  
 Conservation Recommendations**

Programmatic Endangered Species Act (ESA) Consultations [National Marine Fisheries Service (NMFS) reference number WCRO-2019-04086, U.S. Fish and Wildlife Service (USFWS) reference number FWS/R1/2002-0048454] have been completed for the activities listed below. If you can design your project to meet all of the requirements of the Programmatic Biological Opinions (i.e. Project Design Criteria, GCM, and EFH Conservation Recommendations) including those GCM's and EFH Conservation Recommendations listed below, then the review of your ESA consultation and permit application will be streamlined. The submittal of this list is not required. However, to further expedite your review you may include a description of how you meet these requirements in your SSNP application materials.

Notification Requirements
The application materials and notification should include the information below, if applicable.
<ul style="list-style-type: none"> <li>• If concrete would dry quicker than the 7-day curing rate, information must be provided as part of the project submittal as described in GCM #3.</li> </ul>
<ul style="list-style-type: none"> <li>• If in-water impact pile driving more than two piles greater than 12 inches per day, a Marbled Murrelet Monitoring Plan as described in GCM #7 must be submitted. Applicants must confirm, after construction a summary of monitoring reports will be provided to USFWS.</li> </ul>
<ul style="list-style-type: none"> <li>• If impervious surface is installed or replaced as part of the proposed work or resulting from the proposed work, a Post-Construction Stormwater Management Plan (PCSMP) must be submitted as described in GCM #13.</li> <li>• In addition, include the name, email address, and telephone number of the person responsible for designing the stormwater management facilities, so that NMFS may contact that person if additional information is necessary.</li> </ul>
<ul style="list-style-type: none"> <li>• If work area may be isolated, applicant must confirm after construction a Fish Salvage Report will be submitted within 60 days to NMFS and the Corps. The report should include the date, time, and place of fish relocation; number and species of fish captured; number of fish killed; and location of fish release.</li> </ul>
<ul style="list-style-type: none"> <li>• If in-water construction activities cause underwater noise greater than 120dBrms and Southern Resident Killer whales have been documented in the action area more than four times during the proposed work window and/or four or more humpback whale sightings have been documented in the past two years during the proposed work month, a Marine Mammal Monitoring Plan must be submitted. See Program Administration (PA) Section 9 of the Biological Opinions for supporting information. If applicable, NMFS verification required.</li> </ul>

<b>General Construction Measures</b>	
	The proposed project must comply with the following General Construction Measures (GCMs) as applicable.
<b>1.</b>	<b>Minimize Construction Impacts at Project Site</b>
	To the extent feasible, retain natural vegetation, limit impermeable surfaces, limit duration of in-water work and otherwise minimize the extent and duration of earthwork (e.g., compacting, dredging, drilling, excavation, and filling).
<b>2.</b>	<b>In-Water Work Timing</b>
	Complete all work waterward of the line of the Highest Astronomical Tide (HAT) during dates listed in the most recent version of in-water work guidelines, Washington Department of Fish and Wildlife (WDFW) Marine Water Work Windows: <a href="https://app.leg.wa.gov/WAC/default.aspx?cite=220-660-330">https://app.leg.wa.gov/WAC/default.aspx?cite=220-660-330</a>
	Hydraulic and bathymetric measurement, sediment sampling and geotechnical sampling are not constrained by the work timing constraints above and may be completed at any time.
<b>3.</b>	<b>Isolation of Concrete Work</b>
	All concrete will be placed in the dry (e.g., isolated from water) or within confined waters (i.e., within a form or cofferdam) not connected to surface waters, and will be allowed to cure a minimum of 7 days before contact with surface water. Should new concrete technology develop which has a quicker curing rate, information must be provided as part of the project submittal and NMFS and USFWS will evaluate whether a shorter cure time will be no more impactful than the cure time evaluated in this Opinion.
<b>4.</b>	<b>Fish Screens</b>
	Whenever diverting or pumping surface water or water in an isolated work area, a fish screen that meets the most recent revisions of NMFS' fish screen criteria will be installed prior to and during pumping activities and will be maintained in a condition that prevents fish movement through the barrier. Fish screen criteria can be found in Chapter 11 of NMFS Anadromous Salmonid Fish Facility manual or most recent version (NMFS 2022): <a href="https://media.fisheries.noaa.gov/2022-06/anadromous-salmonid-passage-design-manual-2022.pdf">https://media.fisheries.noaa.gov/2022-06/anadromous-salmonid-passage-design-manual-2022.pdf</a> . If at any time fish screens have damage, pumping activities and in-water work shall cease until damaged fish screens are repaired.
<b>5.</b>	<b>Drilling, Boring, and Tunneling</b>
	If drilling, boring, or tunneling are used, isolate drilling operations in wetted areas using a steel casing or other appropriate isolation method to prevent drilling fluids from contacting water.
	If drilling through decking is necessary, use containment measures to prevent drilling debris from entering the water.
	Sampling and directional drill recovery/recycling pits, and any associated waste or spoils will be completely isolated from surface waters and wetlands.
	All waste or spoils will be covered if precipitation is falling or imminent.
	All drilling fluids and waste will be recovered and recycled or disposed of to prevent entry into the water.

	If a drill boring case breaks and drilling fluid or waste is visible in water or a wetland, make all possible efforts to contain the waste.
	All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, will be contained and then completely recovered and recycled or disposed of as necessary to prevent entry into any waterway. Use a tank to recycle drilling fluids.
	When drilling is completed, remove as much of the remaining drilling fluid as possible from the casing (e.g., by pumping) to reduce turbidity when the casing is removed.
	Drilling, boring, or coring may be used to collect sediment samples/cores. Work at contaminated sites is addressed in PDC #14.
<b>6.</b>	<b>Pile Installation</b>
	Piles may be round concrete, steel pipe, untreated wood or some pressure-treated wood with appropriate wrapping (see below). Pressure-treated wood may be installed as described below. Piles must be 36 inches in diameter or smaller or steel H-pile designated as HP 24 inches or smaller.
	Whenever practical, use a vibratory hammer for in-water pile installation.
	Jetting may be used to install pile in areas with coarse, uncontaminated sediments that meet criteria for unconfined in-water disposal.
	When using an impact hammer to drive or proof a steel pile, one of the following sound attenuation methods will be used: (a) complete isolation from water by dewatering the area around the pile; (b) a double-walled pile; or (c) a bubble curtain that will distribute small air bubbles around the pile perimeter for the full depth of the water column during pile installation (see NMFS and USFWS (2006), CALTRANS Technical Report No. CTHWASSNP-RT-306.01.01 (2015), Wursig et al. (2000), and Longmuir and Lively (2001)); or c) if water velocity is greater than 1.6 feet per second, the permittee will use a confined bubble curtain (e.g., surrounded by a fabric or sleeve) that will distribute air bubbles around 100% of the pile perimeter for the full depth of the water column during impact pile installation. New technologies that have demonstrated equivalent sound attenuation can be used if verified by USFWS.
	To assist a permittee in determining biological monitoring needs during pile installation, an optional Pile Installation Calculator is available: <a href="https://www.fws.gov/library/collections/washingtonsection-7-consultation-technical-assistance-and-guidance">https://www.fws.gov/library/collections/washingtonsection-7-consultation-technical-assistance-and-guidance</a>  The tool aids in determining the extent of underwater noise impacts and distances. Construction activities will cease if marbled murrelets are observed within or entering a zone where pile driving noise is likely to cause injury.
	No more than 8 piles may be driven on any day using impact pile driving.
	Impact pile driving will not begin earlier than two hours after sunrise and will be complete at least one hour before sunset for the period from April 1 through September 30.
	Complete all work waterward of the line of the Highest Astronomical Tide (HAT) during dates listed in the most recent version of in-water work

	guidelines, Washington Department of Fish and Wildlife (WDFW) Marine Water Work Windows: <a href="https://app.leg.wa.gov/WAC/default.aspx?cite=220-660-330">https://app.leg.wa.gov/WAC/default.aspx?cite=220-660-330</a>
	Hydraulic and bathymetric measurement, sediment sampling and geotechnical sampling are not constrained by the work timing constraints above and may be completed at any time.
<b>7.</b>	<b>Marbled Murrelet Monitoring Plan</b>
	The applicant will develop and implement a marbled murrelet monitoring plan for projects that include in-water impact pile driving when injurious sound pressure levels are expected or when in-air sounds are expected to cause masking effects.
	Applicants may request technical assistance from the USFWS while developing a Marbled Murrelet Monitoring Plan to ensure it meets requirements under the USFWS Protocol for Marbled Murrelet Monitoring During Pile Driving (further detail is provided in Appendix B of USFWS's Biological Opinion for this programmatic consultation). A plan must be submitted with the project notification.
	Certified observers will visually monitor the monitoring area (area of potential injury) for marbled murrelets following the protocol. Protocol is provided in Appendix B of USFWS's Biological Opinion for this programmatic consultation.
	An appropriate number of certified marbled murrelet observers will be positioned to provide adequate coverage of the monitoring area without looking farther than 50 meters to ensure no murrelets are in the monitoring area.
	All monitoring will be conducted by observers meeting appropriate qualifications and certified by the USFWS.
	One qualified biologist will be identified as the Lead Biologist. The Lead Biologist has the authority to stop pile driving when murrelets are detected in the monitoring area or when visibility impairs monitoring.
	If murrelets are spotted in the monitoring area, pile driving will not resume until the murrelets have left the monitoring area and at least 2 full sweeps of the monitoring area have confirmed no murrelets are present. If visibility impairs monitoring, pile driving will not resume until effective monitoring can be conducted.
	If weather or sea conditions restrict the observer's ability to observe for marbled murrelets, or become unsafe for the monitoring vessels to operate, cease pile installation until conditions allow for monitoring to resume. Monitoring will only occur when the sea state is at a Beaufort scale of 2 or less.
	The Permittee will provide a summary of marbled murrelet monitoring results, including observation dates, times, and conditions; description of any "take" identified by the biologist, and seabirds found during beach surveys to USFWS.
<b>8.</b>	<b>Treated Wood Piles</b>
	Inorganic arsenical pressure-treated wood piles (chromated copper arsenate (CCA) or ammoniacal copper zinc arsenate (ACZA)) that are sealed with a wrapping or a polyurea barrier may be installed under SSNP. Any proposal to use arsenical pressure-treated wood pilings without a wrapping or polyurea barrier systems is not covered by SSNP. Pile wrappings must meet the following criteria:

	A. Wrappings are made from a pre-formed plastic such as polyvinyl chloride (PVC), a fiber glass-reinforced plastic or a high density polyethylene (HDPE) with an epoxy fill or petrolatum saturated tape (PST) inner wrap in the void between the HDPE and the pile.
	B. Wrapping material used for interior pilings must be a minimum of 1/10 of an inch thick, durable enough to maintain integrity for at least 10 years, and have all joints sealed to prevent leakage.
	C. Wrapping material used for exterior pilings that come into direct contact with ocean going vessels or barges must be HDPE pile wrappings with epoxy fill or PST inner wrap.
	D. The tops of all wrapped piles must be capped or sealed to prevent exposure of the treated wood surface to the water column and to prevent preservative from dripping into the water.
	E. Polyurea barrier systems must meet these additional criteria: <ul style="list-style-type: none"> <li>i. The polyurea barrier must be an impact-resistant, biologically inert coating that lasts or can be maintained for 10 years and in accordance with American Wood Protection Association M 27 standard.</li> <li>ii. The polyurea barrier must be ultraviolet light resistant and a minimum of 250 mm (0.25 inch) thick in the area that is submerged (Morrell 2017).</li> <li>iii. Polyurea barriers must be installed on dry piles that are free of loose wood, splinters, sawdust or mechanical damage.</li> <li>iv. Wrappings or polyurea barriers will extend both above and below the portion of the pile that is in contact with the water. The wrapping or polyurea barrier must extend at least 18 inches below the mudline into the substrate and to the top of the pile.</li> <li>v. All operations to prepare wrappings or polyurea barriers for installation over piles (cutting, drilling, and placement of epoxy fill) will occur in a staging area away from the waterbody.</li> <li>vi. All piles with wrappings or polyurea barriers must be regularly inspected and maintained to identify unobserved failures of the wrapping or polyurea barrier or anytime a wrapping or polyurea barrier breach is observed.</li> </ul>
<b>9.</b>	<b>Pile Removal - Intact</b>
	The following steps will be used to minimize contaminant release, sediment disturbance, and total suspended solids when removing an intact pile:
	A. Install a floating surface boom to capture floating surface debris.
	B. To the extent possible, keep all equipment (e.g., bucket, steel cable, vibratory hammer) out of the water, grip piles above the waterline, and complete all work during low water and low current conditions.
	C. Dislodge (i.e., wake up) the piling with a vibratory hammer, whenever feasible.
	D. Slowly lift piles from the sediment and through the water column.
	E. Place piles in a containment basin on a barge deck, pier, or shoreline without attempting to clean or remove any adhering sediment. A

	containment basin for the removed piles and any adhering sediment may be constructed of durable plastic sheeting with continuous sidewalls supported by hay bales or other support to contain all sediment and return flow which may otherwise be directed back to the waterway. Containment basin shall be lined with an oil absorbent boom.
	F. Dispose of all removed piles, floating surface debris, any sediment spilled on work surfaces, and all containment supplies at a permitted upland disposal site.
<b>10.</b>	<b>Pile Removal - Broken or Intractable Pile.</b>
	If a pile breaks above the surface of uncontaminated sediment, or less than two feet below the surface, make every feasible attempt short of excavation to remove it entirely. If the pile cannot be removed without excavation, drive the pile deeper if possible.
	If a pile in contaminated sediment is intractable or breaks above the surface, of contaminated sediment, cut the pile or stump off at the sediment line. Cutting the pile up to two feet below the sediment line is allowed if required by a state permit or other authorization.
	If a pile breaks below the surface of contaminated sediment, make no further effort to remove it.
<b>11.</b>	<b>Treated Wood For Uses Other Than Piles.</b>
	The following criteria pertains to the repair or maintenance of pre-existing bridges, boardwalks, pier, ramp and floats, footbridges, piers, stringers, and structures in or near waterways and wetlands:
	A. Pesticide and preservative-treated wood can only be used for substructures that are not in direct exposure to leaching by precipitation, overtopping waves, or submersion. Treated wood is prohibited for the application of decking and repair or replacement of bulkheads.
	B. Treated wood shipped to the project area will be stored out of contact with standing water and wet soil and will be protected from precipitation.
	C. Each load and piece of treated wood will be visually inspected and rejected for use in or above aquatic environments if visible residue, bleeding of preservative, preservative-saturated sawdust, contaminated soil, or other dispersible materials are present.
	D. Offsite prefabrication will be used whenever possible to minimize cutting, drilling and field preservative treatment over or near water.
	E. When field fabrication is necessary, all drilling, and field preservative treatment of exposed treated wood will be done above the plane of the High Tide Line to minimize discharge of sawdust, drill shavings, excess preservative and other debris. Tarps, plastic tubs, or similar devices will be used to contain the bulk of any fabrication debris, and any excess field preservative will be removed from the treated wood by wiping and proper disposal to prevent run-off to marine waters.
	F. Cutting of treated wood shall occur 50 feet from open water. Cutting of treated wood in nearshore areas shall include means of minimizing sawdust contamination, such as vacuum dust collectors or similar means of collecting dust.

	G. Evaluate all wood construction debris removed during a project to ensure proper disposal of treated wood.
	H. Ensure that no treated wood debris falls into the water or, if debris does fall into the water, remove it immediately.
	I. After removal, place treated wood debris in an appropriate dry storage site protected from precipitation until it can be removed from the project area.
	J. Treated wood debris shall not be left in the water or stacked at or below the High Tide Line.
<b>12.</b>	<b>Barge Use.</b>
	Barges will be large enough to remain stable under foreseeable loads and adverse conditions.
	Barges will be inspected before arrival to ensure the vessel and ballast are free of invasive species if the barge has been used in any other waterbody.
	Barges will be secured, stabilized, and maintained as necessary to ensure no loss of balance, stability, anchorage, or other condition that can result in the release of contaminants or construction debris.
	Ensure the barge does not ground out.
<b>13.</b>	<b>Stormwater Management</b>
	Stormwater management, as described below, is required for PDC #3 and any other project that will create or prolong stormwater runoff discharging to a stream, river, estuary, or nearshore marine area when that proposed project: (1) Includes construction of new impervious surface that; (2) repairs or replaces existing impervious surface when the stormwater management at the site does not currently meet all the criteria identified below; or (3) prolongs the life of an existing impervious surface and the stormwater management at the site does not currently meet the all of the criteria identified below.
	The following actions do not require any post-construction stormwater management: <ul style="list-style-type: none"> <li>i. Removing marine debris or marine life from existing outfalls.</li> <li>ii. Replacing outfall flap gates or flow control devices.</li> <li>iii. Minor repairs or non-structural pavement preservation including installation or repair of guard rails, patching, chip seal, grind/inlay, overlay; removal or plugging of scuppers in a way that benefits stormwater treatment.</li> <li>iv. Modifying on-street parking modifications that reduces contributing impervious surfaces.</li> <li>v. Retrofitting, without increasing the amount of pollution generating impervious surface (PGIS), an existing impervious surface (pavement, parking lot, etc.) as necessary and required by law to comply with Americans with Disabilities Act (ADA) standards for accessible design (e.g., curbcuts). This does not include retrofitting of overwater structures.</li> <li>vi. Minor building repairs such as re-roofing, re-siding, painting, replacing or installing fasteners, shingles, flashing, and gutters, or similar building elements.</li> </ul>

	<p>For residential application, hardscape areas should utilize pervious materials (e.g., pavers, porous concrete) as feasible; if infeasible, incorporate rain gardens, bioswales, planted wetponds or comparable Low Impact Development (LID) treatments.</p>
	<p>For commercial, industrial, or public application, utilize LID approaches to design stormwater treatment and management facilities. LID uses on-site features to maximize evapotranspiration and infiltration, which improve water quality and reduce adverse effects to receiving waters such as hydromodification. Manufactured (or proprietary) stormwater facilities, or alternative approaches, will only be considered if site constraints preclude the implementation of LID methods or the alternative can demonstrate improvement in ecosystem health and function commensurate with identified LID practices. Examples of LID practices, ordered by preference, include:</p> <ul style="list-style-type: none"> <li>i. Minimize impervious area.</li> <li>ii. Limit disturbance.</li> <li>iii. Landscape and hardscape areas.</li> </ul>
	<p>Provide a Post-Construction Stormwater Management Plan (PCSMP) for any action proposed to be carried out under this GCM to NMFS. This plan will be validated by NMFS during the verification step. A PCSMP must include the following information:</p> <ul style="list-style-type: none"> <li>i. All relevant plans, drawings, exhibits, and a narrative report addressing PDC #3 below, that describes, explains, and defines the proposed project. Any engineering design sheets must be stamped and signed by a professional engineer licensed to practice in the state of Washington.</li> <li>ii. Site maps indicating the following elements within the project boundaries: <ul style="list-style-type: none"> <li>a. Property boundaries and project boundaries, especially if the project includes activities extending beyond/outside the property or parcel boundaries.</li> <li>b. Impervious areas, landscape areas, and undeveloped natural areas (e.g., forested areas, wetlands, riparian zones).</li> <li>c. Location and extent of all LID stormwater facilities and BMPs by type and capacity.</li> <li>d. Location and extent of proprietary stormwater treatment technologies by type and capacity, if proposed.</li> <li>e. Location and extent of other structural source control practices by type and capacity (e.g., special practices for known or suspected contaminated sites, methods for targeting specific pollutants of concern).</li> <li>f. All runoff discharge points and conveyance paths to the nearest receiving water.</li> </ul> </li> </ul>
	<p>Water Quality Treatment Analysis that describes how LID or commensurate practices will treat the water quality design storm and provide adequate</p>

	<p>treatment for runoff that will be discharged from the site, based on design storm flows. The Water Quality Treatment Analysis should include:</p> <ul style="list-style-type: none"> <li>i. Descriptions of each proposed LID facility's capacity in terms of discharge or volume depending on the type of facility (i.e., flow rate or volume managed facilities).</li> <li>ii. If proposed, describe each proprietary stormwater treatment facility's capacity to treat the water quality design storm and provide adequate treatment for runoff that will be discharged from the site.</li> <li>iii. Describe any other structural source control practices that address LID or proprietary facilities treatment efficiency objectives (i.e., amount or percent of contaminant reduction, treatment, or management).</li> </ul>
	<p>Flow Control Analysis that describes how treatment facilities (LID or commensurate practices) will manage and control the quantity of stormwater discharged from the site (i.e., detention, retention). Flow control is required for all projects, unless the outfall of the stormwater facility discharges directly into a major water body or directly to nearshore marine areas. Post-construction stormwater flow control methods shall demonstrate that the post-construction stormwater runoff is equal to, or less than, the pre-development stormwater runoff for all storm events between the 50% of the 2-year, 24-hour and the 10-year storm events.</p> <ul style="list-style-type: none"> <li>i. Describe each proposed LID facility's capacity in terms of flow or volume retention/detention depending on facility type.</li> <li>ii. Describe each proprietary stormwater facility's capacity in terms of flow or volume retention/detention depending on facility type.</li> <li>iii. Describe any other structural source control practices in terms of flow or volume retention/detention depending on facility type.</li> </ul>
	<p>If relevant, a description of how the proposed stormwater treatment prevents adverse hydromodification of receiving waters. This step would not typically be required for discharge directly into nearshore marine areas. This step is necessary if a project will:</p> <ul style="list-style-type: none"> <li>i. Peak runoff exceeds 0.5 cfs during the 2-year, 24-hour storm event; and,</li> <li>ii. Not meet the flow control requirements, detailed above; and,</li> <li>iii. Discharge into an intermittent or perennial water body with a watershed area less than 100 square miles above the discharge location.</li> </ul>
	<p>Flow control treatment and practices must be designed using continuous simulation modeling to ensure facilities are designed to capture the frequency and duration of flows generated by storms within the following criteria:</p> <ul style="list-style-type: none"> <li>i. Lower discharge endpoint, by U.S. Geological Survey (USGS) flood frequency zone = 50% of 2-year event (i.e., Water Quality Design Storm)</li> <li>ii. Upper discharge endpoint <ul style="list-style-type: none"> <li>a. Entrenchment ratio &lt;2.2 = 10-year event, 24-hour storm; or,</li> <li>b. Entrenchment ratio &gt;2.2 = bank overtopping event.</li> </ul> </li> </ul>

	<p>Provide a description of the stormwater conveyance system. When conveyance is necessary to discharge treated stormwater directly into a surface water or a wetland, the following requirements apply:</p> <ul style="list-style-type: none"> <li>i. Maintain natural drainage patterns such that runoff is not redirected to a different drainage basin (i.e., watershed, subwatershed) from the pre-project conditions.</li> <li>ii. Ensure that treatment for post-construction runoff from the site is completed before it is allowed to commingle with any offsite runoff in the conveyance.</li> <li>iii. Prevent erosion of the flow path from the project to the receiving water(s). If preventing erosion using a natural flow path is not feasible, use manufactured elements (e.g., pipes, ditches, discharge facility protection) to discharge runoff that extends below the OHWM or HTL elevation of the receiving water. Note: The Corps does not consider activities occurring above the OHWM or HTL.</li> </ul>
	<p>Provide an Operations and Maintenance Plan that describes the schedule of the proposed inspection as well as maintenance activities for the stormwater facilities. This plan will be validated by NMFS during the verification step. The party that is legally responsible for maintenance and monitoring activities should also be stated. Finally, describe events that would trigger an inspection outside of routine inspection (e.g., a large storm event, localized flooding). Provide a contact phone number and email address for the legally responsible party or parties.</p>
	<p>The name, email address, and telephone number of the person responsible for designing the stormwater management facilities, so that NMFS may contact that person if additional information is necessary.</p>
<b>14.</b>	<b>Pollution and Erosion Control</b>
	<p>Use site planning and site erosion control measures commensurate with the scope of the project to minimize damage to natural vegetation and permeable soils and prevent erosion and sediment discharge from the project site.</p>
	<p>Before significant earthwork begins, install appropriate, temporary erosion controls downslope to prevent sediment deposition in the riparian area, wetlands, or water body. In tidal areas, plan work in dry areas as much as possible.</p>
	<p>During construction:</p> <ul style="list-style-type: none"> <li>i. Complete earthwork in wetlands, riparian areas, and stream channels as quickly as possible.</li> <li>ii. Cease project operations when high flows may inundate the project area, except for efforts to avoid or minimize resource damage.</li> <li>iii. If eroded sediment appears likely to be deposited in the stream during construction, install additional sediment barriers as necessary.</li> <li>iv. Temporary erosion control measures may include fiber wattles, silt fences, jute matting, wood fiber mulch and soil binder, or geotextiles and geosynthetic fabric.</li> <li>v. Soil stabilization using wood fiber mulch and tackifier (hydro-applied) may be used to reduce erosion of bare soil, if the materials are free</li> </ul>

	<p>of noxious weeds and non-toxic to aquatic and terrestrial animals, soil microorganisms, and vegetation.</p> <ul style="list-style-type: none"> <li>vi. Inspect and monitor pollution and erosion control measures throughout the length of the project.</li> <li>vii. Remove sediment from erosion controls if it reaches one-third of the exposed height of the control.</li> <li>viii. Whenever surface water is present, maintain a supply of sediment control materials and an oil-absorbing floating boom at the project site.</li> <li>ix. Stabilize all disturbed soils following any break in work unless construction will resume within four days.</li> </ul>
	Remove temporary erosion controls after construction is complete and the site is fully stabilized.
<b>15.</b>	<b>Fish Capture and Release</b>
	If practicable, allow listed fish species to migrate out of the work area or remove fish before dewatering; otherwise remove fish from an exclusion area as it is slowly dewatered with methods such as hand or dip-nets, seining, or trapping with minnow traps (or gee-minnow traps).
	Manage isolation areas in a manner to avoid multiple salvage events (e.g. do not let water or fish into the isolated area during non-work times).
	Fish capture will be supervised by a qualified fisheries biologist, with experience in work area isolation and competent to ensure the safe handling of all fish.
	Conduct fish capture activities during periods of the day with the coolest air and water temperatures possible, normally early in the morning to minimize stress and injury of species present.
	Monitor the block nets frequently enough to ensure they stay secured to the banks and free of organic accumulation.
	<p>Electrofishing will be used during the coolest time of day, only after other means of fish capture are determined to be not feasible or ineffective.</p> <ul style="list-style-type: none"> <li>a. Do not electrofish when the water appears turbid, e.g., when objects are not visible at depth of 12 inches.</li> <li>b. Do not intentionally contact fish with the anode.</li> <li>c. Follow NMFS (2000 or most recent) electrofishing guidelines, including use of only direct current (DC) or pulsed direct current within the following ranges: <ul style="list-style-type: none"> <li>i. If conductivity is less than 100 microsecond (<math>\mu</math>s), use 900 to 1100 volts.</li> <li>ii. If conductivity is between 100 and 300 <math>\mu</math>s, use 500 to 800 volts.</li> <li>iii. If conductivity greater than 300 <math>\mu</math>s, use less than 400 volts.</li> <li>iv. Begin electrofishing with a minimum pulse width and recommended voltage, then gradually increase to the point where fish are immobilized.</li> <li>v. Immediately discontinue electrofishing if fish are killed or injured, i.e., dark bands visible on the body, spinal</li> </ul> </li> </ul>

	<p>deformations, significant de-scaling, torpid or inability to maintain upright attitude after sufficient recovery time. Recheck machine settings, water temperature and conductivity, and adjust or postpone procedures as necessary to reduce injuries.</p> <p>vi. If buckets are used to transport fish:</p> <ol style="list-style-type: none"> <li>1. Minimize the time fish are in a transport bucket. Check condition of fish in the bucket frequently.</li> <li>2. Keep buckets in shaded areas or, if no shade is available, covered by a canopy.</li> <li>3. Limit the number of fish within a bucket; fish will be of relatively comparable size to minimize predation.</li> <li>4. Use aerators or replace the water in the buckets at least every 15 minutes with cold clear water.</li> <li>5. Release fish in an area upstream with adequate cover and flow refuge; downstream is acceptable provided the release site is below the influence of construction.</li> <li>6. Ensure water levels in buckets is low enough to prevent fish from jumping out of the bucket or cover the bucket with a wet towel</li> </ol>
	<p>The USFWS is to be notified within three working days upon locating a dead, injured or sick endangered or threatened species specimen. Initial notification must be made to the nearest U.S. Fish and Wildlife Service Law Enforcement Office. Contact the U.S. Fish and Wildlife Service Law Enforcement Office at (425) 883-8122, or the Service's Washington Fish and Wildlife Office at (360) 753-9440.</p>
<p><b>PA #9</b></p>	<p><b>Marine Mammals</b></p>
	<p>In-water construction activities causing underwater noise greater than 120dBrms, such as pile driving, jackhammering, and underwater sawing, will shut down if marine mammals enter the zone of influence. See Program Administration (PA) Section 9 of the Biological Opinions for supporting information. Construction activities will not resume until all marine mammals have been cleared from the zone of harm and are observed to be moving away from the construction site.</p>
	<p>A. If Southern Resident Killer whales have been documented more than four times during the proposed work window in the quadrant the project area is in, a Marine Mammal Monitoring Plan (MMMP) must be prepared and submitted with the project notification. The MMMP will be reviewed by a NMFS biologist. The goal of a MMMP is to stop or not start work if a marine mammal is in the area where it may be affected by pile driving noise.</p>
	<p>If in the previous two years there were four or more humpback whale sightings during the proposed work month, in the action area of the proposed work, a MMMP must be submitted with the project notification.</p>

	NOAA's website identifies these quadrants and contains guidance on the potential for ESA-listed marine mammal occurrences in project areas: <a href="http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/evaluating_sound.html">http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/evaluating_sound.html</a>
	Check the Orca Network Sightings Maps at: <a href="http://www.orcanetwork.org/Archives/index.php?categories_file=Sightings%20Archives%20Home">http://www.orcanetwork.org/Archives/index.php?categories_file=Sightings%20Archives%20Home</a> for Humpback whale sightings.
	Guidance for developing an MMMP can be found on NOAA's website: <a href="http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/monitoring_plan_guidance.html">http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/monitoring_plan_guidance.html</a>

	<b>Essential Fish Habitat Conservation Recommendations</b>
	1. All projects resulting in a loss of eelgrass habitat, are required to follow eelgrass mitigation monitoring requirements put forth in the Washington Department of Fish and Wildlife "Eelgrass/Macroalgae Habitat Interim Survey Guidelines" unless it conflicts with Seattle District Corps guidelines, in which case the Corps guidelines apply. .
	<b>Mooring Anchors and Persistently Moored Vessels</b>
	2. All new moorings buoys should be anchored in areas where SAV (e.g., eelgrass, kelp) habitat is absent. This will reduce adverse impacts to SAV. Additionally, all new mooring buoys should, to the maximum extent practicable, be in waters deep enough so that the bottom of the vessel remains a minimum of 18 inches off the substrate during extreme low tide events. This will reduce adverse grounding impacts to benthic habitat.
	3. When repairing or replacing mooring buoys, located within SAV habitat should be of the type that use midline floats, where appropriate, to prevent chain scour to the substrate. This will reduce adverse impacts to SAV and other benthic habitat.
	<b>Pile Removal and Installation</b>
	4. Encircle the pile with a silt curtain that extends from the surface of the water to the substrate, where appropriate and feasible.
	5. Drive piles during low tide periods when substrates are exposed in intertidal areas, where appropriate and feasible. This minimizes the direct impacts to fish from sound waves and minimizing the amount of sediments re-suspended in the water column.
	<b>Over- and in- water Structures</b>
	6. Any cross or transverse bracing should be placed above the plane of MHHW, where appropriate and feasible, to avoid impacts to water flow and circulation.
	7. Minimize, to the maximum extent practicable, the footprint of the overwater structure.
	8. Design structures in a north-south orientation, to the maximum extent practicable, to minimize persistent shading over the course of a diurnal cycle.

	9. For residential dock and pier structures, the height of the structure above water should be a minimum of 5 feet above MHHW, where appropriate and feasible.
	10. The use of floats should be minimized to the extent practicable and should be restricted to terminal platforms placed in deep water where appropriate and feasible and when the Corps determines there will not be a navigation hazard.
	11. When breakwaters are required, floating breakwaters are preferred. Encourage seasonal use of breakwaters.
	<b>Nearshore Structures</b>
	12. Use soft approaches (e.g., beach nourishment, soft or hybrid armoring, vegetative plantings, and placement of LWD) in lieu of “hard” shoreline stabilization and modifications (such as concrete bulkheads and seawalls, concrete or rock revetments), where appropriate and feasible.
	13. If planting in the riparian zone, use an adaptive management plan with ecological indicators and performance standards to oversee monitoring and ensure mitigation objectives are met, unless it is contrary to a Corps approved riparian planting plan.

**SALISH SEA NEARSHORE PROGRAMMATIC (SSNP) CONSULTATIONS**

Version: August 02, 2022

**Notification Summary Sheet**

The following information is provided as notification and/or a request for verification for Section 7 Endangered Species Act and/or Magnuson-Stevens Fishery Conservation Management Act coverage under the Salish Sea Nearshore Programmatic (SSNP) consultations with the National Marine Fisheries Service (NMFS), WCRO-2019-04086, and the U.S. Fish and Wildlife Service (USFWS), FWS/R1/2002-0048454.

Date of Notification:		
Project Name:		
Corps Reference Number:		
Location (Lat./Long.):		
Type of Request	NMFS	USFWS
	<input type="checkbox"/> Notification Only <input type="checkbox"/> Notification and Verification <input type="checkbox"/> Minor Alteration Request and Verification	<input type="checkbox"/> Notification Only <input type="checkbox"/> Minor Alteration Notification
Statutory Authority	<input type="checkbox"/> NMFS: ESA and EFH <input type="checkbox"/> NMFS: EFH Only	<input type="checkbox"/> USFWS: ESA Only
General Information	<input type="checkbox"/> JARPA enclosed <input type="checkbox"/> Project Drawings Enclosed	
Project Description including conservation offsets, if applicable.		

Activity Category:

	Culvert and bridge repair and replacement resulting in improvements for fish passage	PDC #1
	Utilities	PDC #2
	Stormwater facilities and outfalls	PDC #3
	Shoreline modifications	PDC #4
	Expand or install a new in-water or overwater structure	PDC #5
	Repair or replace an existing structure	PDC #6
	Minor maintenance of an existing structure	PDC #7
	Repair, replace, or install a new aid to navigation, scientific measurement device, or tideland marker	PDC #8
	Dredging for vessel access	PDC #9
	Dredging and debris removal to maintain functionality of culverts, water intakes, or outfalls	PDC #10
	Habitat enhancement activities	PDC #11
	Set-back or removal of existing tidegates, berms, dikes or levees	PDC #12
	Beach nourishment	PDC #13
	Sediment remediation	PDC #14

Review the PDC checklist(s) for each applicable activity category.

1. Are all applicable project design criteria met?
  - a. If no, describe why and how the work would not result in any adverse effects beyond those considered in the programmatic:
  
2. If applicable, provide a list of the required monitoring plans/reports enclosed or required post-construction:

General Construction Measures (GCM):

	Minimize Construction Impacts at Project Site	GCM #1
	In-Water Work Timing	GCM #2
	Isolation of Concrete Work	GCM #3
	Fish Screens	GCM #4
	Drilling, Boring, and Tunneling	GCM #5
	Pile Installation	GCM #6
	Marbled Murrelet Monitoring Plan	GCM #7

	Treated Wood Piles	GCM #8
	Pile Removal – Intact	GCM #9
	Pile Removal – Broken or Intractable	GCM #10
	Treated Wood for Uses Other Than Piles	GCM #11
	Barge Use	GCM #12
	Stormwater Management	GCM #13
	Pollution and Erosion Control	GCM #14
	Fish Capture and Release	GCM #15
	Marine Mammals	Program Administration # 9

Review the applicable GCM List of Requirements specific to the proposed work.

1. Are all applicable GCM's met?
  - a. If no, describe why and how the work would not result in any adverse effects beyond those considered in the programmatic:
  
2. If applicable, provide a list of the required monitoring plans/reports enclosed or required post-construction:

Project Modifications:

	Work outside the specified in-water work period when the change would not result in any adverse effects beyond those considered in the programmatic consultation.
	Alternate location for equipment, refueling, and staging due to topographical or other site-specific constraints.
	Not installing an anti-perch device (on piling).
	Marina facility expansion with no more than 1,000 square feet of additional over water coverage or 10 new slips. Whichever is less so long as the other criteria in PDC #5 are met.
	Underwater sound attenuation methods demonstrating equivalent sound attenuation to bubble curtains.

If an alteration is requested, include information detailing why the alteration is needed and how the proposal would not result in any adverse effects beyond those considered in the programmatic consultations:

Essential Fish Habitat Conservation Measures:

Applicable	If applicable but will not be implemented, explain.	
		1. All projects resulting in a loss of eelgrass habitat, are required to follow eelgrass mitigation monitoring requirements put forth in the Washington Department of Fish and Wildlife “Eelgrass/Macroalgae Habitat Interim Survey Guidelines” unless it conflicts with Seattle District Corps guidelines, in which case the Corps guidelines apply.
		2. All new moorings buoys should be anchored in areas where SAV (e.g., eelgrass, kelp) habitat is absent. This will reduce adverse impacts to SAV. Additionally, all new mooring buoys should, to the maximum extent practicable, be in waters deep enough so that the bottom of the vessel remains a minimum of 18 inches off the substrate during extreme low tide events. This will reduce adverse grounding impacts to benthic habitat.
		3. When repairing or replacing mooring buoys, located within SAV habitat should be of the type that use midline floats, where appropriate, to prevent chain scour to the substrate. This will reduce adverse impacts to SAV and other benthic habitat.
		4. Encircle the pile with a silt curtain that extends from the surface of the water to the substrate, where appropriate and feasible.
		5. Drive piles during low tide periods when substrates are exposed in intertidal areas, where appropriate and feasible. This minimizes the direct impacts to fish from sound waves and minimizing the amount of sediments re-suspended in the water column.
		6. Any cross or transverse bracing should be placed above the plane of MHHW, where appropriate and feasible, to avoid impacts to water flow and circulation.
		7. Minimize, to the maximum extent practicable, the footprint of the overwater structure.
		8. Design structures in a north-south orientation, to the maximum extent practicable, to minimize persistent shading over the course of a diurnal cycle.

		9. For residential dock and pier structures, the height of the structure above water should be a minimum of 5 feet above MHHW, where appropriate and feasible.
		10. The use of floats should be minimized to the extent practicable and should be restricted to terminal platforms placed in deep water where appropriate and feasible and when the Corps determines there will not be a navigation hazard.
		11. When breakwaters are required, floating breakwaters are preferred. Encourage seasonal use of breakwaters.
		12. Use soft approaches (e.g., beach nourishment, soft or hybrid armoring, vegetative plantings, and placement of LWD) in lieu of “hard” shoreline stabilization and modifications (such as concrete bulkheads and seawalls, concrete or rock revetments), where appropriate and feasible.
		13. If planting in the riparian zone, use an adaptive management plan with ecological indicators and performance standards to oversee monitoring and ensure mitigation objectives are met, unless it is contrary to a Corps approved riparian planting plan.



**Date:** 12/13/2022  
**Subject:** 6933589-EX 1140 SW MASSACHUSETTS ST  
**To:** PND Engineers, Inc.,  
PND Engineers, Inc.  
**From:** Ben Perkowski

## **Shoreline Permit Exemption Request Result; Shoreline Review**

Shoreline permit exemption request for cleaning per plans has been approved. Conditions of exemption approval copied below. See building permit specialist for building permit requirements.

SEPA exempt with respect to shoreline issues.

- All conditions of this exemption approval shall be noted on applicable building permit set of plans.
- Proposal is subject to zoning review approval for compliance with applicable development standards.
- Refer to any applicable Hydraulic Project Approval permit for allowable in-water work timing.
- Any conditions of HPA are considered conditions of this exemption approval.
- Appropriate Best Management Practices (BMPs) shall be employed to prevent deleterious material from entering the aquatic environment during project, consistent with all applicable standards in SMC 23.60A.152 and local, state and federal regulations and permits..
- If toxic or deleterious material such as any petroleum or cleaning product enters the water, this material shall be reported to the Department of Ecology, and shall be immediately contained using the appropriate equipment and material.



US Army Corps  
of Engineers ®  
Seattle District

# NATIONWIDE PERMIT 3

## Terms and Conditions



2021 NWP - Final 41; Effective Date: February 25, 2022

- 
- A. Description of Authorized Activities
  - B. U.S. Army Corps of Engineers (Corps) National General Conditions for All Final 41 NWPs
  - C. Seattle District Regional General Conditions
  - D. Seattle District Regional Specific Conditions for this Nationwide Permit (NWP)
  - E. 401 Water Quality Certification (401 WQC) for this NWP
  - F. Coastal Zone Management Consistency Response for this NWP
- 

In addition to any special condition that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit (NWP) authorization to be valid in Washington State.

### A. DESCRIPTION OF AUTHORIZED ACTIVITIES

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 of dredged or fill material, 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.

## B. CORPS NATIONAL GENERAL CONDITIONS FOR ALL 2021 NWPs - FINAL 41

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 or her 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 NWP 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 Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. 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. Permittees 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 activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

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 designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). 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 species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) 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 species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference 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 or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(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 that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects 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) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places 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 (see 33 CFR 330.4(g)(1)). 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 commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or 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.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has 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. 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. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they 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, 52, 57 and 58 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 by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines 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) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-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. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-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. 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. If restoring riparian areas involves planting vegetation, only native species should be planted. 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(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 NWPs. 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 or federal, 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. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority 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)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. 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 CWA 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 authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot 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.

(b) If one or more of the NWP's used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWP's cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 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."

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(Transferee)

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(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 review by, or 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 and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or

completes its review 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. 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) (i) 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.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, 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 (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) 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 and intermittent 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 or 3/100-acre of stream bed 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) 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 NWP activity that requires permission from, or review by, 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, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. 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 NWP's 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 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 (iii) 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 NWP's, including the need for mitigation to ensure that 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.

C. SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS: The following conditions apply to the 2021 NWP's - Final 41 NWP's for the Seattle District in Washington State, as applicable.

### **RGC 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 United States 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.

### **RGC 2, Aquatic Resources Requiring Special Protection**

A PCN is required for activities resulting in a loss of waters of the United States in wetlands in dunal systems along the Washington coast, mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.

### **RGC 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.

### **RGC 4, Commencement Bay**

No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

### **RGC 5, Bank Stabilization**

All projects including new or maintenance bank stabilization activities in waters of the United States where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

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

- 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.

### **RGC 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 U.S. Army 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.

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.

### **RGC 7, Stream Loss**

A PCN is required for all activities that result in the loss of any linear feet of streams.

### **RGC 8, Construction Boundaries**

Permittees must clearly mark all construction area boundaries within waters of the United States 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.

### **RGC 9, ESA Reporting to NMFS**

For any nationwide permit that may affect threatened or endangered species;

Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries, National Marine Fisheries Service (NMFS) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide

Permit verification shall be reported to NMFS, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by the NMFS to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

D. SEATTLE DISTRICT REGIONAL SPECIFIC CONDITIONS FOR THIS NWP: None

E. 401 WATER QUALITY CERTIFICATION: Depending on the geographic region of the work authorized by this verification, the appropriate 401 certifying authority has made the following determinations:

**Washington Department of Ecology (Ecology) (Projects in all areas except as described for the other certifying agencies listed below): General and Specific WQC Conditions**

**A. State General Conditions for all Nationwide Permits**

In addition to all of the U.S. Army Corps of Engineers' (Corps) national and Seattle District's regional permit conditions, the following state general Water Quality Certification (WQC) conditions **apply to all NWPs whether granted or granted with conditions** in Washington where Ecology is the certifying authority.

Due to the lack of site specific information on the discharge types, quantities, and specific locations, as well as the condition of receiving waters and the quantity of waters (including wetlands) that may be lost, Ecology may need to review the project if one of the following state general conditions is triggered.

This case-by-case review may be required, and additional information regarding the project and associated discharges may be needed, to verify that the proposed project would comply with state water quality requirements and if an individual WQC is required or if the project meets this programmatic WQC.

1. **In-water construction activities.** Ecology WQC review is required for projects or activities authorized under NWPs where the project proponent has indicated on the Joint Aquatic Resource Permit Application (JARPA) question 9e that the project or activity will not meet State water quality standards, or has provided information indicating that the project or activity 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).

Note: In-water activities include any activity within a jurisdictional wetland and/or waters.

2. **Projects or Activities Discharging to Impaired Waters.** Ecology WQC review is required for projects or activities that 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 the project meets this programmatic WQC or will require individual WQC.

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

Ecology WQC review is required for projects or activities in areas identified below to determine if the project meets this programmatic WQC or will require individual WQC.

- a. Activities in or affecting the following aquatic resources:
  - i. 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 forested wetlands and mature forested wetlands.
    - Wetlands in coastal lagoons.
    - Wetlands in dunal systems along the Washington coast.
    - Vernal pools.
    - Alkali wetlands.
  - ii. Fens, aspen-dominated wetlands, camas prairie wetlands.
  - iii. Category I wetlands.
  - iv. Category II wetlands with a habitat score  $\geq 8$  points.
- b. Activities in or resulting in a loss of eelgrass (*Zostera marina*) beds.

This state general condition does not apply to the following NWPs:

- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 48 – Commercial Shellfish Mariculture Activities

4. **Loss of More than 300 Linear Feet of Streambed.** For any project that results in the loss of more than 300 linear feet of streambed Ecology WQC review is required to determine if the project meets this programmatic WQC or will require individual WQC.
5. **Temporary Fills.** For any project or activity with temporary fill in wetlands or other waters for more than six months Ecology WQC review is required to determine if the project meets this programmatic WQC or will require individual WQC.
6. **Mitigation.** Project proponents 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 WQC review or an individual WQC with unavoidable impacts to aquatic resources, a mitigation plan 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 toward 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 approaches 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.

**7. Stormwater Pollution Prevention.** All projects involving land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters.

- 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. Application.** For projects or activities that will require Ecology WQC review, or an individual WQC, project proponents must provide Ecology with a JARPA or the equivalent information, along with the documentation provided to the Corps, as described in national general condition 32, Pre-Construction Notification (PCN), including, where applicable:

- a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project discharge(s) would cause, best management practices (BMPs), and proposed means to monitor the discharge(s).
- b. List of all federal, state or local agency authorizations required to be used for any part

of the proposed project or any related activity.

- c. Drawings indicating the 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.

- d. 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.
- e. Other applicable requirements of Corps NWP general condition 32, Corps regional conditions, or notification conditions of the applicable NWP.

Ecology **grants with conditions Water Quality Certification (WQC)** for this NWP provided that Ecology individual WQC review is not required per the state general conditions (see above) ) and the following conditions:

1. The project or activity involves the complete replacement of a shoreline stabilization using hard armoring.
2. The project or activity increases the original footprint of the structure by more than 1/10<sup>th</sup> acre in wetlands; or
3. The project or activity includes adding a new structure, such as a weir, flap gate/tide gate, or culvert to the site.

**Environmental Protection Agency (EPA) (on Tribal Lands where Tribes Do Not Have Treatment in a Similar Manner as a State and Lands with Exclusive Federal Jurisdiction in Washington):**

On behalf of the 28 tribes that do not have treatment in a similar manner as a state and for exclusive federal jurisdiction lands located within the state of Washington, EPA Region 10 has determined that CWA Section 401 WQC for the following proposed NWP is granted with conditions. EPA Region 10 has determined that any discharge authorized under the following proposed NWP will comply with water quality requirements, as defined at 40 C.F.R. § 121.1(n), subject to the following conditions pursuant to CWA Section 401(d).

General Conditions:

**EPA General Condition 1 – Aquatic Resources of Special Concern**

Activities resulting in a point source discharge in the following types of aquatic resources of special concern shall request an individual project-specific CWA Section 401 WQC: mature forested wetlands; bogs, fens and other peatlands; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; wetlands in dunal systems along the Oregon or Washington Coast; riffle-pool complexes of streams; marine or estuarine mud-flats; salt marshes; marine waters with native eelgrass or kelp beds; or marine nearshore forage fish habitat. To identify whether a project would occur in any of these aquatic resources of special concern, project proponents shall use existing and available information to identify the location and type of resources, including using the U.S. Fish and Wildlife Service's online digital National Wetland Inventory maps, identifying project location on topographical maps, and/or providing on-site determinations as required by the Corps. When a project requires a Pre-Construction Notification (PCN) to the Corps, project proponents shall work with the Corps to identify whether the project is in any of these specific aquatic resources of special concern.

EPA General Condition 2 – Soil Erosion and Sediment Controls

Turbidity shall not exceed background turbidity by more than 50 Nephelometric Turbidity Units (NTU) above background instantaneously or more than 25 NTU above background for more than ten consecutive days.<sup>8</sup> Projects or activities that are expected to exceed these levels require an individual project-specific CWA Section 401 WQC.

The turbidity standard shall be met at the following distances from the discharge:

<b>Wetted Stream Width at Discharge Point</b>	<b>Approximate Downstream Point to Sample to Determine Compliance</b>
Up to 30 feet	50 feet
>30 to 100 feet	100 feet
>100 feet to 200 feet	200 feet
>200 feet	300 feet
Lake, Pond, Reservoir	Lesser of 100 feet or maximum surface distance

<b>For Marine Water</b>	<b>Point of Compliance for Temporary Area of Mixing</b>
Estuaries or Marine Waters	Radius of 150 feet from the activity causing the turbidity exceedance

Measures to prevent and/or reduce turbidity shall be implemented and monitored prior to, during, and after construction. Turbidity monitoring shall be done at the point of compliance within 24 hours of a precipitation event of 0.25 inches or greater. During monitoring and maintenance, if turbidity limits are exceeded or if measures are identified as ineffective, then additional measures shall be taken to come into compliance and EPA shall be notified within 48 hours of the exceedance or measure failure.

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

For land disturbances during construction that 1) disturb one or more acres of land, or 2) will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land, the permittee shall obtain and implement Construction Stormwater General Permit requirements,<sup>9</sup> including:

1. The permittee shall develop a Stormwater Pollution Prevention Plan (SWPPP)<sup>10</sup> and submit it to EPA Region 10 and appropriate Corps District; and
2. Following construction, prevention or treatment of ongoing stormwater runoff from impervious surfaces that includes soil infiltration shall be implemented.

EPA General Condition 4 – Projects or Activities Discharging to Impaired Waters

Projects or activities are not authorized under the NWP's if the project will involve point source discharges into an active channel (e.g., flowing or open waters) of a water of the U.S. listed as impaired under CWA Section 303(d) and/or if the waterbody has an approved Total Maximum Daily Load (TMDL) and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed or has an approved TMDL. The current lists of impaired waters of the U.S. under CWA Section 303(d) and waters of the U.S. for which a TMDL has been approved are available on EPA Region 10's web site at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10>.

#### EPA General Condition 5 – Notice to EPA

All project proponents shall provide notice to EPA Region 10 prior to commencing construction activities authorized by a NWP. This will provide EPA Region 10 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this CWA Section 401 WQC. Where the Corps requires a PCN for an applicable NWP, the project proponent shall also provide the PCN to EPA Region 10. EPA Region 10 will provide written notification to the project proponent if the proposed project will violate the water quality certification of the NWP.

#### EPA General Condition 6 – Unsuitable Materials

The project proponent shall not use wood products treated with leachable chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol), which result in a discharge to waters of the U.S., unless the wood products meet the following criteria:

1. Wood preservatives and their application shall be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act;
2. Use of chemically treated wood products shall follow the Western Wood Preservatives Institute (WWPI) guidelines and BMPs to minimize the preservative migrating from treated wood into the aquatic environment;
3. For new or replacement wood structures, the wood shall 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 include untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and
4. All removal of chemically treated wood products (including pilings) shall follow the most recent "EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State."

#### NWP Specific Conditions:

NWP 3 is conditionally certified, subject to the general conditions listed above, for all maintenance, repair or replacement activities authorized under this NWP, except that an individual project-specific WQC is required when the project involves:

1. Maintenance, repair, or replacement of shoreline stabilization using hard armoring approaches; or
2. Extending existing infrastructure beyond its prior footprint in fish bearing waters of the U.S.; or
3. Excavation or dredging in marine waters.

#### **Specific Tribes with Certifying Authority (Projects in Specific Tribal Areas):**

WQC was issued by the Swinomish Indian Tribal Community. WQC was waived by the Confederated Tribes of the Chehalis Reservation and Colville Indian Reservation, Kalispel Tribe of Indians, Port Gamble S'Klallam Tribe, Quinault Indian Nation, and the Spokane Tribe of Indians. WQC was denied by the Lummi Nation, Makah Tribe, Puyallup Tribe of Indians, and the Tulalip Tribes; therefore, individual WQC is required from these tribes.

#### F. COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY RESPONSE FOR THIS NWP:

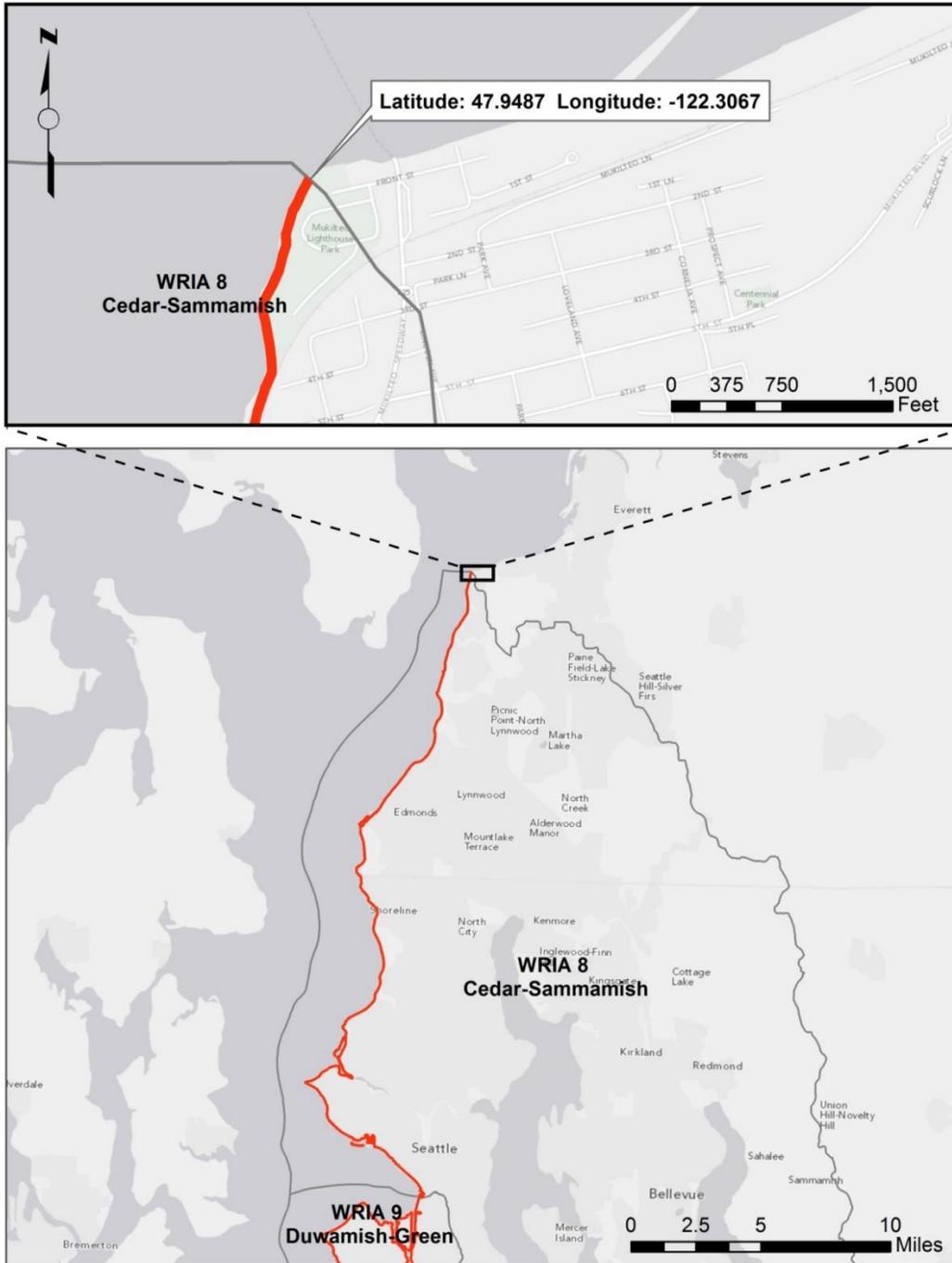
Ecology's determination is that they concur with conditions that this NWP is consistent with CZMA.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

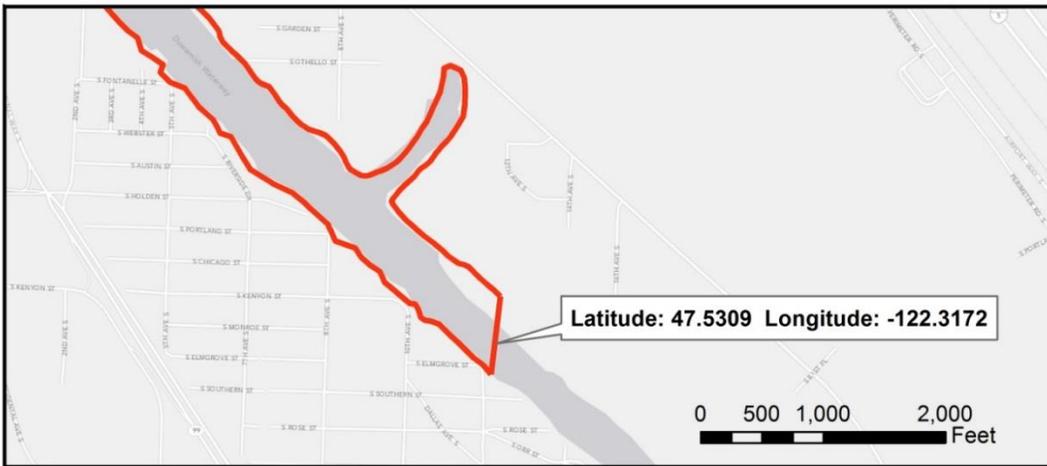
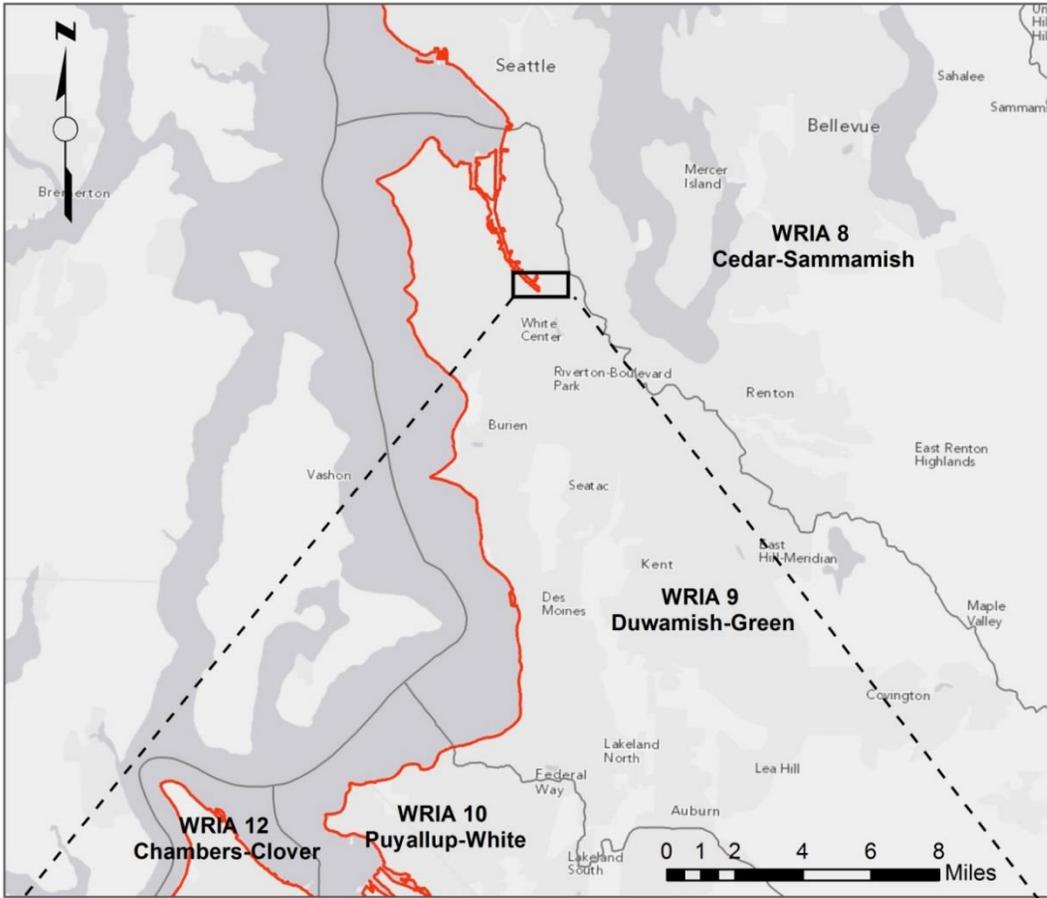
Seattle District Regional General Conditions - Figures

Figure 1: RGC 3 - WRIAs 8, 9, 10, 11, and 12

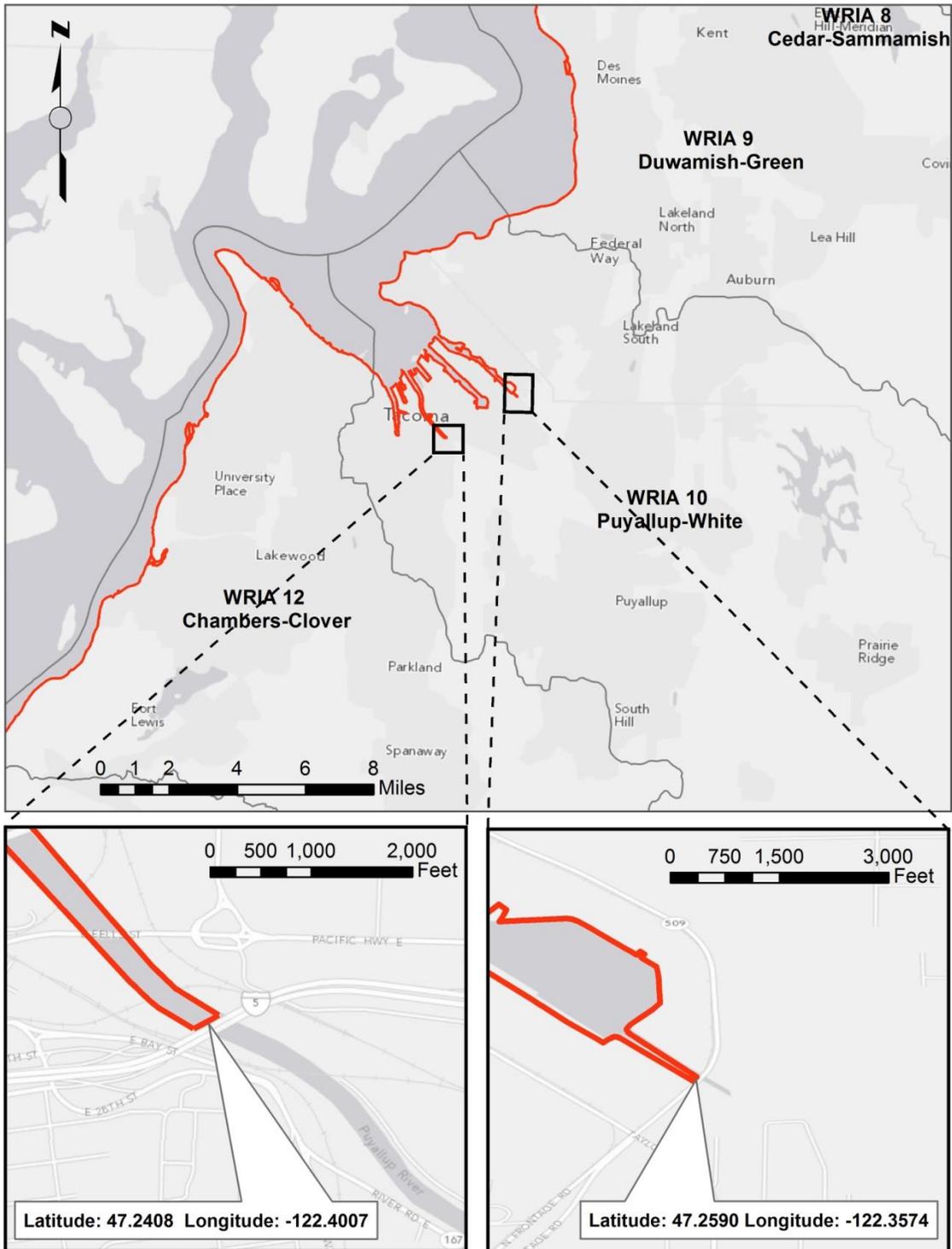
a. WRIA 8



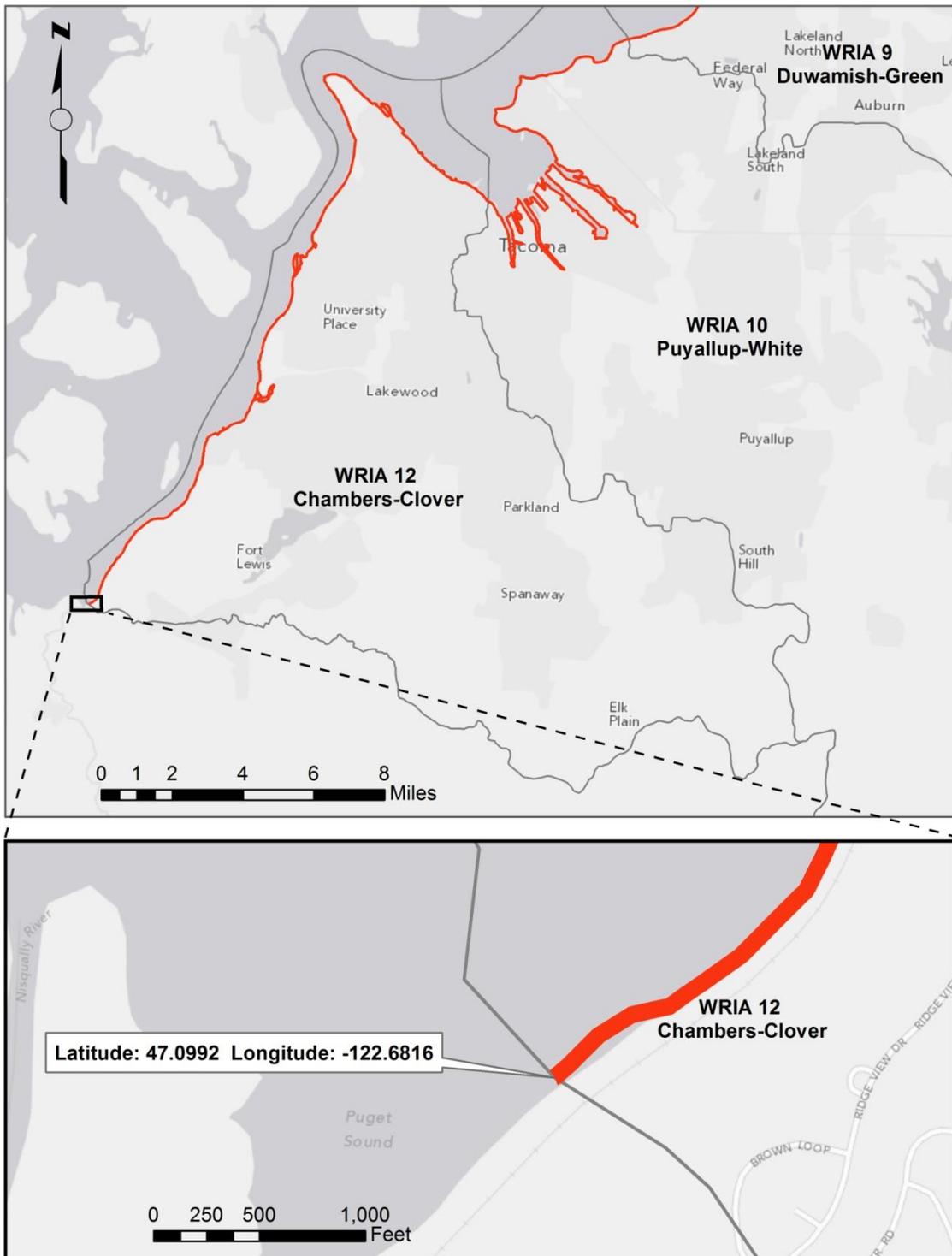
b. WRIA 9



c. WRIA 10



d. WRIA 12



e. WRIA 11

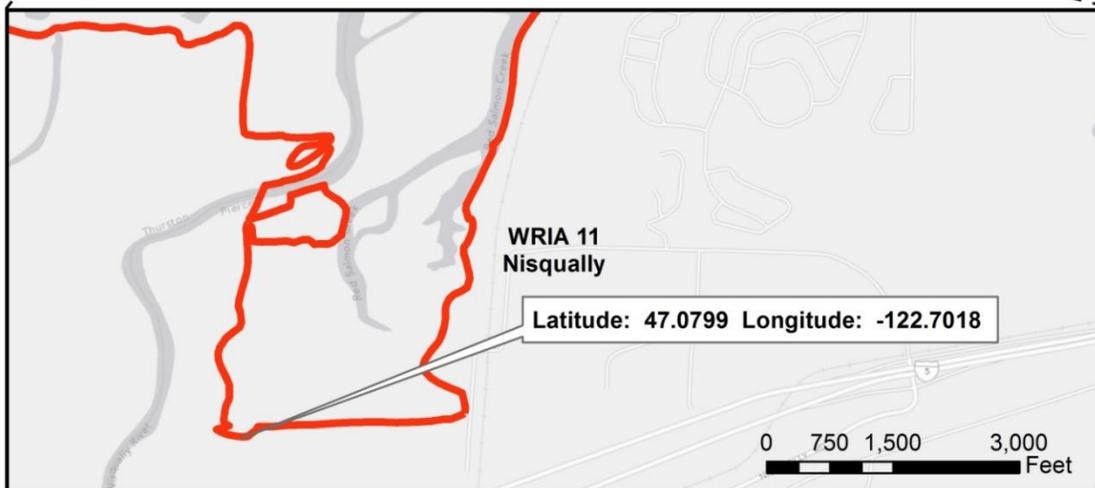
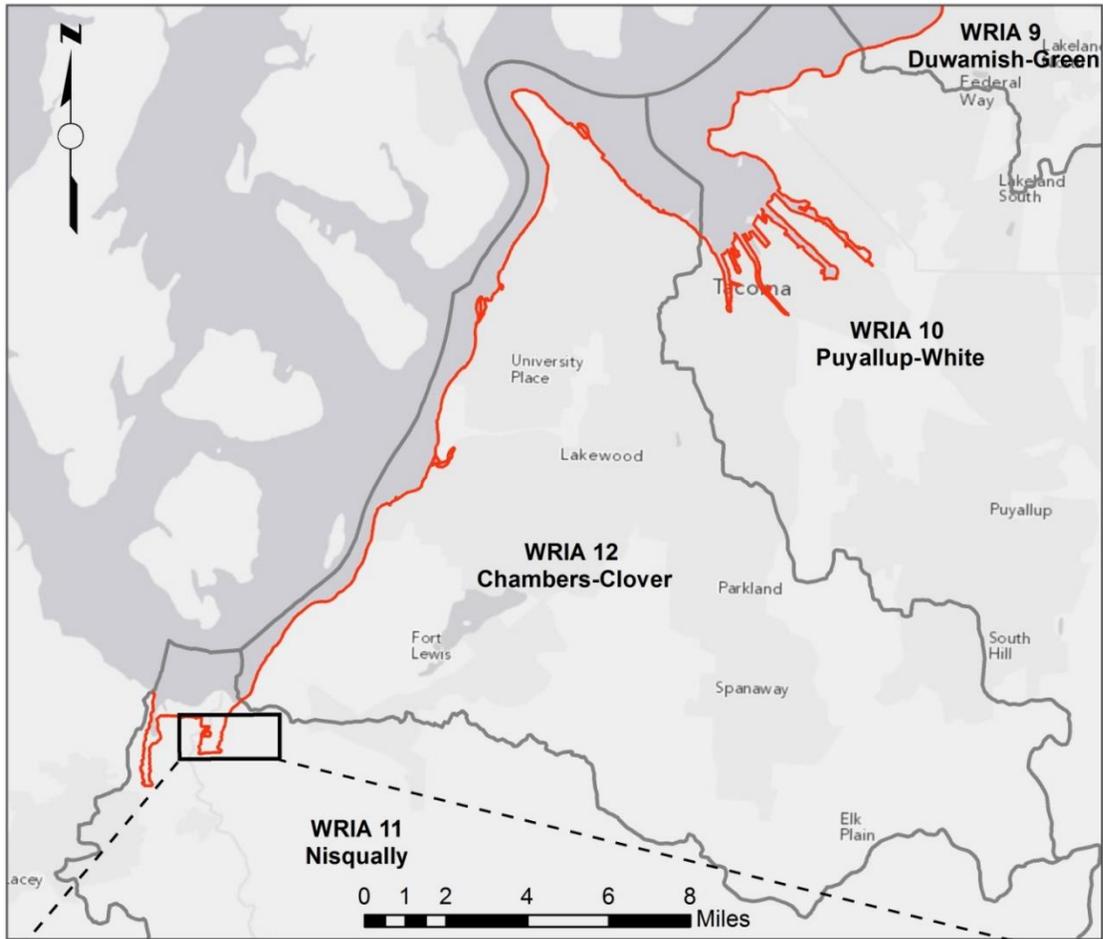
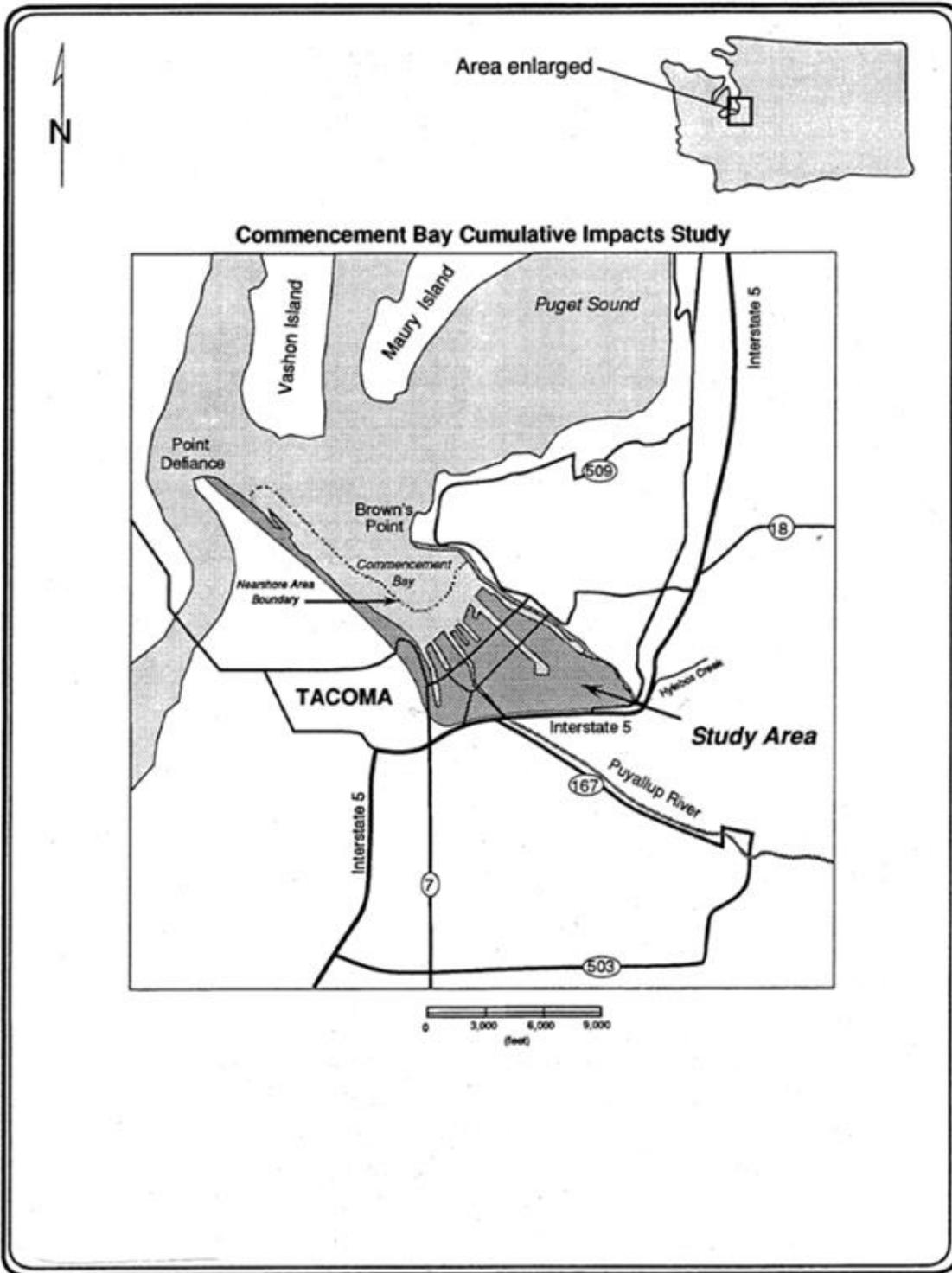
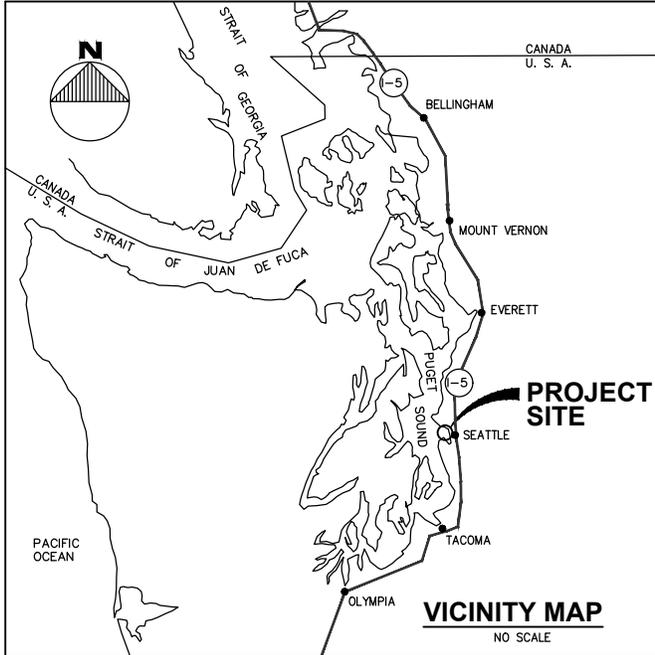


Figure 2. RGC 4 - Commencement Bay Study Area

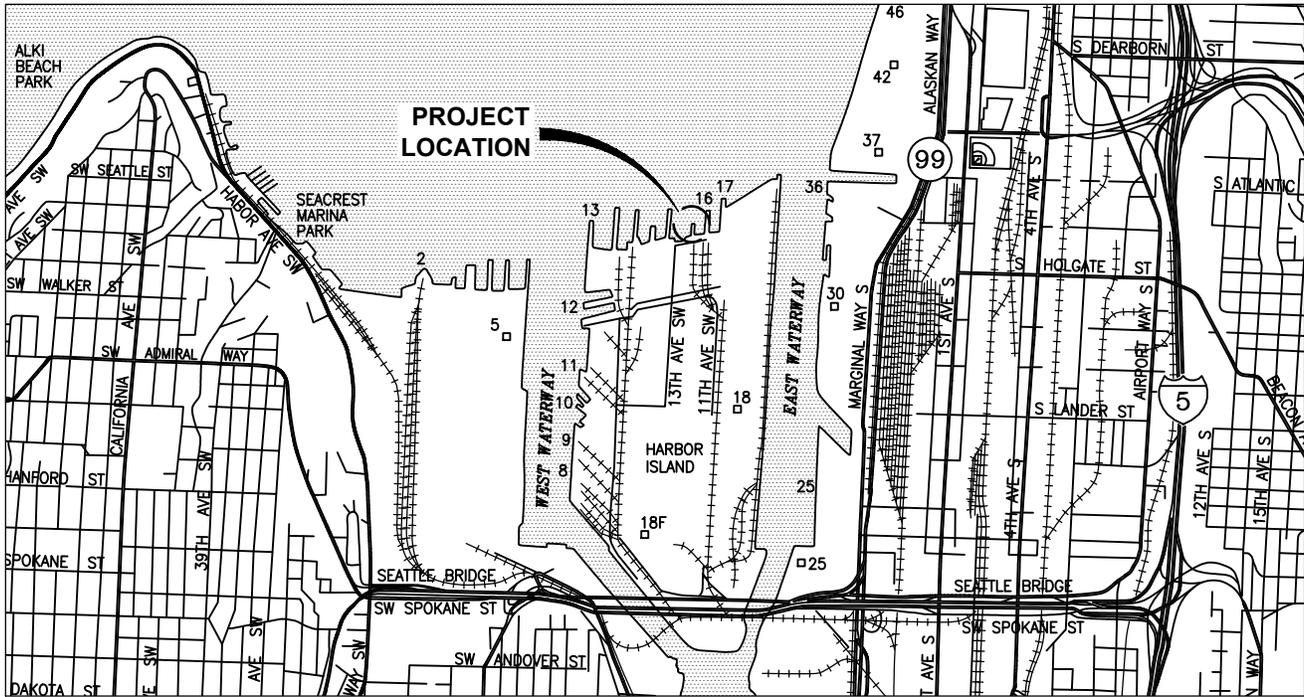




TIDAL DATA	ELEV. (FT)
HIGH TIDE LINE (HTL)	+13.30
MEAN HIGHER HIGH WATER (MHHW)	+11.36
MEAN HIGH WATER (MHW)	+10.49
MEAN TIDE LEVEL (MTL)	+6.66
MEAN LOW WATER (MLW)	+2.83
MEAN LOWER LOW WATER (MLLW)	0.0

SOURCE: NOAA TIDE STATION 9447130, SEATTLE, WA

(NOTE: HTL IS BASED ON THE HAT FOR NOAA TIDE STATION 9447130, SEATTLE, WA, WHICH IS DEFINED AS THE HIGHEST TIDE LEVEL WHICH CAN BE PREDICTED TO OCCUR UNDER AVERAGE METEOROLOGICAL CONDITIONS AND UNDER ANY COMBINATION OF ASTRONOMICAL CONDITIONS (HO)).



**PURPOSE:** REPLACE EXISTING FAILING PAINT WITH NEW COATINGS SYSTEM

**DATUM:** 0.0' M.L.L.W.

**ADJACENT PROPERTY OWNERS:**

1. DEPARTMENT OF NATURAL RESOURCES (DNR)
2. 767180HYDR
3. UNION PACIFIC RR
4. TRITON WEST
5. PORT OF SEATTLE

**AKRR PIER 15.5 COATINGS**

**PROJECT LOCATION**

1140 SW MASSACHUSETTS ST.  
SEATTLE, WA 98134  
47.58766 N, 122.35154 W

**PROPOSED:** RECOAT TRANSFER SPAN, TRANSFER SPAN PONTON, AND GUIDE DOLPHINS IN-PLACE.

**IN:** PUGET SOUND  
**AT:** SEATTLE, WA

**APPLICATION BY:**  
ALASKA RAILROAD CORPORATION  
**SHEET 1 of 7 DATE:** JULY 2022

## GENERAL NOTES

### PROTECTIVE COATINGS

Generally, the coating zones and respective products are summarized in the following table. See coating schedule and detail drawings for clarification on application locations.

COATING ZONES AND PRODUCTS			
NO.	COATING ZONE	LOCATION(S)	ELEVATION RANGE
1	ATMOSPHERIC	GIRDERS, BRACING, PONTOON SUPPORTS, PONTOON ACCESS TUBES, GUIDE DOLPHINS, AND FENDERS	ABOVE MHHW
2	TIDAL AND SPLASH	PONTOON ACCESS TUBES, GUIDE DOLPHINS, AND FENDERS	BETWEEN MLW AND MHHW
3	UNDERWATER	PONTOON ACCESS TUBES, PONTOON, GUIDE DOLPHINS, AND FENDERS	BELOW MLW
4	SUBMERGED	PONTOON INTERIOR	-

### CONTAINMENT SYSTEM

The CONTRACTOR shall design and provide a containment system for the capture, containment, collection, storage and disposal of the waste water materials generated by the work. All debris removed from the surfaces of the structure shall be captured, contained, and disposed of in accordance with the project permitting requirements. All coating overspray and coatings not otherwise adhering to the steel surfaces shall be captured, contained, and disposed of in accordance with the project permitting requirements.

The containment system shall, at a minimum, meet the requirements of SSPC Guide 6 Class 2-A to facilitate effective surface preparation and application of coating materials. Containment may be designed as fixed containment for complete structure or portable containment for sections of the structure. The containment shall be maintained weather tight and/or sealed to avoid any loss of production days. Equipment such as dehumidifiers, heaters, and fans/blowers shall be used to create and maintain environmental requirements during surface preparation and coating installation.

For coating work in the tidal zone, the containment system may be placed intermittently, or at an elevation that allows work to be done only in dry conditions. If the containment system does not continuously isolate the substrate from seawater, debris generated from surface preparation shall be collected and removed.

COATING SCHEDULE		
NO.	ITEM	COATING ZONE(S)
1	GIRDERS AND DIAPHRAGM BRACING	ATMOSPHERIC, TIDAL/SPLASH
2	PONTOON SUPPORTS	TIDAL/SPLASH
3	PONTOON EXTERIOR	UNDERWATER
4	PONTOON INTERIOR	SUBMERGED
5	PONTOON ACCESS TUBES EXTERIOR	ATMOSPHERIC, TIDAL/SPLASH, AND UNDERWATER
6	PONTOON ACCESS TUBES INTERIOR	ATMOSPHERIC AND SUBMERGED
7	GUIDE DOLPHINS STEEL PIPE PILE	ATMOSPHERIC, TIDAL/SPLASH, AND UNDERWATER
8	GUIDE DOLPHIN FENDER PANELS	ATMOSPHERIC, TIDAL/SPLASH, AND UNDERWATER

### NOTES:

- SEE TRANSFER SPAN ELEVATION FOR APPROXIMATE EXTENTS OF EACH ITEM NO. LISTED IN THE ABOVE COATING SCHEDULE.
- CONTRACTOR SHALL ERECT CONTAINMENT AROUND AREA WHERE DEBRIS WILL BE REMOVED DURING SURFACE PREPARATION. CONTAINMENT SHALL CAPTURE ALL DEBRIS REMOVED FROM THE STEEL STRUCTURES DURING CLEANING AND COATING OPERATIONS. CONTAINMENT STRUCTURE SHALL MEET ALL PROJECT PERMITTING REQUIREMENTS. CONTAINMENT STRUCTURE SHALL NOT IMPEDE ON TOP SIDE OWNER OPERATIONS LOADING/UNLOADING TRAIN CARS. SUBMIT.

**PURPOSE:** REPLACE EXISTING FAILING PAINT WITH NEW COATINGS SYSTEM

**DATUM:** 0.0' M.L.L.W.

**ADJACENT PROPERTY OWNERS:**

- DEPARTMENT OF NATURAL REOURCES (DNR)
- 767180HYDR
- UNION PACIFIC RR
- TRITON WEST
- PORT OF SEATTLE

## AKRR PIER 15.5 COATINGS

### PROJECT NOTES

1140 SW MASSACHUSETTS ST.  
SEATTLE, WA 98134  
47.58766 N, 122.35154 W

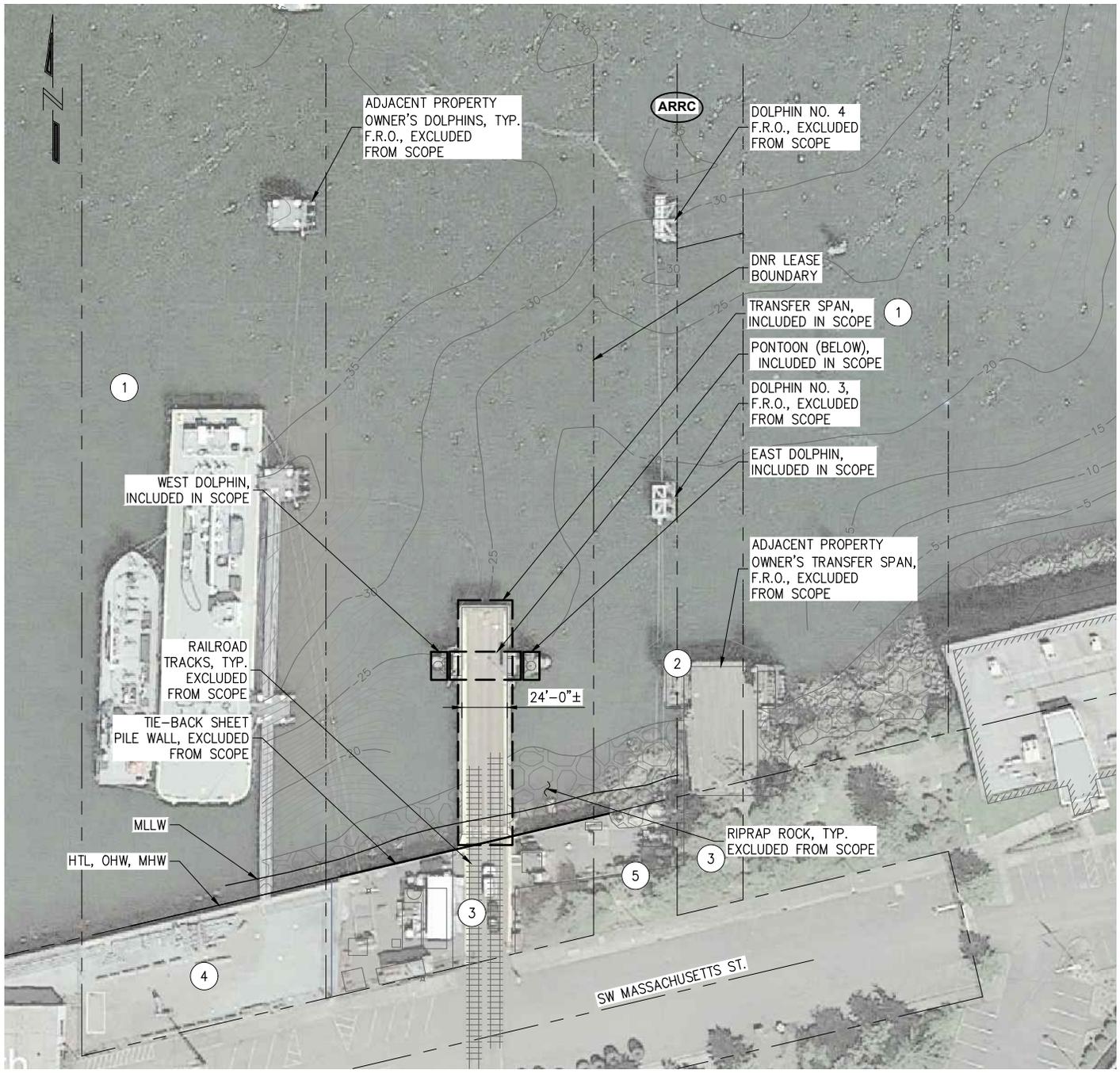
**PROPOSED:** RECOAT TRANSFER SPAN, TRANSFER SPAN PONTOON, AND GUIDE DOLPHINS IN-PLACE.

**IN:** PUGET SOUND

**AT:** SEATTLE, WA

**APPLICATION BY:**  
ALASKA RAILROAD CORPORATION  
**SHEET 2 of 7 DATE:** JULY 2022

Drawings \2020\201122 ARRC Term Marine Engineering\ARPA\201122.06-03.dwg



**PLAN**



**LEGEND**

(#) ADJACENT PROPERTY OWNER

**PURPOSE:** REPLACE EXISTING FAILING PAINT WITH NEW COATINGS SYSTEM  
**DATUM:** 0.0' M.L.L.W.

- ADJACENT PROPERTY OWNERS:**
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**AKRR PIER 15.5 COATINGS**

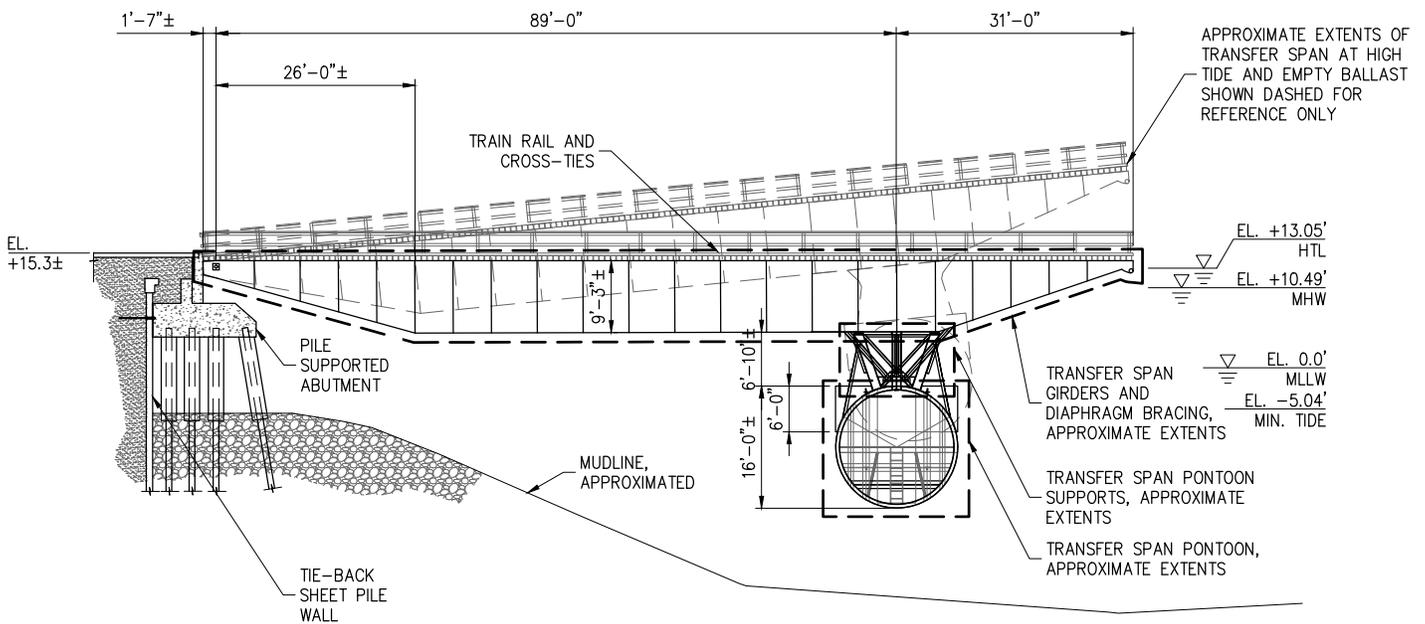
**SITE PLAN**

1140 SW MASSACHUSETTS ST.  
 SEATTLE, WA 98134  
 47.58766 N, 122.35154 W

**PROPOSED:** RECOAT TRANSFER SPAN, TRANSFER SPAN PONTOON, AND GUIDE DOLPHINS IN-PLACE.

**IN:** PUGET SOUND  
**AT:** SEATTLE, WA

**APPLICATION BY:**  
 ALASKA RAILROAD CORPORATION  
**SHEET 3 of 7 DATE:** JULY 2022



**ELEVATION**

**PURPOSE:** REPLACE EXISTING FAILING PAINT WITH NEW COATINGS SYSTEM

**DATUM:** 0.0' M.L.L.W.

**ADJACENT PROPERTY OWNERS:**

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**AKRR PIER 15.5 COATINGS**

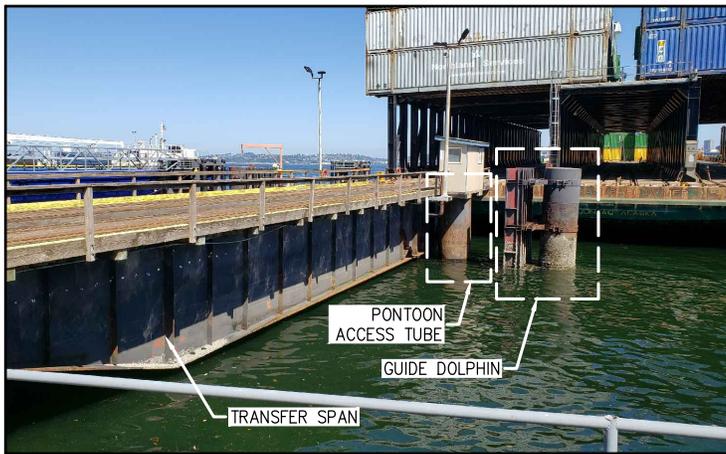
**TRANSFER SPAN  
ELEVATION**

1140 SW MASSACHUSETTS ST.  
SEATTLE, WA 98134  
47.58766 N, 122.35154 W

**PROPOSED:** RECOAT TRANSFER SPAN, TRANSFER SPAN PONTON, AND GUIDE DOLPHINS IN-PLACE.

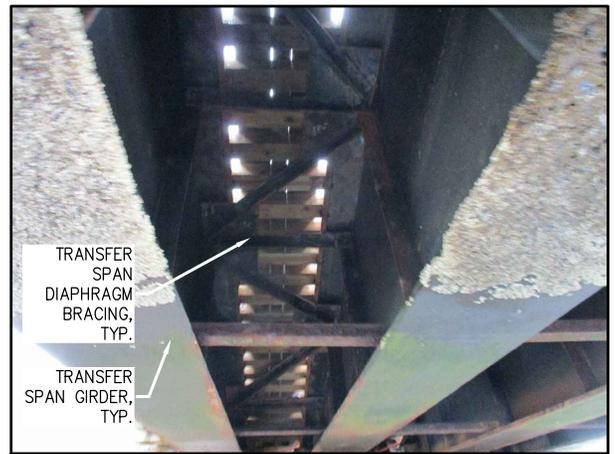
**IN:** PUGET SOUND  
**AT:** SEATTLE, WA

**APPLICATION BY:**  
ALASKA RAILROAD CORPORATION  
**SHEET 4 of 7 DATE:** JULY 2022



**PHOTO 1**

TRANSFER SPAN FROM SHORE SIDE



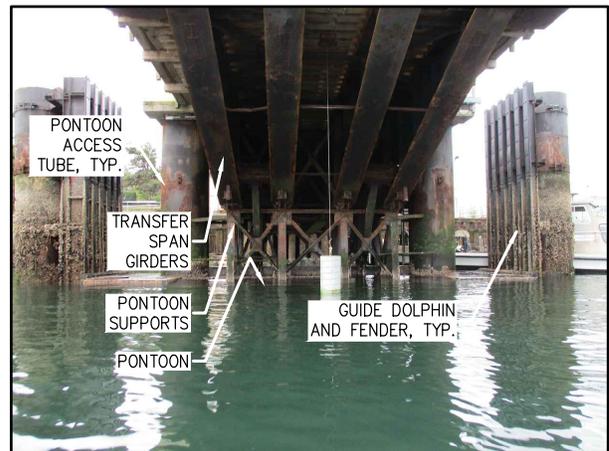
**PHOTO 2**

TRANSFER SPAN FROM BELOW



**PHOTO 3**

TRANSFER SPAN PONTON SUPPORTS FROM BELOW



**PHOTO 4**

TRANSFER SPAN SUPPORT AND PONTON (SUBMERGED) FROM BELOW

**PURPOSE:** REPLACE EXISTING FAILING PAINT WITH NEW COATINGS SYSTEM

**DATUM:** 0.0' M.L.L.W.

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**AKRR PIER 15.5 COATINGS**

**PHOTOS**

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SEATTLE, WA 98134  
47.58766 N, 122.35154 W

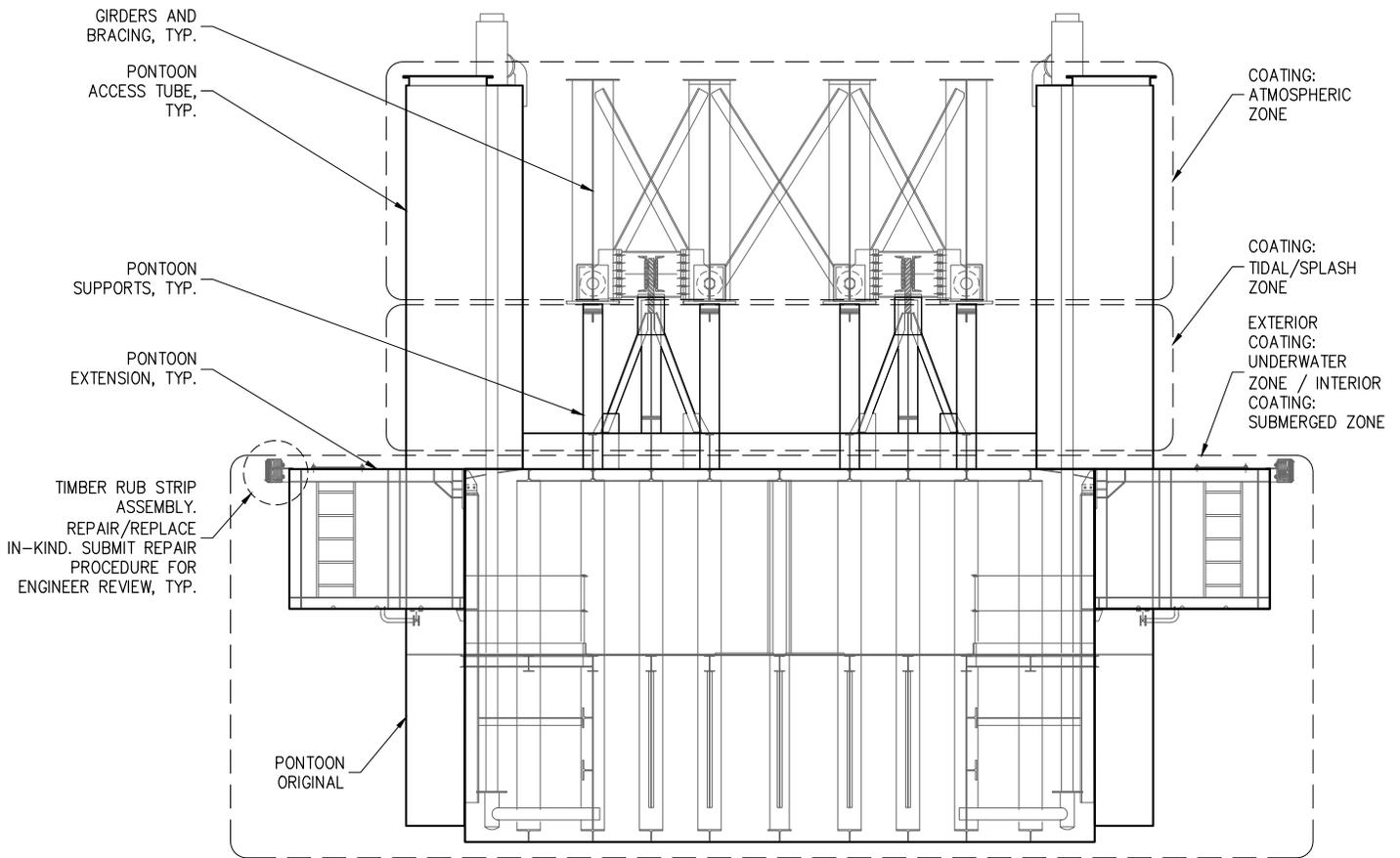
**PROPOSED:** RECOAT TRANSFER SPAN, TRANSFER SPAN PONTON, AND GUIDE DOLPHINS IN-PLACE.

**IN:** PUGET SOUND

**AT:** SEATTLE, WA

**APPLICATION BY:**  
ALASKA RAILROAD CORPORATION

**SHEET 5 of 7 DATE:** JULY 2022



**PURPOSE:** REPLACE EXISTING FAILING PAINT WITH NEW COATINGS SYSTEM

**DATUM:** 0.0' M.L.L.W.

**ADJACENT PROPERTY OWNERS:**

1. DEPARTMENT OF NATURAL REOURCES (DNR)
2. 767180HYDR
3. UNION PACIFIC RR
4. TRITON WEST
5. PORT OF SEATTLE

## AKRR PIER 15.5 COATINGS

### TRANSFER SPAN AND PONTOON ELEVATION

1140 SW MASSACHUSETTS ST.  
SEATTLE, WA 98134  
47.58766 N, 122.35154 W

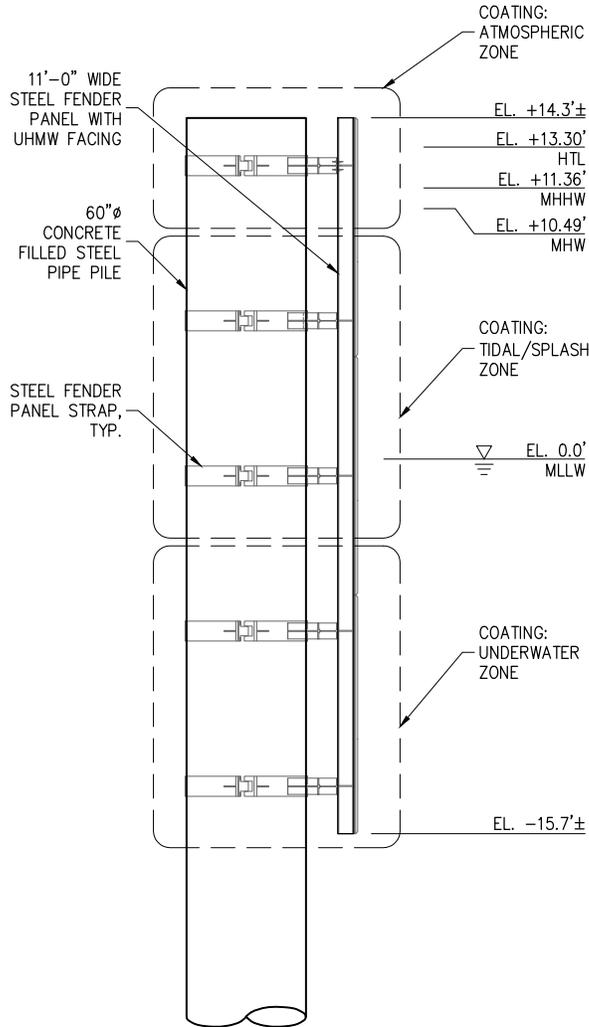
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## AKRR PIER 15.5 COATINGS

### GUIDE DOLPHIN SIDE ELEVATION

1140 SW MASSACHUSETTS ST.  
SEATTLE, WA 98134  
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**IN:** PUGET SOUND

**AT:** SEATTLE, WA

**APPLICATION BY:**  
ALASKA RAILROAD CORPORATION

**SHEET 7 of 7 DATE:** JULY 2022



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
4735 EAST MARGINAL WAY SOUTH, BLDG 1202  
SEATTLE, WA 98134-2388

Regulatory Branch

August 25, 2023

Mr. Brian Lindamood  
Alaska Railroad Corporation  
1140 Southwest Massachusetts Avenue  
Seattle, Washington 98134

Reference: NWS-2022-695  
Alaska Railroad  
Corporation Club (Pier  
Maintenance)

Dear Mr. Lindamood:

We have reviewed your application to perform routine maintenance to remove and recoat of the metallic components of the Alaska Railroad Corporation (ARRC) Pier 15.5 located on Harbor Island in Seattle, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 3, *Maintenance* (Federal Register December 27, 2021, Vol. 86, No. 245), authorizes your proposal as depicted on the enclosed drawings dated July 1, 2022.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 3, Terms and Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act (ESA) and the Magnuson Stevens Fishery Conservation and Management Act (MSA), you must implement and abide by the applicable terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" and the applicable Essential Fish Habitat Conservation Recommendations as set forth in the Salish Sea Nearshore Programmatic (SSNP) Biological Opinion (BO) (National Marine Fisheries Service (NMFS) Reference Number WCRO-2019-04086) dated June 29, 2022, and U.S. Fish and Wildlife Service (USFWS) Reference Number FWS/R1/2022-0048454 dated July 29, 2022). The specific General Construction Measures, Project Design Criteria, Essential Fish Habitat Conservation Measures, and monitoring and/or reporting requirements applicable to this permit are identified in the enclosed Notification Summary Sheet dated April 20, 2023, (NMFS Reference Number 2019-04086-5703; USFWS Reference Number 2023-0072544). The BO is available on the U.S. Army Corps of Engineers (Corps) website

(<https://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/Endangered-Species/>). You must provide the Corps and NMFS the information requested in the enclosed Notification Summary Sheet. All information must prominently display the reference number NWS-2022-695. Failure to comply with these requirements constitutes non-compliance with the ESA and your Corps permit. The NMFS and USFWS is the appropriate authority to determine compliance with the terms and conditions of their BO and with the ESA. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and/or the MSA.

b. In order to meet the requirements of the Endangered Species Act you may conduct the authorized activities from July 16 through February 15 in any year this permit is valid. You shall not conduct work authorized by this permit from February 16 through July 15 in any year this permit is valid.

c. All piling work will occur in the dry, and all material will be captured in tarps deployed for that purpose. All materials captured will be disposed of appropriately, with no loss of scraped materials to the environment.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please be reminded that Special Condition "a" of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the programmatic Biological Opinion (BO) for this project. In particular, note that the BO requires you submit the enclosed *Certificate of Compliance with Department of the Army Permit*. All documents must be submitted to the Corps at [nws.compliance@usace.army.mil](mailto:nws.compliance@usace.army.mil), NMFS at [ssnp-wa.wcr@noaa.gov](mailto:ssnp-wa.wcr@noaa.gov), and USFWS at [ssnp\\_wa@fws.gov](mailto:ssnp_wa@fws.gov). Failure to comply with the commitments above constitutes non-compliance with the ESA and with this authorization.

The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination decision for this NWP. No further coordination with Ecology for WQC and CZM is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project, you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 14, 2026, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work for the NWP authorization has not been completed by that date and you have commenced or are under contract to commence this activity before March 14, 2026, you will have until March 14, 2027, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. Referenced documents and information about our program are available on our website at [www.nws.usace.army.mil](http://www.nws.usace.army.mil), select "Regulatory Permit Information". A copy of this letter with enclosures will be furnished to Ms. Brenna Hughes at [bhughes@pndengineers.com](mailto:bhughes@pndengineers.com). If you have any questions, please contact me at (206) 549-2682 or by [leeann.w.simmons@usace.army.mil](mailto:leeann.w.simmons@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "LeeAnn Simmons". The signature is fluid and cursive, with the first name "Lee" being more prominent.

**For LeeAnn Simmons, Project Manager  
Regulatory Branch**

Enclosures

cc:  
Ecology ([ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov))



US Army Corps  
of Engineers ®  
Seattle District

## CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT



Permit Number: NWS-2022-695, Alaska Railroad Corporation Club (Pier Maintenance)

Name of Permittee: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

Upon completion of the activity authorized by this permit, please check the applicable boxes below, date and sign this certification, and return it to the following email or mailing address:

NWS.Compliance@usace.army.mil                      OR                      Department of the Army  
U.S. Army Corps of Engineers Seattle  
District, Regulatory Branch  
4735 E. Marginal Way S, Bldg 1202  
Seattle, Washington 98134-2388

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of your authorization, your permit may be subject to suspension, modification, or revocation.

<input type="checkbox"/>	<p>The work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of this permit.</p> <p>Date work complete: _____</p> <p><input type="checkbox"/> Photographs and as-built drawings of the authorized work (OPTIONAL, unless required as a Special Condition of the permit).</p>
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<input type="checkbox"/>	<p>If applicable, the mitigation required (e.g., construction and plantings) in the above-referenced permit has been completed in accordance with the terms and conditions of this permit (not including future monitoring).</p> <p>Date work complete: _____ <input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Photographs and as-built drawings of the mitigation (OPTIONAL, unless required as a Special Condition of the permit).</p>
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<input type="checkbox"/>	<p>Provide phone number/email for scheduling site visits (must have legal authority to grant property access).</p> <p>Printed Name: _____</p> <p>Phone Number: _____ Email: _____</p>
--------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



# HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: October 21, 2022  
Project End Date: October 19, 2027

Permit Number: 2022-4-695+01  
FPA/Public Notice Number: N/A  
Application ID: 29699

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
Alaska Railroad ATTENTION: Brian Lindamood P.O. Box 107500 Anchorage, AK 99510-7500	PND Engineers, Inc. ATTENTION: Brenna Hughes 1506 W 36th Ave. Anchorage, AK 99503

**Project Name:** ARRC PIER 15.5 COATING REPLACEMENT PROJECT

**Project Description:** This project will include routine maintenance to remove and recoat the metallic components of the Alaska Railroad Corporation (ARRC) Pier 15.5 transfer span located on Harbor Island in Seattle.

## PROVISIONS

- 1. TIMING LIMITATION:** To protect fish and shellfish habitats at the job site, work below the ordinary high water line must occur from AUGUST 1 through DECEMBER 31 and JANUARY 1 through FEBRUARY 15 of any year.
  - a. Washing must be only done at the time of maximum daily tidal flows.** Maximum tidal flows occur from one hour after high or low slack tide to one hour prior to the next high or low slack tide.
- 2. APPROVED PLANS:** Work must be accomplished per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife, entitled ARRC PIER 15.5 COATING REPLACEMENT PROJECT, dated JULY 2022, except as modified by this Hydraulic Project Approval. You must have a copy of these plans available on site during all phases of the project proposal.

## NOTIFICATION

- 3. PRE- AND POST-CONSTRUCTION NOTIFICATION:** You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work, and again within seven days after completing the work. The notification must include the permittee's name, project location, starting date for work or date the work was completed, and the permit number. The Washington Department of Fish and Wildlife may conduct inspections during and after construction; however, the Washington Department of Fish and Wildlife will notify you or your agent before conducting the inspection.
- 4. PHOTOGRAPHS:** You, your agent, or contractor must take photographs of the job site before the work begins and after the work is completed. You must upload the photographs to the post-permit requirement page in the Aquatic Protection Permitting System (APPS) or mail them to Washington Department of Fish and Wildlife at Post Office Box 43234, Olympia, Washington 98504-3234 within 30-days after the work is completed.
- 5. FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill



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or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

## STAGING, JOB SITE ACCESS AND EQUIPMENT

6. Establish the staging area (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants like petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.
7. Clearly mark boundaries to establish the limit of work associated with site access and construction.
8. Confine the use of equipment to specific access and work corridor shown in the approved plans.
9. Check equipment daily for leaks and complete any required repairs before using the equipment in or near the water.
10. Lubricants composed of biodegradable base oils such as vegetable oils, synthetic esters, and polyalkylene glycols are recommended for use in equipment operated in or near water.
11. Operate vessels with minimal propulsion power to avoid prop scour damage to the bed and marine vegetation habitats.
12. Operate vessels during tidal elevations that are adequate to prevent grounding of the barge.
13. Restrict vessel operation to tidal elevations adequate to prevent propeller related damage to seagrass and kelp.
14. Do not deploy anchors or spuds in seagrass or kelp.
15. Maintain anchor cable tension, set and retrieve anchors vertically, and prevent mooring cables from dragging to avoid impacts to seagrass and kelp.
16. Relocate vessels moored over seagrass between March 21 and September 21 every 4th day to minimize shading of seagrass.

## CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

17. Prevent contaminants from the project, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.
18. Use tarps or other methods to prevent treated wood, sawdust, trimmings, drill shavings and other debris from contacting the bed or waters of the state.

## CONSTRUCTION MATERIALS

19. To prevent leaching, construct forms to contain any wet concrete. Place impervious material over any exposed wet concrete that will come in contact with waters of the state. Forms and impervious materials must remain in place until the concrete is cured.
20. Do not use wood treated with oil-type preservative (creosote, pentachlorophenol) in any hydraulic project. Wood



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treated with waterborne preservative chemicals (ACZA, ACQ) may be used if the Western Wood Preservers Institute has approved the waterborne chemical for use in the aquatic environment. The manufacturer must follow the Western Wood Preservers Institute guidelines and the best management practices to minimize the preservative migrating from treated wood into aquatic environments. To minimize leaching, wood treated with a preservative by someone other than a manufacturer must follow the field treating guidelines. These guidelines and best management practices are available at [www.wwpinstitute.org](http://www.wwpinstitute.org).

## PIER 15.5 COATING REPLACEMENT

21. Project activities include routine maintenance to remove and recoat the metallic components of the Pier 15.5 transfer span (cleaning, washing, abrasive blasting, marine growth removal and recoating), as illustrated in your plans, except as modified by this Hydraulic Project Approval.

22. As specified in the application, work will occur above and below the OHWM and includes girders, bracing, pontoon surfaces and supports, pontoon access tubes, dolphin piles, and fenders.

23. A containment system shall be implemented to prevent all paint, blasting media and other material from entering the water or the leaving the immediate work area. The containment system shall be installed without disturbance of the shoreline, and cleaned as necessary to keep material out of the water.

24. Any deployed containment, boom or filter structure must be routinely inspected and repaired as necessary to ensure its function. Debris and substances collected in the containment, boom or filter structure must be removed from the structure daily, whenever accumulation place the structure at risk, and before relocation or the removal of the structure.

25. Removal of the existing structure shall be accomplished so the structure and associated material does not enter the water. Material shall be disposed of in an approved upland disposal site.

26. Cleaned debris and substances from this project shall be collected and then contained and deposited above waters of the state in an approved upland disposal site. No debris and substances shall be placed in road drainages, wetlands, riparian areas or on adjacent land where they may be eroded into waters of the state.

27. Work must not occur when weather conditions would place the containment structure at risk and/or result in loss of containment of debris and substances.

28. After dry cleaning, washing of the superstructure to be coated is done with high pressure equipment followed by abrasive blasting, the filtered wash water may enter state waters. Work may include use of a temporary floating work platform and marine growth removal as provided below:

29. Minimal, disturbance (e.g. walking, sliding materials) that does not result in destruction of vegetation or stability of the shoreline may occur when placing, using, or removing a temporary floating or pier mounted work platform.

30. No temporary floating work platform anchoring or grounding may occur in saltwater that would disturb eelgrass, kelp, and/or other intertidal wetland vascular plants.

31. No grounding of a temporary floating work platform may occur.

32. The structures must first be cleaned using dry methods and equipment (scraping, sweeping, vacuuming) that will prevent debris and substances from entering state waters.



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- 33. Dry method work that would result in debris and substances entering state waters, including but not restricted to dirt, abrasive blasting medium, old paint chips, and new paint, must include a containment structure capable of collecting all such debris and substances.
- 34. Wet method work wash water and debris resulting from pressure washing, including but not restricted to dirt and old paint chips, must be filtered through a filter tarp with a minimum # 100 sieve.
- 35. Removed marine growth may be released to state waters provided the marine growth must not accumulate or be spoiled on the seabed.
- 36. Marine growth removal from creosote or any other treated wood must be restricted to the use of hand tools and methods that will avoid removal of the creosote or treated wood fibers.
- 37. During washing operations proper BMPs must be used at the deck drains to insure dirty wash water and other debris will not be discharged into the water body.

## DEMOBILIZATION/CLEANUP

- 38. Do not relocate removed or replaced structures within waters of the state. Remove and dispose of these structures in an upland area above the limits of anticipated floodwater.
- 39. Remove all trash and unauthorized fill in the project area, including concrete blocks or pieces, bricks, asphalt, metal, treated wood, glass, floating debris, and paper, that is waterward of the ordinary high water line and deposit upland.
- 40. Remove all debris or deleterious material resulting from construction from the beach area or bed and prevent from entering waters of the state.
- 41. Do not burn wood, trash, waste, or other deleterious materials waterward of the ordinary high water line.
- 42. Replace damaged or destroyed riparian vegetation during the first dormant season (late fall through late winter) after project completion. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require you to submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

LOCATION #1:	Site Name: ARRC Pier 15.5 1140 SW Massachusetts Ave., DNR LEASE # 22-2331, Seattle, WA 98134					
WORK START:	October 21, 2022	WORK END:	October 19, 2027			
<u>WRIA</u>	<u>Waterbody:</u>			<u>Tributary to:</u>		
08 - Cedar - Sammamish	Wria 08 Marine			Puget Sound		
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
NW 1/4	07	24 N	04 E	47.58766	-122.35154	King
<u>Location #1 Driving Directions</u>						



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The site is on Harbor Island, Pier 15.5. From I5 N from the South Seattle area, take exit 163 toward the W. Seattle Bridge; Keep right, follow signs for Spokane St/Lumen Fld/T-Mobile Pk and merge onto S Spokane St; slight right to Harbor Island/Termina 18; continue straight onto Klickitat Ave bridge onto 16th Ave SW; turn left onto 13th Ave SW; turn right onto SW Massachusetts St. The project site is between Maxum Petroleum and Union Pacific Railroad.

## APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person (s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.



# HYDRAULIC PROJECT APPROVAL

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**MINOR MODIFICATIONS TO THIS HPA:** You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

**MAJOR MODIFICATIONS TO THIS HPA:** You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

## APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

**A. INFORMAL APPEALS:** WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.



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FPA/Public Notice Number: N/A  
Application ID: 29699

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist      Laura.Arber@dfw.wa.gov  
Laura Arber            425-379-2306

for Director  
WDFW



**WASHINGTON STATE**  
**Joint Aquatic Resources Permit**  
**Application (JARPA) [\[help\]](#)**



US Army Corps  
of Engineers  
Seattle District

AGENCY USE ONLY

Date received: \_\_\_\_\_;  Town  
 Application Fee Received;  Fee N/A  
 New Application;  Renewal Application  
Type/Prefix #: \_\_\_\_\_; NaturE Use Code: \_\_\_\_\_  
LM Initials & BP#: \_\_\_\_\_  
RE Assets Finance BP#: \_\_\_\_\_  
New Application Number: \_\_\_\_\_  
Trust(s): \_\_\_\_\_; County: \_\_\_\_\_  
AQR Plate #(s): \_\_\_\_\_  
Gov Lot #(s): \_\_\_\_\_  
Tax Parcel #(s): \_\_\_\_\_

**Attachment E:**  
**Aquatic Use Authorization on**  
**Department of Natural Resources**  
**(DNR)-managed aquatic lands [\[help\]](#)**

Complete this attachment and submit it with the completed JARPA form only if you are applying for an Aquatic Use Authorization with DNR. Call (360) 902-1100 or visit <http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions> for more information.

- DNR recommends you discuss your proposal with a DNR land manager before applying for regulatory permits. Contact your regional land manager for more information on potential permit and survey requirements. You can find your regional land manager by calling (360) 902-1100 or going to <http://www.dnr.wa.gov/programs-and-services/aquatics/aquatic-districts-and-land-managers-map>. [\[help\]](#)
- The applicant may not begin work on DNR-managed aquatic lands until DNR grants an Aquatic Use Authorization.
- Include a \$25 non-refundable application processing fee, payable to the “Washington Department of Natural Resources.” (Contact your Land Manager to determine if and when you are required to pay this fee.) [\[help\]](#)

DNR may reject the application at any time prior to issuing the applicant an Aquatic Use Authorization. [\[help\]](#)

Use black or blue ink to enter answers in white spaces below.

<b>1. Applicant Name (Last, First, Middle)</b>	
Lindamood, Brian	
<b>2. Project Name (A name for your project that you create. Examples: Smith’s Dock or Seabrook Lane Development) <a href="#">[help]</a></b>	
ARRC PIER 15.5 COATING REPLACEMENT PROJECT	
<b>3. Phone Number and Email</b>	
907-265-3095, lindamoodb@akrr.com	
<b>4. Which of the following applies to Applicant? Check one and, if applicable, attach the written authority – bylaws, power of attorney, etc. <a href="#">[help]</a></b>	
<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Company  Home State of Registration: Alaska	<input type="checkbox"/> Individual <input type="checkbox"/> Marital Community (Identify spouse): _____ <input type="checkbox"/> Government Agency <input checked="" type="checkbox"/> Other (Please Explain): State Owned

<b>5.</b> Washington UBI (Unified Business Identifier) number, if applicable: <a href="#">[help]</a>
602-273-750
<b>6.</b> Are you aware of any existing or previously expired Aquatic Use Authorizations at the project location?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know If Yes, Authorization number(s): <u>DNR Lease #22-071593</u>
<b>7.</b> Do you intend to sublease the property to someone else?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, contact your Land Manager to discuss subleasing.
<b>8.</b> If fill material was used previously on DNR-managed aquatic lands, describe below the type of fill material and the purpose for using it. <a href="#">[help]</a>
Not applicable

**To be completed by DNR and a copy returned to the applicant.**

Signature for projects on DNR-managed aquatic lands:

Applicant must obtain the signature of DNR Aquatics District Manager OR Assistant Division Manager if the project is located on DNR-managed aquatic lands.

I, a designated representative of the Dept. of Natural Resources, am aware that the project is being proposed on Dept. of Natural Resources-managed aquatic lands and agree that the applicant or his/her representative may pursue the necessary regulatory permits. My signature does not authorize the use of DNR-managed aquatic lands for this project.

<p>Jessica Olmstead</p> <hr/> <p><b>Printed Name</b> Dept. of Natural Resources District Manager or Assistant Division Manager</p>	 <hr/> <p><b>Signature</b> Dept. of Natural Resources District Manager or Assistant Division Manager</p>	<p>9/26/2022</p> <hr/> <p><b>Date</b></p>
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If you require this document in another format, contact the Governor's Office for Regulatory Innovation and Assistance (ORIA) at (800) 917-0043. People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341. ORIA Publication ORIA-16-016 rev. 10/2016



**WASHINGTON STATE**  
**Joint Aquatic Resources Permit**  
**Application (JARPA) [\[help\]](#)**



US Army Corps  
of Engineers  
Seattle District

AGENCY USE ONLY

Date received: \_\_\_\_\_;  Town  
 Application Fee Received;  Fee N/A  
 New Application;  Renewal Application  
Type/Prefix #: \_\_\_\_\_; NaturE Use Code: \_\_\_\_\_  
LM Initials & BP#: \_\_\_\_\_  
RE Assets Finance BP#: \_\_\_\_\_  
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Use black or blue ink to enter answers in white spaces below.

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Lindamood, Brian	
<b>2. Project Name (A name for your project that you create. Examples: Smith’s Dock or Seabrook Lane Development) <a href="#">[help]</a></b>	
ARRC PIER 15.5 COATING REPLACEMENT PROJECT	
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907-265-3095, lindamoodb@akrr.com	
<b>4. Which of the following applies to Applicant? Check one and, if applicable, attach the written authority – bylaws, power of attorney, etc. <a href="#">[help]</a></b>	
<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Company  Home State of Registration: Alaska	<input type="checkbox"/> Individual <input type="checkbox"/> Marital Community (Identify spouse): _____ <input type="checkbox"/> Government Agency <input checked="" type="checkbox"/> Other (Please Explain): State Owned

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<p>Jessica Olmstead</p> <hr/> <p><b>Printed Name</b> Dept. of Natural Resources District Manager or Assistant Division Manager</p>	 <hr/> <p><b>Signature</b> Dept. of Natural Resources District Manager or Assistant Division Manager</p>	<p>9/26/2022</p> <hr/> <p><b>Date</b></p>
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