



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

YAKAMA NATION
WATER CODE ADMINISTRATION
HYDRAULIC PERMIT
H-2025-03

Details of Application:

Date of Application:	April 10, 2025
Applicant Name:	Yakama Reservation Watersheds Project-YRWP
Contact Person:	Audrey Scott
Mailing Address	4690 SR-22 Toppenish, WA 98948
Email Address	scoa@yakamafish-nsn.gov
Phone:	(509) 449-2091

Details of Proposal:

Location Information:	S ½ NE ¼ & N ½ SE ¼ S20, T10N, R17E
Coordinates:	varies
Trust Land No(s):	131, 175, 176
Water Body:	Toppenish Creek and associated side channels and wetlands

Proposed Activity:

The YRWP proposes to improve a water main along Pom Pom Road, install a 150-foot bridge and install three new 21-foot culverts. Remove existing culvert associated with scour pool and fish barrier. Create a narrow road berm along a segment of Marion Drain Rd. Plugging the artificially created modern day alignment of Toppenish Creek including micro-topography grading, floodplain roughness, channel sediment augmentation, channel grading. Install large wood structures and post assisted roughness features. 13.8 acres of reseeding riparian/upland vegetation planting. Install cattle and exclusion fencing around project area.

Decision:

Application to the Yakama Nation Water Code Administration for a Hydraulic Project permit secures agreement by the applicant, YRWP that this permit is issued under the jurisdiction of the Yakama Nation.

Note: This **Hydraulic Project Approval** permit pertains only to the provisions of the Yakama Nation Hydraulic Code and Water Code. It is the permittee's responsibility to apply for and obtain any additional permits from other permitting agencies Yakama Nation or Federal that may be necessary for this project.

Provisions:

1. **NOTIFICATION REQUIREMENT:** The permittee or his/her agent or contractor shall notify the Water Code Administration of the intent to begin work. Notification shall be received by the WCA at **least** three working days prior to the start of construction activities. The notification shall be submitted on the YNWCA-provided notification form, and shall include the permittee's name, project location, starting date of work, and the permit number for the Hydraulic Project Approval. Submission of the 72-hour notification form may be done one or more of the following methods. : **1)** Fax to 509-877-1064; **2)** Mail to Water Code Administration, P.O. Box 151, Toppenish, WA 98948; **3)** Hand delivery to Water Code Administration during regular business hours, 214 Ivy St., Wapato, WA; or **4)** Email to Shyanne Pinkham, shyanne_pinkham@yakama.com.
2. This permit authorizes the following activities:
 - Cut, prune and remove existing vegetation and trees to allow construction of temporary access routes and staging areas for construction for all aspects of project.
 - Installation of erosion control methods such silt fence waddles, straw bales etc.
 - Excavation of existing culverts, channel reconstruction, grading and installation of new bridge, berm installation, rip-rap and all associated structures.
 - Plugging of existing artificial Toppenish Creek channel and reconfiguring creek channel(s) with all associated installations of woody debris structures etc.
 - Excavation of the creek channel to the extent necessary to perform the work outlined in the Post-Fire Pom Pom Project plan.
 - Placing of super sacks or equivalent for dewatering as needed.
 - Withdrawal of surface water for dust abatement and dewatering as needed when necessary. All pump sites shall be properly screened with 3/32 screening.
 - Salvage of fish in work areas as needed.
3. The applicant is responsible to supply the contractor(s) with a copy of this permit and the contractor(s) must have a copy of the permit on the job site at all times.
4. Plans and specifications provided in the application dated 4/10/2025, supplementary environmental documentation and Post-Fire Pom Pom Project plan shall be substantially adhered to.
5. Equipment is authorized to enter the wetted area of the channel limited to what is necessary to perform the work outlined in the Post-Fire Pom Pom Project plan.
 - Excavator may enter the creek channel during the project only for purposes of excavating and removing the existing culverts, cutting and grading of the channel, installation of the bridge footings and other applicable duties that cannot be accessed in any other manner. All work shall be coordinated according to YN Fisheries approved instream work window as needed.
 - All equipment working within project site shall be kept in good working order free of any fluid leaks such as engine oil, hydraulic fluid, grease etc. No petroleum products, hydraulic fluid, chemicals, or any other toxic or deleterious materials shall enter or leak into the creek, wetlands or other water source.
 - Washing and cleaning of work equipment and machinery shall be done in a location where wash water will not enter the riparian zone or river side channel.

- All portable refueling storage tanks shall be provided with portable containment facilities equal to 110% of the fuel tanks they will contain.
 - **Permittee/contractor is to have spill kits available on site and staff trained in use of kits and spill response.**
6. Removal or repositioning of bed load material (e.g. gravels) is authorized by this HPA but is limited to the minimum necessary to perform the approved activities in provision 2.
 7. The use of explosives is not authorized.
 8. Erosion control methods such as but not limited to filter fabric, silt fences, straw bales, straw wattles, ecology blocks and other applicable erosion control techniques shall be temporarily utilized to prevent silt laden water and other deleterious materials from entering the channel.
 9. Erosion control structures shall be monitoring regularly during normal operations and during and after rain events. If any issues or failures occur with sediment barriers and structures, they are to be repaired within 24 hours.
 10. Removal of temporary structures shall be done in a manner that ensures materials will not enter the channel.
 11. If water is present during project, water will be diverted as described in the Post-Fire Pom Pom Project.
 12. If water is present, any seepage that enters the work area will be pumped to an upland area within 100' of the creek for infiltration back into the ground.
 13. If a high water event occurs during construction, work will cease until water levels recede.
 14. All earthen waste material such as construction debris, silt, excess dirt or overburden resulting from the project shall be deposited in an approved and designated upland site. These stockpiled excavated materials will be used as project backfill.
 15. Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to accomplish the approved activities listed in provision 2.
 16. Vegetation removed by clearing and grubbing will be disposed on on-site within 200' of the project area by means of "pile and mash down".
 17. Restoration and revegetation shall be completed prior to the expiration of this permit.
 18. Restoration and vegetation establishment shall be monitored and maintained for five years to ensure survivability.
 19. Best Management Practices shall be adhered to prevent any toxic or deleterious materials from entering or leaking into the creek or other water source.
 20. This Hydraulic Project Approval (HPA) is for work involving this project area only. This HPA does not authorize trespass onto property not owned by the permittee. It is the permittee's responsibility to obtain permission to enter property owned by others.
 21. WCA retains the authority to ingress and egress the site for legitimate purposes, such as, collection of water samples, measurement of water levels, construction monitoring and so forth.
Other tribal programs such as YN Cultural Resources, YN Fisheries and YN Wildlife shall be granted access to monitor construction activities.
 22. Hydraulic permit **H-2025-03** will expire in one (1) year from date of issuance. All additional HPA work plans shall be cleared and approved through the Yakama Nation Water Code Administration prior to the start of any construction activities. *A time extension may be added depending upon site specific circumstances. Request must be in writing and approved by WCA Director prior to any extensions.*

Failure to comply with the terms, conditions, and scope of this permit may result in the cancellation of this permit and/or civil penalties as listed in the YN Law and Order Code Title 60. This Interim Hydraulic permit is to be available on the job site at all times and its provisions followed by the permittee and operator performing the work.

I have read, understand and will comply with the conditions of this permit. Noncompliance can result in civil fines, requests to cease and desist and denial of permit.

Initial _____

Please read carefully, sign and date this agreement. Your signature indicates that you understand and agree to the conditions set forth in this agreement. Project activities may commence when exact date is given, and sign and date this agreement.

Water Code Director

X 

Date: 6-12-25

I have read the foregoing permit and agree to comply with all conditions and measures set forth, in exchange for the Yakama Nation's permission to proceed with hydraulic modifications.

Permittee

X 

Date: 7/1/25

Permit Expiration Date: 7-1-26

Protest And Appeal:

This decision may be protested and appealed in accordance with Chapters 60.17 of the Yakama Nation Water Code. This appeal must be filed with the reviewing officer.

Chairman

Roads, Irrigation, Land Committee

P.O. Box 151

Toppenish, WA 98948

Appeals must include sufficient narrative evidence and argument to show why this decision should be changed or reversed.

HIP GENERAL CONSERVATION MEASURES APPLICABLE TO ALL ACTIONS

THE ACTIVITIES COVERED UNDER THE HIP ARE INTENDED TO PROTECT AND RESTORE FISH AND WILDLIFE HABITAT WITH LONG-TERM BENEFITS TO ESA-LISTED SPECIES. THE FOLLOWING GENERAL CONSERVATION MEASURES (DEVELOPED IN COORDINATION WITH USFWS AND NMFS) WILL BE APPLIED TO ALL ACTIONS OF THIS PROJECT.

PROJECT DESIGN AND SITE PREPARATION.

1. STATE AND FEDERAL PERMITS.

- A. ALL APPLICABLE REGULATORY PERMITS AND OFFICIAL PROJECT AUTHORIZATIONS WILL BE OBTAINED BEFORE PROJECT IMPLEMENTATION.
- B. THESE PERMITS AND AUTHORIZATIONS INCLUDE, BUT ARE NOT LIMITED TO, NATIONAL ENVIRONMENTAL POLICY ACT, NATIONAL HISTORIC PRESERVATION ACT, THE APPROPRIATE STATE AGENCY REMOVAL AND FILL PERMIT, USACE CLEAN WATER ACT (CWA) 404 PERMITS, CWA SECTION 401 WATER QUALITY CERTIFICATIONS, AND FEMA NO-RISE ANALYSES.

2. TIMING OF IN-WATER WORK.

- A. APPROPRIATE STATE (OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW), WASHINGTON DEPARTMENT OF FISH AND WILDLIFE (WDFW), IDAHO DEPARTMENT OF FISH AND GAME (IDFG), AND MONTANA FISH WILDLIFE AND PARKS (MFWP)) GUIDELINES FOR TIMING OF IN-WATER WORK WINDOWS (IWW) WILL BE FOLLOWED.
- B. CHANGES TO ESTABLISHED WORK WINDOWS WILL BE APPROVED BY REGIONAL STATE BIOLOGISTS AND BPA'S EC LEAD.
- C. BULL TROUT. FOR AREAS WITH DESIGNATED IN-WATER WORK WINDOWS FOR BULL TROUT OR AREAS KNOWN TO HAVE BULL TROUT, PROJECT PROPONENTS WILL CONTACT THE APPROPRIATE USFWS FIELD OFFICE TO INSURE THAT ALL REASONABLE IMPLEMENTATION MEASURES ARE CONSIDERED AND AN APPROPRIATE IN-WATER WORK WINDOW IS BEING USED TO MINIMIZE PROJECT EFFECTS.
- D. LAMPREY. WORKING IN STREAM OR RIVER CHANNELS THAT CONTAIN PACIFIC LAMPREY WILL BE AVOIDED FROM MARCH 1 TO JULY 1 FOR REACHES <5,000 FEET IN ELEVATION AND FROM MARCH 1 TO AUGUST 1 FOR REACHES >5,000 FEET. IF EITHER TIMEFRAME IS INCOMPATIBLE WITH OTHER OBJECTIVES, THE AREA WILL BE SURVEYED FOR NESTS AND LAMPREY PRESENCE, AND AVOIDED IF POSSIBLE. IF LAMPREYS ARE KNOWN TO EXIST, THE PROJECT SPONSOR WILL UTILIZE DEWATERING AND SALVAGE PROCEDURES (SEE FISH SALVAGE AND ELECTROFISHING SECTIONS) TO MINIMIZE ADVERSE EFFECTS.
- E. THE IN-WATER WORK WINDOW WILL BE PROVIDED IN THE CONSTRUCTION PLANS.

3. CONTAMINANTS.

- A. EXCAVATION OF MORE THAN 20 CUBIC YARDS WILL REQUIRE A SITE VISIT AND DOCUMENTED ASSESSMENT FOR POTENTIAL CONTAMINANT SOURCES. THE SITE ASSESSMENT WILL BE STORED WITH PROJECT FILES OR AS AN APPENDIX TO THE BASIS OF DESIGN REPORT.

- B. THE SITE ASSESSMENT WILL SUMMARIZE:

1. THE SITE VISIT, CONDITION OF THE PROPERTY, AND IDENTIFICATION OF ANY AREAS USED FOR VARIOUS INDUSTRIAL PROCESSES;
2. AVAILABLE RECORDS, SUCH AS FORMER SITE USE, BUILDING PLANS, AND RECORDS OF ANY PRIOR CONTAMINATION EVENTS;
3. INTERVIEWS WITH KNOWLEDGEABLE PEOPLE, SUCH AS SITE OWNERS, OPERATORS, OCCUPANTS, NEIGHBORS, OR LOCAL GOVERNMENT OFFICIALS; AND
4. THE TYPE, QUANTITY, AND EXTENT OF ANY POTENTIAL CONTAMINATION SOURCES.

4. SITE LAYOUT AND FLAGGING.

- A. CONSTRUCTION AREAS TO BE CLEARLY FLAGGED PRIOR TO CONSTRUCTION.

- B. AREAS TO BE FLAGGED WILL INCLUDE:

1. SENSITIVE RESOURCE AREAS, SUCH AS AREAS BELOW ORDINARY HIGH WATER, SPAWNING AREAS, SPRINGS, AND WETLANDS;
2. EQUIPMENT ENTRY AND EXIT POINTS;
3. ROAD AND STREAM CROSSING ALIGNMENTS;
4. STAGING, STORAGE, AND STOCKPILE AREAS; AND
5. NO-SPRAY AREAS AND BUFFERS.

5. TEMPORARY ACCESS ROADS AND PATHS.

- A. EXISTING ACCESS ROADS AND PATHS WILL BE PREFERENTIALLY USED WHENEVER REASONABLE, AND THE NUMBER AND LENGTH OF TEMPORARY ACCESS ROADS AND PATHS THROUGH RIPARIAN AREAS AND FLOODPLAINS WILL BE MINIMIZED.
- B. VEHICLE USE AND HUMAN ACTIVITIES, INCLUDING WALKING, IN AREAS OCCUPIED BY TERRESTRIAL ESA-LISTED SPECIES WILL BE MINIMIZED.
- C. TEMPORARY ACCESS ROADS AND PATHS WILL NOT BE BUILT ON SLOPES WHERE GRADE, SOIL, OR OTHER FEATURES SUGGEST A LIKELIHOOD OF EXCESSIVE EROSION OR FAILURE. IF SLOPES ARE STEEPER THAN 30%, THEN THE ROAD WILL BE DESIGNED BY A CIVIL ENGINEER WITH EXPERIENCE IN STEEP ROAD DESIGN.
- D. THE REMOVAL OF RIPARIAN VEGETATION DURING CONSTRUCTION OF TEMPORARY ACCESS ROADS WILL BE MINIMIZED. WHEN TEMPORARY VEGETATION REMOVAL IS REQUIRED, VEGETATION WILL BE CUT AT GROUND LEVEL (NOT GRUBBED).
- E. AT PROJECT COMPLETION, ALL TEMPORARY ACCESS ROADS AND PATHS WILL BE OBLITERATED, AND THE SOIL WILL BE STABILIZED AND REVEGETATED. ROAD AND PATH OBLITERATION REFERS TO THE MOST COMPREHENSIVE DEGREE OF DECOMMISSIONING AND INVOLVES DECOMPACTING THE SURFACE AND DITCH, PULLING THE FILL MATERIAL ONTO THE RUNNING SURFACE, AND RESHAPING TO MATCH THE ORIGINAL CONTOUR.
- F. HELICOPTER FLIGHT PATTERNS WILL BE ESTABLISHED IN ADVANCE AND LOCATED TO AVOID TERRESTRIAL ESA-LISTED SPECIES AND THEIR OCCUPIED HABITAT DURING SENSITIVE LIFE STAGES.

6. TEMPORARY STREAM CROSSINGS.

- A. EXISTING STREAM CROSSINGS OR BEDROCK WILL BE PREFERENTIALLY USED WHENEVER REASONABLE, AND THE NUMBER OF TEMPORARY STREAM CROSSINGS WILL BE MINIMIZED.
- B. TEMPORARY BRIDGES AND CULVERTS WILL BE INSTALLED TO ALLOW FOR EQUIPMENT AND VEHICLE CROSSING OVER PERENNIAL STREAMS DURING CONSTRUCTION. TREATED WOOD SHALL NOT BE USED ON TEMPORARY BRIDGE CROSSINGS OR IN LOCATIONS IN CONTACT WITH OR DIRECTLY OVER WATER.
- C. FOR PROJECTS THAT REQUIRE EQUIPMENT AND VEHICLES TO CROSS IN THE WET:
1. THE LOCATION AND NUMBER OF ALL WET CROSSINGS SHALL BE APPROVED BY THE BPA EC LEAD AND DOCUMENTED IN THE CONSTRUCTION PLANS;
2. VEHICLES AND MACHINERY SHALL CROSS STREAMS AT RIGHT ANGLES TO THE MAIN CHANNEL WHENEVER POSSIBLE;
3. NO STREAM CROSSINGS WILL OCCUR 300 FEET UPSTREAM OR 100 FEET DOWNSTREAM OF AN EXISTING REDD OR SPAWNING FISH; AND
4. AFTER PROJECT COMPLETION, TEMPORARY STREAM CROSSINGS WILL BE OBLITERATED AND BANKS RESTORED.

7. STAGING, STORAGE, AND STOCKPILE AREAS.

- A. STAGING AREAS (USED FOR CONSTRUCTION EQUIPMENT STORAGE, VEHICLE STORAGE, FUELING, SERVICING, AND HAZARDOUS MATERIAL STORAGE) WILL BE 150 FEET OR MORE FROM ANY NATURAL WATER BODY OR WETLAND. STAGING AREAS CLOSER THAN 150 FEET WILL BE APPROVED BY THE EC LEAD.
- B. NATURAL MATERIALS USED FOR IMPLEMENTATION OF AQUATIC RESTORATION, SUCH AS LARGE WOOD, GRAVEL, AND BOULDERS, MAY BE STAGED WITHIN 150 FEET IF CLEARLY INDICATED IN THE PLANS THAT AREA IS FOR NATURAL MATERIALS ONLY.
- C. ANY LARGE WOOD, TOPSOIL, AND NATIVE CHANNEL MATERIAL DISPLACED BY CONSTRUCTION WILL BE STOCKPILED FOR USE DURING SITE RESTORATION AT A SPECIFICALLY IDENTIFIED AND FLAGGED AREA.
- D. ANY MATERIAL NOT USED IN RESTORATION, AND NOT NATIVE TO THE FLOODPLAIN, WILL BE DISPOSED OF OUTSIDE THE 100-YEAR FLOODPLAIN.

8. EQUIPMENT.

- A. MECHANIZED EQUIPMENT AND VEHICLES WILL BE SELECTED, OPERATED, AND MAINTAINED IN A MANNER THAT MINIMIZES ADVERSE EFFECTS ON THE ENVIRONMENT (E.G., MINIMALLY-SIZED, LOW PRESSURE TIRES; MINIMAL HARD-TURN PATHS FOR TRACKED VEHICLES; TEMPORARY MATS OR PLATES WITHIN WET AREAS OR ON SENSITIVE SOILS).
- B. EQUIPMENT WILL BE STORED, FUELED, AND MAINTAINED IN AN CLEARLY IDENTIFIED STAGING AREA THAT MEETS STAGING AREA CONSERVATION MEASURES.
- C. EQUIPMENT WILL BE REFUELED IN A VEHICLE STAGING AREA OR IN AN ISOLATED HARD ZONE, SUCH AS A PAVED PARKING LOT OR ADJACENT, ESTABLISHED ROAD (THIS MEASURE APPLIES ONLY TO GAS-POWERED EQUIPMENT WITH TANKS LARGER THAN 5 GALLONS).

- D. BIODEGRADABLE LUBRICANTS AND FLUIDS WILL BE USED ON EQUIPMENT OPERATING IN AND ADJACENT TO THE STREAM CHANNEL AND LIVE WATER.
- E. EQUIPMENT WILL BE INSPECTED DAILY FOR FLUID LEAKS BEFORE LEAVING THE VEHICLE STAGING AREA FOR OPERATION WITHIN 150 FEET OF ANY NATURAL WATER BODY OR WETLAND.
- F. EQUIPMENT WILL BE THOROUGHLY CLEANED BEFORE OPERATION BELOW ORDINARY HIGH WATER, AND AS OFTEN AS NECESSARY DURING OPERATION, TO REMAIN GREASE FREE.

9. EROSION CONTROL.

- A. TEMPORARY EROSION CONTROL MEASURES INCLUDE:

1. TEMPORARY EROSION CONTROLS WILL BE IN PLACE BEFORE ANY SIGNIFICANT ALTERATION OF THE ACTION SITE AND APPROPRIATELY INSTALLED DOWNSLOPE OF PROJECT ACTIVITY WITHIN THE RIPARIAN BUFFER AREA UNTIL SITE REHABILITATION IS COMPLETE;
2. IF THERE IS A POTENTIAL FOR ERODED SEDIMENT TO ENTER THE STREAM, SEDIMENT BARRIERS WILL BE INSTALLED AND MAINTAINED FOR THE DURATION OF PROJECT IMPLEMENTATION;
3. TEMPORARY EROSION CONTROL MEASURES MAY INCLUDE SEDGE MATS, FIBER WATTLES, SILT FENCES, JUTE MATTING, WOOD FIBER MULCH AND SOIL BINDER, OR GEOTEXTILES AND GEOSYNTHETIC FABRIC;
4. SOIL STABILIZATION UTILIZING WOOD FIBER MULCH AND TACKIFIER (HYDRO-APPLIED) MAY BE USED TO REDUCE EROSION OF BARE SOIL IF THE MATERIALS ARE NOXIOUS WEED FREE AND NONTOXIC TO AQUATIC AND TERRESTRIAL ANIMALS, SOIL MICROORGANISMS, AND VEGETATION;
5. SEDIMENT WILL BE REMOVED FROM EROSION CONTROLS ONCE IT HAS REACHED 1/3 OF THE EXPOSED HEIGHT OF THE CONTROL; AND
6. ONCE THE SITE IS STABILIZED AFTER CONSTRUCTION, TEMPORARY EROSION CONTROL MEASURES WILL BE REMOVED.
- B. EMERGENCY EROSION CONTROLS. THE FOLLOWING MATERIALS FOR EMERGENCY EROSION CONTROL WILL BE AVAILABLE AT THE WORK SITE:
1. A SUPPLY OF SEDIMENT CONTROL MATERIALS; AND
2. AN OIL-ABSORBING FLOATING BOOM WHENEVER SURFACE WATER IS PRESENT.

10. DUST ABATEMENT.

- A. THE PROJECT SPONSOR WILL DETERMINE THE APPROPRIATE DUST CONTROL MEASURES BY CONSIDERING SOIL TYPE, EQUIPMENT USAGE, PREVAILING WIND DIRECTION, AND THE EFFECTS CAUSED BY OTHER EROSION AND SEDIMENT CONTROL MEASURES.
- B. WORK WILL BE SEQUENCED AND SCHEDULED TO REDUCE EXPOSED BARE SOIL SUBJECT TO WIND EROSION.
- C. DUST-ABATEMENT ADDITIVES AND STABILIZATION CHEMICALS (TYPICALLY MAGNESIUM CHLORIDE, CALCIUM CHLORIDE SALTS, OR LIGNINSULFONATE) WILL NOT BE APPLIED WITHIN 25 FEET OF WATER OR A STREAM CHANNEL AND WILL BE APPLIED SO AS TO MINIMIZE THE LIKELIHOOD THAT THEY WILL ENTER STREAMS. APPLICATIONS OF LIGNINSULFONATE WILL BE LIMITED TO A MAXIMUM RATE OF 0.5 GALLONS PER SQUARE YARD OF ROAD SURFACE, ASSUMING MIXED 50:50 WITH WATER.
- D. APPLICATION OF DUST ABATEMENT CHEMICALS WILL BE AVOIDED DURING OR JUST BEFORE WET WEATHER, AND AT STREAM CROSSINGS OR OTHER AREAS THAT COULD RESULT IN UNFILTERED DELIVERY OF THE DUST ABATEMENT MATERIALS TO A WATERBODY (TYPICALLY THESE WOULD BE AREAS WITHIN 25 FEET OF A WATERBODY OR STREAM CHANNEL; DISTANCES MAY BE GREATER WHERE VEGETATION IS SPARSE OR SLOPES ARE STEEP).
- E. SPILL CONTAINMENT EQUIPMENT WILL BE AVAILABLE DURING APPLICATION OF DUST ABATEMENT CHEMICALS.
- F. PETROLEUM-BASED PRODUCTS WILL NOT BE USED FOR DUST ABATEMENT.



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Plan + Design + Engineer + Manage

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NO.	DATE	BY	REVISION



POM POM ROAD AT TOPPENISH CREEK
YAKAMA NATION

HIP CONSERVATION MEASURES

DRAWN: DAN	PROJECT NO.: 2200093
DESIGN: DAN/DKL	SCALE: AS SHOWN
CHECKED: ARR	DATE: 7/10/2025
DRAWING NO.	G04
SHEET NO.	4 of 61

PROJECT DESIGN AND SITE PREPARATION (CONTINUED).

11. SPILL PREVENTION, CONTROL, AND COUNTER MEASURES.

- A. A DESCRIPTION OF HAZARDOUS MATERIALS THAT WILL BE USED, INCLUDING INVENTORY, STORAGE, AND HANDLING PROCEDURES WILL BE AVAILABLE ON-SITE.
- B. WRITTEN PROCEDURES FOR NOTIFYING ENVIRONMENTAL RESPONSE AGENCIES WILL BE POSTED AT THE WORK SITE.
- C. SPILL CONTAINMENT KITS (INCLUDING INSTRUCTIONS FOR CLEANUP AND DISPOSAL) ADEQUATE FOR THE TYPES AND QUANTITY OF HAZARDOUS MATERIALS USED AT THE SITE WILL BE AVAILABLE AT THE WORK SITE.
- D. WORKERS WILL BE TRAINED IN SPILL CONTAINMENT PROCEDURES AND WILL BE INFORMED OF THE LOCATION OF SPILL CONTAINMENT KITS.
- E. ANY WASTE LIQUIDS GENERATED AT THE STAGING AREAS WILL BE TEMPORARILY STORED UNDER AN IMPERVIOUS COVER, SUCH AS A TARPULIN, UNTIL THEY CAN BE PROPERLY TRANSPORTED TO AND DISPOSED OF AT A FACILITY THAT IS APPROVED FOR RECEIPT OF HAZARDOUS MATERIALS.
- F. PUMPS USED ADJACENT TO WATER SHALL USE SPILL CONTAINMENT SYSTEMS.

12. INVASIVE SPECIES CONTROL.

- A. PRIOR TO ENTERING THE SITE, ALL VEHICLES AND EQUIPMENT WILL BE POWER WASHED, ALLOWED TO FULLY DRY, AND INSPECTED TO MAKE SURE NO PLANTS, SOIL, OR OTHER ORGANIC MATERIAL ADHERES TO THE SURFACE.
- B. WATERCRAFT, WADERS, BOOTS, AND ANY OTHER GEAR TO BE USED IN OR NEAR WATER WILL BE INSPECTED FOR AQUATIC INVASIVE SPECIES.
- C. WADING BOOTS WITH FELT SOLES ARE NOT TO BE USED DUE TO THEIR PROPENSITY FOR AIDING IN THE TRANSFER OF INVASIVE SPECIES UNLESS DECONTAMINATION PROCEDURES HAVE BEEN APPROVED BY THE EC LEAD.

WORK AREA ISOLATION AND FISH SALVAGE.

1. WORK AREA ISOLATION.

- A. ANY WORK AREA WITHIN THE WETTED CHANNEL WILL BE ISOLATED FROM THE ACTIVE STREAM WHENEVER ESA-LISTED FISH ARE REASONABLY CERTAIN TO BE PRESENT, OR IF THE WORK AREA IS LESS THAN 300-FEET UPSTREAM FROM KNOWN SPAWNING HABITATS.
- B. WORK AREA ISOLATION AND FISH SALVAGE ACTIVITIES WILL COMPLY WITH THE IN-WATER WORK WINDOW.
- C. DESIGN PLANS WILL INCLUDE ALL ISOLATION ELEMENTS AND AREAS (COFFER DAMS, PUMPS, DISCHARGE AREAS, FISH SCREENS, FISH RELEASE AREAS, ETC.).
- D. WORK AREA ISOLATION AND FISH CAPTURE ACTIVITIES WILL OCCUR DURING PERIODS OF THE COOLEST AIR AND WATER TEMPERATURES POSSIBLE, NORMALLY EARLY IN THE MORNING VERSUS LATE IN THE DAY, AND DURING CONDITIONS APPROPRIATE TO MINIMIZE STRESS AND DEATH OF SPECIES PRESENT.

2. FISH SALVAGE.

- A. MONITORING AND RECORDING WILL TAKE PLACE FOR DURATION OF SALVAGE. THE SALVAGE REPORT WILL BE COMMUNICATED TO AGENCIES VIA THE PROJECT COMPLETION FORM (PCF).
- B. SALVAGE ACTIVITIES SHOULD TAKE PLACE DURING CONDITIONS TO MINIMIZE STRESS TO FISH SPECIES, TYPICALLY PERIODS OF THE COOLEST AIR AND WATER TEMPERATURES WHICH OCCUR IN THE MORNING VERSUS LATE IN THE DAY.
- C. SALVAGE OPERATIONS WILL FOLLOW THE ORDERING, METHODS, AND CONSERVATION MEASURES SPECIFIED BELOW:
 - 1. SLOWLY REDUCE WATER FROM THE WORK AREA TO ALLOW SOME FISH TO LEAVE VOLITIONALLY.
 - 2. BLOCK NETS WILL BE INSTALLED AT UPSTREAM AND DOWNSTREAM LOCATIONS AND MAINTAINED IN A SECURED POSITION TO EXCLUDE FISH FROM ENTERING THE PROJECT AREA.
 - 3. BLOCK NETS WILL BE SECURED TO THE STREAM CHANNEL BED AND BANKS UNTIL FISH CAPTURE AND TRANSPORT ACTIVITIES ARE COMPLETE. BLOCK NETS MAY BE LEFT IN PLACE FOR THE DURATION OF THE PROJECT TO EXCLUDE FISH AS LONG AS PASSAGE REQUIREMENTS ARE MET.
 - 4. NETS WILL BE MONITORED HOURLY DURING IN-STREAM DISTURBANCE.

- 5. IF BLOCK NETS REMAIN IN PLACE MORE THAN ONE DAY, THE NETS WILL BE MONITORED AT LEAST DAILY TO ENSURE THEY ARE SECURED AND FREE OF ORGANIC ACCUMULATION. IF BULL TROUT ARE PRESENT, NETS ARE TO BE CHECKED EVERY 4 HOURS FOR FISH IMPINGEMENT.
- 6. CAPTURE FISH THROUGH SEINING AND RELOCATE TO STREAMS.
- 7. WHILE DEWATERING, ANY REMAINING FISH WILL BE COLLECTED BY HAND OR DIP NETS.
- 8. SEINES WITH A MESH SIZE TO ENSURE CAPTURE OF THE RESIDING ESA-LISTED FISH WILL BE USED.
- 9. MINNOW TRAPS WILL BE LEFT IN PLACE OVERNIGHT AND USED IN CONJUNCTION WITH SEINING.
- 10. ELECTROFISH TO CAPTURE AND RELOCATED FISH NOT CAUGHT DURING SEINING PER ELECTROFISH CONSERVATION MEASURES.
- 11. CONTINUE TO SLOWLY DEWATER STREAM REACH.
- 12. COLLECT ANY REMAINING FISH IN COLD-WATER BUCKETS AND RELOCATED TO THE STREAM.
- 13. LIMIT THE TIME FISH ARE IN A TRANSPORT BUCKET.
- 14. MINIMIZE PREDATION BY TRANSPORTING COMPARABLE SIZES IN BUCKETS.
- 15. BUCKET WATER TO BE CHANGED EVERY 15 MINUTES OR AERATED.
- 16. BUCKETS WILL BE KEPT IN SHADED AREAS OR COVERED.
- 17. DEAD FISH WILL NOT BE STORED IN TRANSPORT BUCKETS, BUT WILL BE LEFT ON THE STREAM BANK TO AVOID MORTALITY COUNTING ERRORS.

D. SALVAGE GUIDELINES FOR BULL TROUT, LAMPREY, MUSSELS, AND NATIVE FISH.

- 1. CONDUCT SITE SURVEY TO ESTIMATE SALVAGE NUMBERS.
- 2. PRE-SELECT SITE(S) FOR RELEASE AND/OR MUSSEL BED RELOCATION.
- 3. SALVAGE OF BULL TROUT WILL NOT TAKE PLACE WHEN WATER TEMPERATURES EXCEED 15 DEGREES CELSIUS.
- 4. IF DRAWDOWN LESS THAN 48 HOURS, SALVAGE OF LAMPREY AND MUSSELS MAY NOT BE NECESSARY IF TEMPERATURES SUPPORT SURVIVAL IN SEDIMENTS.
- 5. SALVAGE MUSSELS BY HAND, LOCATING BY SNORKELING OR WADING.
- 6. SALVAGE LAMPREY BY ELECTROFISHING (SEE ELECTROFISHING FOR LARVAL LAMPREY SETTINGS AND LARVAL LAMPREY DRY SHOCKING SETTINGS).
- 7. SALVAGE BONY FISH AFTER LAMPREY WITH NETS OR ELECTROFISHING (SEE ELECTROFISHING FOR APPROPRIATE SETTINGS).
- 8. REGULARLY INSPECT DEWATERED SITE SINCE LAMPREY LIKELY TO EMERGE AFTER DEWATERING AND MUSSELS MAY BECOME VISIBLE.
- 9. MUSSELS MAY BE TRANSFERRED IN COOLERS.
- 10. MUSSELS WILL BE PLACED INDIVIDUALLY TO ENSURE ABILITY TO BURROW INTO NEW HABITAT.

3. ELECTROFISHING.

A. INITIAL SITE SURVEY AND INITIAL SETTINGS.

- 1. IDENTIFY SPAWNING ADULTS AND ACTIVE REDDS TO AVOID.
- 2. RECORD WATER TEMPERATURE. ELECTROFISHING WILL NOT OCCUR WHEN WATER TEMPERATURES ARE ABOVE 18 DEGREES CELSIUS.
- 3. IF POSSIBLE, A BLOCK NET WILL BE PLACED DOWNSTREAM AND CHECKED REGULARLY TO CAPTURE STUNNED FISH THAT DRIFT DOWNSTREAM.
- 4. INITIAL SETTINGS WILL BE 100 VOLTS, PULSE WIDTH OF 500 MICRO SECONDS, AND PULSE RATE OF 30 HERTZ.
- 5. RECORDS FOR CONDUCTIVITY, WATER TEMPERATURE, AIR TEMPERATURE, ELECTROFISHING SETTINGS, ELECTROFISHER MODEL, ELECTROFISHER CALIBRATION, FISH CONDITIONS, FISH MORTALITIES, AND TOTAL CAPTURE RATES WILL BE INCLUDED IN THE SALVAGE LOG BOOK.

B. ELECTROFISHING TECHNIQUE.

- 1. SAMPLING WILL BEGIN USING STRAIGHT DC. POWER WILL REMAIN ON UNTIL THE FISH I NETTED WHEN USING STRAIGHT DC. GRADUALLY INCREASE VOLTAGE WHILE REMAINING BELOW MAXIMUM LEVELS.
- 2. MAXIMUM VOLTAGE WILL BE 1100 VOLTS WHEN CONDUCTIVITY IS <100 MILLISECONDS 800 VOLTS WHEN CONDUCTIVITY IS BETWEEN 100 AND 300 MILLISECONDS, AND 400 VOLTS WHEN CONDUCTIVITY IS >300 MILLISECONDS.
- 3. IF FISH CAPTURE IS NOT SUCCESSFUL USING STRAIGHT DC, THE ELECTROFISHER WILL BE SET TO INITIAL VOLTAGE FOR PDC. VOLTAGE, PULSE WIDTH, AND PULSE FREQUENCY WILL BE GRADUALLY INCREASED WITHIN MAXIMUM VALUES UNTIL CAPTURE IS SUCCESSFUL.
- 4. MAXIMUM PULSE WIDTH IS 5 MILLISECONDS. MAXIMUM PULSE RATE IS 70 HERTZ
- 5. ELECTROFISHING WILL NOT OCCUR IN ONE AREA FOR AN EXTENDED PERIOD.
- 6. THE ANODE WILL NOT INTENTIONALLY COME INTO CONTACT WITH FISH. THE ZONE FOR POTENTIAL INJURY OF 0.5 M FROM THE ANODE WILL BE AVOIDED.
- 7. SETTINGS WILL BE LOWERED IN SHALLOWER WATER SINCE VOLTAGE GRADIENTS LIKELY TO INCREASE.
- 8. ELECTROFISHING WILL NOT OCCUR IN TURBID WATER WHERE VISIBILITY IS POOR (I.E. UNABLE TO SEE THE BED OF THE STREAM).
- 9. OPERATIONS WILL IMMEDIATELY STOP IF MORTALITY OR OBVIOUS FISH INJURY IS OBSERVED. ELECTROFISHING SETTINGS WILL BE REEVALUATED.

C. SAMPLE PROCESSING.

- 1. FISH SHALL BE SORTED BY SIZE TO AVOID PREDATION DURING CONTAINMENT.
- 2. SAMPLERS WILL REGULARLY CHECK CONDITIONS OF FISH HOLDING CONTAINERS, AIR PUMPS, WATER TRANSFERS, ETC.
- 3. FISH WILL BE OBSERVED FOR GENERAL CONDITIONS AND INJURIES
- 4. EACH FISH WILL BE COMPLETELY REVIVED BEFORE RELEASE. ESA-LISTED SPECIES WILL BE PRIORITIZED FOR SUCCESSFUL RELEASE.

D. BULL TROUT ELECTROFISHING.

- 1. ELECTROFISHING FOR BULL TROUT WILL ONLY OCCUR FROM MAY 1 TO JULY 31. NO ELECTROFISHING WILL OCCUR IN ANY BULL TROUT OCCUPIED HABITAT AFTER AUGUST 15. IN FMO HABITATS ELECTROFISHING MAY OCCUR ANY TIME.
- 15. ELECTROFISHING OF BULL TROUT WILL NOT OCCUR WHEN WATER TEMPERATURES EXCEED 15 DEGREES CELSIUS.

E. LARVAL LAMPREY ELECTROFISHING.

- 1. PERMISSION FROM EC LEAD WILL BE OBTAINED IF LARVAL LAMPREY ELECTROFISHER IS NOT ONE OF FOLLOWING PRE-APPROVED MODELS: ABP-2 "WISCONSIN", SMITH-ROOT LR-24, OR SMITH-ROOT APEX BACKPACK.
- 2. LARVAL LAMPREY SAMPLING WILL INCORPORATE 2-STAGE METHOD: "TICKLE" AND "STUN".
- 3. FIRST STAGE: USE 125 VOLT DC WITH A 25 PERCENT DUTY CYCLE APPLIED AT A SLOW RATE OF 3 PULSES PER SECOND. IF TEMPERATURES ARE BELOW 10 DEGREES CELSIUS, VOLTAGE MAY BE INCREASED GRADUALLY (NOT TO EXCEED 200 VOLTS). BURSTED PULSES (THREE SLOW AND ONE SKIPPED) RECOMMENDED TO INCREASE EMERGENCE.
- 4. SECOND STAGE (OPTIONAL FOR EXPERIENCED NETTERS): IMMEDIATELY AFTER LAMPREY EMERGE, USE A FAST PULSE SETTING OF 30 PULSES PER SECOND.
- 5. USE DIP NETS FOR VISIBLE LAMPREY. SIENES AND FINE MESH NET SWEEPS MAY BE USED IN POOR VISIBILITY.
- 6. SAMPLING WILL OCCUR SLOWLY (>60 SECONDS PER METER) STARTING AT UPSTREAM AND WORKING DOWNSTREAM.
- 7. MULTIPLE SWEEPS TO OCCUR WITH 15 MINUTES BETWEEN SWEEPS.
- 8. POST-DRAWDOWN "DRY-SHOCKING" WILL BE APPLIED IF LARVAL LAMPREY CONTINUE TO EMERGE. ANODES TO BE PLACED ONE METER APART TO SAMPLE ONE SQUARE METER AT A TIME FOR AT LEAST 60 SECONDS. FOR TEMPERATURES LESS THAN 10 DEGREES CELSIUS, MAXIMUM VOLTAGE MAY BE GRADUALLY INCREASED TO 400 VOLTS (DRY-SHOCKING ONLY).



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NO.	DATE	BY	REVISION



POM POM ROAD AT TOPPENISH CREEK
YAKAMA NATION

HIP CONSERVATION MEASURES II

DRAWN: DAN	PROJECT NO.: 2200093
DESIGN: DAN/DKL	SCALE: AS SHOWN
CHECKED: ARR	DATE: 7/10/2025
DRAWING NO.	G05
SHEET NO.	5 of 61

WORK AREA ISOLATION AND FISH SALVAGE (CONTINUED).

4. DEWATERING.

- A. DEWATERING WILL OCCUR AT A RATE SLOW ENOUGH TO ALLOW SPECIES TO NATURALLY MIGRATE OUT OF THE WORK AREA.
- B. WHERE A GRAVITY FEED DIVERSION IS NOT POSSIBLE, A PUMP MAY BE USED. PUMPS WILL BE INSTALLED TO AVOID REPETIVE DEWATERING AND REWATERING.
- C. WHEN FISH ARE PRESENT, PUMPS WILL BE SCREENED IN ACCORDANCE WITH NMFS FISH SCREEN CRITERIA. NMFS ENGINEERING REVIEW AND APPROVAL WILL BE OBTAINED FOR PUMPS EXCEEDING 3 CUBIC FEET PER SECOND.
- D. DISSIPATION OF FLOW ENERGY AT THE BYPASS OUTFLOW WILL BE PROVIDED TO PREVENT DAMAGE TO THE STREAM CHANNEL AND RIPARIAN VEGETATION.
- E. SEEPAGE WATER WILL BE PUMPED TO A TEMPORARY STORAGE AND TREATMENT SITE OF INTO UPLAND AREAS TO ALLOW WATER TO PERCOLATE THROUGH SOIL AND VEGETATION PRIOR TO REENTERING THE STREAM CHANNEL.

CONSTRUCTION AND POST CONSTRUCTION CONSERVATION MEASURES.

1. FISH PASSAGE.

- A. FISH PASSAGE WILL BE PROVIDED FOR ADULT AND JUVENILE FISH LIKELY TO BE PRESENT DURING CONSTRUCTION UNLESS PASSAGE DID NOT EXIST BEFORE CONSTRUCTION, THE STREAM IS NATURALLY IMPASSABLE, OR PASSAGE WILL NEGATIVELY IMPACT ESA-LISTED SPECIES OR THEIR HABITAT.
- B. FISH PASSAGE ALTERNATIVES WILL BE APPROVED BY THE BPA EC LEAD UNDER ADVISEMENT BY THE NMFS HABITAT BIOLOGIST.

2. CONSTRUCTION AND DISCHARGE WATER.

- A. SURFACE WATER MAY BE DIVERTED TO MEET CONSTRUCTION NEEDS ONLY IF DEVELOPED SOURCES ARE UNAVAILABLE OR INADEQUATE.
- B. DIVERSIONS WILL NOT EXCEED 10% OF THE AVAILABLE FLOW.
- C. CONSTRUCTION DISCHARGE WATER WILL BE COLLECTED AND TREATED TO REMOVE DEBRIS, NUTRIENTS, SEDIMENT, PETROLEUM HYDROCARBONS, METALS, AND OTHER POLLUTANTS.

3. TIME AND EXTENT OF DISTURBANCE.

- A. EARTHWORK REQUIRING IN-STREAM MECHANIZED EQUIPMENT (INCLUDING DRILLING, EXCAVATION, DREDGING, FILLING, AND COMPACTING) WILL BE COMPLETED AS QUICKLY AS POSSIBLE.
- B. MECHANIZED EQUIPMENT WILL WORK FROM TOP OF BANK UNLESS WORK FROM ANOTHER LOCATION WILL RESULT IN LESS HABITAT DISTURBANCE (TURBIDITY, VEGETATION DISTURBANCE, ETC.).

4. CESSATION OF WORK.

- A. PROJECT OPERATIONS WILL CEASE WHEN HIGH FLOW CONDITIONS MAY RESULT IN INUNDATION OF THE PROJECT AREA (FLOOD EFFORTS TO DECREASE DAMAGES TO NATURAL RESOURCES PERMITTED).
- B. WATER QUALITY LEVELS EXCEEDED. SEE CWA SECTION 401 WATER QUALITY CERTIFICATION AND TURBIDITY MEASURES.

5. SITE RESTORATION.

- A. DISTURBED AREAS, STREAM BANKS, SOILS, AND VEGETATION WILL BE CLEANED UP AND RESTORED TO IMPROVED OR PRE-PROJECT CONDITIONS.
- B. PROJECT-RELATED WASTE WILL BE REMOVED.
- C. TEMPORARY ACCESS ROADS AND STAGING WILL BE DECOMPACTED AND RESTORED. SOILS WILL BE LOOSENEED IF NEEDED FOR REVEGETATION OR WATER INFILTRATION.
- D. THE PROJECT SPONSOR WILL RETAIN THE RIGHT OF REASONABLE ACCESS TO THE SITE TO MONITOR AND MAINTAIN THE SITE OVER THE LIFE OF THE PROJECT.

6. REVEGETATION.

- A. PLANTING AND SEEDING WILL OCCUR PRIOR TO OR AT THE BEGINNING OF THE FIRST GROWING SEASON AFTER CONSTRUCTION.

- B. A MIX OF NATIVE SPECIES (INVASIVE SPECIES NOT ALLOWED) APPROPRIATE TO THE SITE WILL BE USED TO REESTABLISH VEGETATION, PROVIDE SHADE, AND REDUCE EROSION. REESTABLISHED VEGETATION SHOULD BE AT LEAST 70% OF PRE-PROJECT CONDITIONS WITHIN THREE YEARS.
- C. VEGETATION SUCH AS WILLOWS, SEDGES, OR RUSH MATS WILL BE SALVAGED FROM DISTURBED OR ABANDONED AREAS TO BE REPLANTED.
- D. SHORT-TERM STABILIZATION MEASURE MAY INCLUDE THE USE OF NON-NATIVE STERILE SEED MIX (WHEN NATIVE NOT AVAILABLE), WEED-FREE CERTIFIED STRAW, OR OTHER SIMILAR TECHNIQUES.
- E. SURFACE FERTILIZER WILL NOT BE APPLIED WITHIN 50 FEET OF ANY STREAM, WATE BODY, OR WETLAND.
- F. FENCING WILL BE INSTALLED AS NECESSARY TO PREVENT ACCESS TO REVEGETATED SITES BY LIVESTOCK OR UNAUTHORIZED PERSONS.
- G. INVASIVE PLANTS WILL BE REMOVED OR CONTROLLED UNTIL NATIVE PLANT SPECIES ARE WELL ESTABLISHED (TYPICALLY THREE YEARS POST-CONSTRUCTION).

7. SITE ACCESS AND IMPLEMENTATION MONITORING.

- A. THE PROJECT SPONSOR WILL PROVIDE CONSTRUCTION MONITORING DURING IMPLEMENTATION TO ENSURE ALL CONSERVATION MEASURES ARE ADEQUATELY FOLLOWED, EFFECTS TO LISTED SPECIES ARE NOT GREATER THAN PREDICTED, AND INCIDENTAL TAKE LIMITATIONS ARE NOT EXCEEDED.
- B. THE PROJECT SPONSOR OR DESIGNATED REPRESENTATIVE WILL SUBMIT THE PROJECT COMPLETION FORM (PCF) WITHIN 30 DAYS OF PROJECT COMPLETION.

8. CWA SECTION 401 WATER QUALITY CERTIFICATION.

- A. THE PROJECT SPONSOR OR DESIGNATED REPRESENTATIVE WILL COMPLETE AND RECORD WATER QUALITY OBSERVATIONS (SEE TURBIDITY MONITORING) TO ENSURE IN-WATER WORK IS NOT DEGRADING WATER QUALITY.
- B. DURING CONSTRUCTION, WATER QUALITY PROVISIONS PROVIDED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, WASHINGTON DEPARTMENT OF ECOLOGY, IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY WILL BE FOLLOWED.

STAGED REWATERING PLAN.

- A. WHEN REINTRODUCING WATER TO DEWATERED AREAS AND NEWLY CONSTRUCTED CHANNELS, A STAGED REWATERING PLAN WILL BE APPLIED.
- B. THE FOLLOWING WILL BE APPLIED TO ALL REWATERING EFFORTS. COMPLEX REWATERING EFFORTS MAY REQUIRE ADDITIONAL NOTES OR A DEDICATED SHEET IN THE CONSTRUCTION DETAILS.

- TURBIDITY MONITORING PROTOCOL WILL BE APPLIED TO REWATERING EFFORTS.
- PRE-WASH THE AREA BEFORE REWATERING. TURBID WASH WATER WILL BE DETAINED AND PUMPED TO THE FLOODPLAIN OR SEDIMENT CAPTURE AREAS RATHER THAN DISCHARGING TO FISH-BEARING STREAMS.
- INSTALL SEINE NETS AT UPSTREAM END TO PREVENT FISH FROM MOVING DOWNSTREAM UNTIL 2/3 OF TOTAL FLOW IS RESTORED TO THE CHANNEL.
- STARTING IN EARLY MORNING INTRODUCE 1/3 OF NEW CHANNEL FLOW OVER PERIOD OF 1-2 HOURS.
- INTRODUCE SECOND THIRD OF FLOW OVER NEXT 1 TO 2 HOURS AND BEGIN FISH SALVAGE OF BYPASS CHANNEL IF FISH ARE PRESENT.
- REMOVE UPSTREAM SEINE NETS ONCE 2/3 FLOW IN REWATERED CHANNEL AND DOWNSTREAM TURBIDITY IS WITHIN ACCEPTABLE RANGE (LESS THAN 40 NTU OR LESS THAN 10% BACKGROUND).
- INTRODUCE FINAL THIRD OF FLOW ONCE FISH SALVAGE EFFORTS ARE COMPLETE AND DOWNSTREAM TURBIDITY VERIFIED TO BE WITHIN ACCEPTABLE RANGE.
- INSTALL PLUG TO BLOCK FLOW INTO OLD CHANNEL OR BYPASS. REMOVE ANY REMAINING SEINE NETS.
- IN LAMPREY SYSTEMS, LAMPREY SALVAGE AND DRY SHOCKING MAY BE NECESSARY.

TURBIDITY MONITORING.

- A. RECORD THE READING, LOCATION, AND TIME FOR THE BACKGROUND READING APPROXIMATELY 100 FEET UPSTREAM OF THE PROJECT AREA USING A RECENTLY CALIBRATED TURBIDIMETER OR VIA VISUAL OBSERVATION (SEE THE HIP HANDBOOK TURBIDITY MONITORING SECTION FOR A VISUAL OBSERVATION KEY).
- B. RECORD THE TURBIDITY READING, LOCATION, AND TIME AT THE MEASUREMENT COMPLIANCE LOCATION POINT.
 - 50 FEET DOWNSTREAM FOR STREAMS LESS THAN 30 FEET WIDE.
 - 100 FEET DOWNSTREAM FOR STREAMS BETWEEN 30 AND 100 FEET WIDE.
 - 200 FEET DOWNSTREAM FOR STREAMS GREATER THAN 100 FEET WIDE.
 - 300 FEET FROM THE DISCHARGE POINT OR NONPOINT SOURCE FOR LOCATIONS SUBJECT TO TIDAL OR COASTAL SCOUR.
- C. TURBIDITY SHALL BE MEASURED (BACKGROUND LOCATION AND COMPLIANCE POINTS) EVERY 4 HOURS WHILE WORK IS BEING IMPLEMENTED.
- D. IF THERE IS A VISIBLE DIFFERENCE BETWEEN A COMPLIANCE POINT AND THE BACKGROUND, THE EXCEEDANCE WILL BE NOTED IN THE PROJECT COMPLETION FORM (PCF). ADJUSTMENTS OR CORRECTIVE MEASURES WILL BE TAKEN IN ORDER TO REDUCE TURBIDITY.
- E. IF EXCEEDANCES OCCUR FOR MORE THAN TWO CONSECUTIVE MONITORING INTERVALS (AFTER 8 HOURS), THE ACTIVITY WILL STOP UNTIL THE TURBIDITY LEVEL RETURNS TO BACKGROUND. THE BPA EC LEAD WILL BE NOTIFIED OF ALL EXCEEDANCES AND CORRECTIVE ACTIONS AT PROJECT COMPLETION.
- F. IF TURBIDITY CONTROLS (COFFER DAMS, WADDLES, FENCING, ETC.) ARE DETERMINED INEFFECTIVE, CREWS WILL BE MOBILIZED TO MODIFY AS NECESSARY. OCCURRENCES WILL BE DOCUMENTED IN THE PROJECT COMPLETION FORM (PCF).
- G. FINAL TURBIDITY READINGS, EXCEEDANCES, AND CONTROL FAILURES WILL BE SUBMITTED TO THE BPA EC LEAD USING THE PROJECT COMPLETION FORM (PCF).



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NO.	DATE	BY	REVISION



POM POM ROAD AT TOPPENISH CREEK
YAKAMA NATION

HIP CONSERVATION MEASURES III

DRAWN: DAN	PROJECT NO.: 2200093
DESIGN: DAN/DKL	SCALE: AS SHOWN
CHECKED: ARR	DATE: 7/10/2025
DRAWING NO.	G06
SHEET NO.	6 of 61



US Army Corps
of Engineers ®
Seattle District

NATIONWIDE PERMIT 27

Terms and Conditions

2021 NWP - Final 41; Effective Date: February 25, 2022
amended with RGCs 10-14 June 28, 2024



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- 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

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

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

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

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

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

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

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

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

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

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

(2) Activities conducted in accordance with the terms and conditions of a binding coral restoration or relocation agreement between the project proponent and the NMFS or any of its designated state cooperating agencies;

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

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

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

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

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 NWP.

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

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

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

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring 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 NWP 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 NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs 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.”

(Transferee)

(Date)

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

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

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

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

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

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires 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 NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 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 NWPs, 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 NWPs - Final 41 NWPs for the Seattle District in Washington State, as applicable.

RGC 1, Project Drawings

Drawings must be submitted with a 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 applicant 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.

RGC 10, Limitations on New Bank Stabilization Within the Salish Sea

The length of new bank stabilization within waters of the U.S., including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length, cannot exceed 50 linear feet within the Salish Sea under any NWP.

RGC 11, Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs)

No NWP activity can:

- a. cause more than minimal adverse effects to forage fish spawning beaches or drift cells; or
- b. prevent the functioning of feeder bluffs, including more than minimal adverse effects to sediment recruitment, transport, or deposition.

This regional general condition applies to all NWP activities within the Salish Sea. Information regarding the location of forage fish spawning beaches is available on the Washington Department of Fish and Wildlife's (WDFW) Forage Fish Spawning Map at <https://wdfw.maps.arcgis.com/home/webmap/viewer.html?webmap=19b8f74e2d41470cbd80b1af8dedd6b3>. Information regarding the location and movement of drift cells, shoreline stability, and coastal landforms, to include feeder bluffs, is available at the Washington State Department of Ecology's Coastal Atlas Map website: <https://apps.ecology.wa.gov/coastalatlasmap>. These maps are resources that can be used to help identify the location of forage fish spawning beaches, drift cells, and feeder bluffs; they are not a substitute for site-specific data. Information about forage fish, their spawning habitats, and spawning behavior are available through the WDFW. Additional information about the importance of these species as prey species for Endangered Species Act listed salmonids can be found on the National Marine Fisheries Service website.

RGC 12, Bank Stabilization Design Considerations

Bank stabilization activities, including maintenance activities, shall utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

RGC 13, PCNs for Activities in Areas Where There May Be Treaty-Reserved Tribal Rights

To ensure compliance with General Condition 17, Tribal Rights, a pre-construction notification (PCN) is required for all NWP's associated with structures or fills in areas where Tribes have retained via treaty the right to fish in their usual and accustomed grounds and stations.

RGC 14, Maintenance of Existing Bank Stabilization Structures and Fills

(Applicable to NWP 3, Maintenance Activities) Maintenance of existing bank stabilization structures that expand the existing structure's footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers are not eligible for NWP 3.

D. SEATTLE DISTRICT REGIONAL SPECIFIC CONDITIONS FOR THIS NWP:

NWP 27 Specific Regional Conditions:

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

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 NWP's 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 NWP's 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 ≥ 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 NWP's:

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:

Ecology Section 401 Water Quality Certification – Granted with conditions.

- 1. Ecology WQC review is required if the project or activity is in a known contaminated or cleanup site to determine if an individual WQC is required or the project meets the programmatic WQC for this NWP.
- 2. Ecology individual WQC is required for projects or activities authorized under this NWP

if:

- a. The project or activity directly impacts ½ acre or more of tidal waters; or
- b. The project or activity affects ½ acre or more of wetlands; or
- c. The project or activity is a mitigation bank or an advance mitigation 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.⁸ 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:

Wetted Stream Width at Discharge Point	Approximate Downstream Point to Sample to Determine Compliance
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

For Marine Water	Point of Compliance for Temporary Area of Mixing
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Estuaries or Marine Waters	Radius of 150 feet from the activity causing the turbidity exceedance
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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,⁹ including:

1. The permittee shall develop a Stormwater Pollution Prevention Plan (SWPPP)¹⁰ 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 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."

EPA NWP Specific Conditions:

NWP 27 is conditionally certified, subject to the general conditions listed above, except that an individual project-specific WQC is required when the project:

1. Involves dam removal; or
2. Involves greater than 1 acre of impacts to waters of the U.S.; or
3. Would impact greater than 500 linear feet of waters of the U.S.; or
4. Involves greater than 1/2 acre of impacts to tidal wetlands or 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.

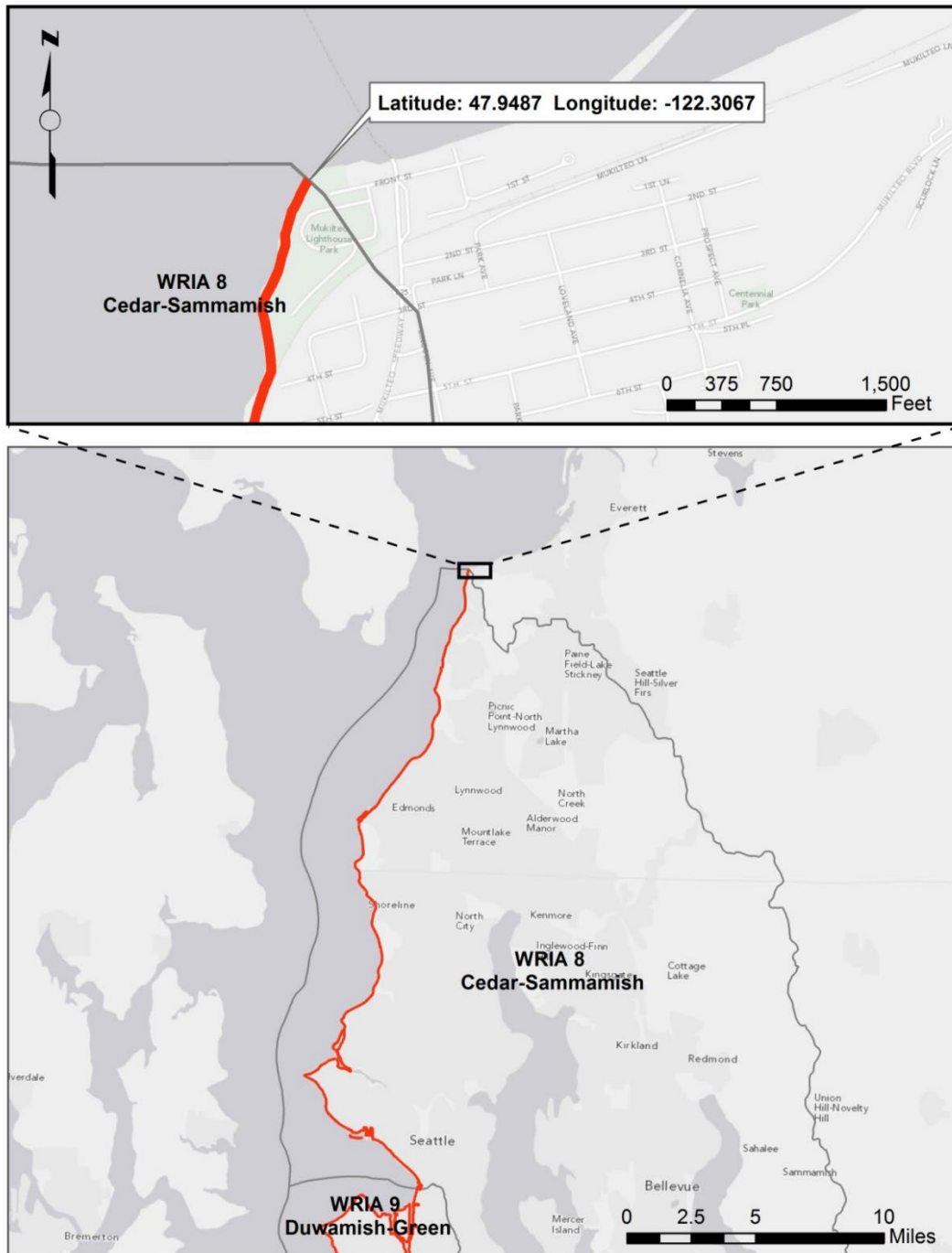
CZM Federal Consistency Response – Concur with Conditions.

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

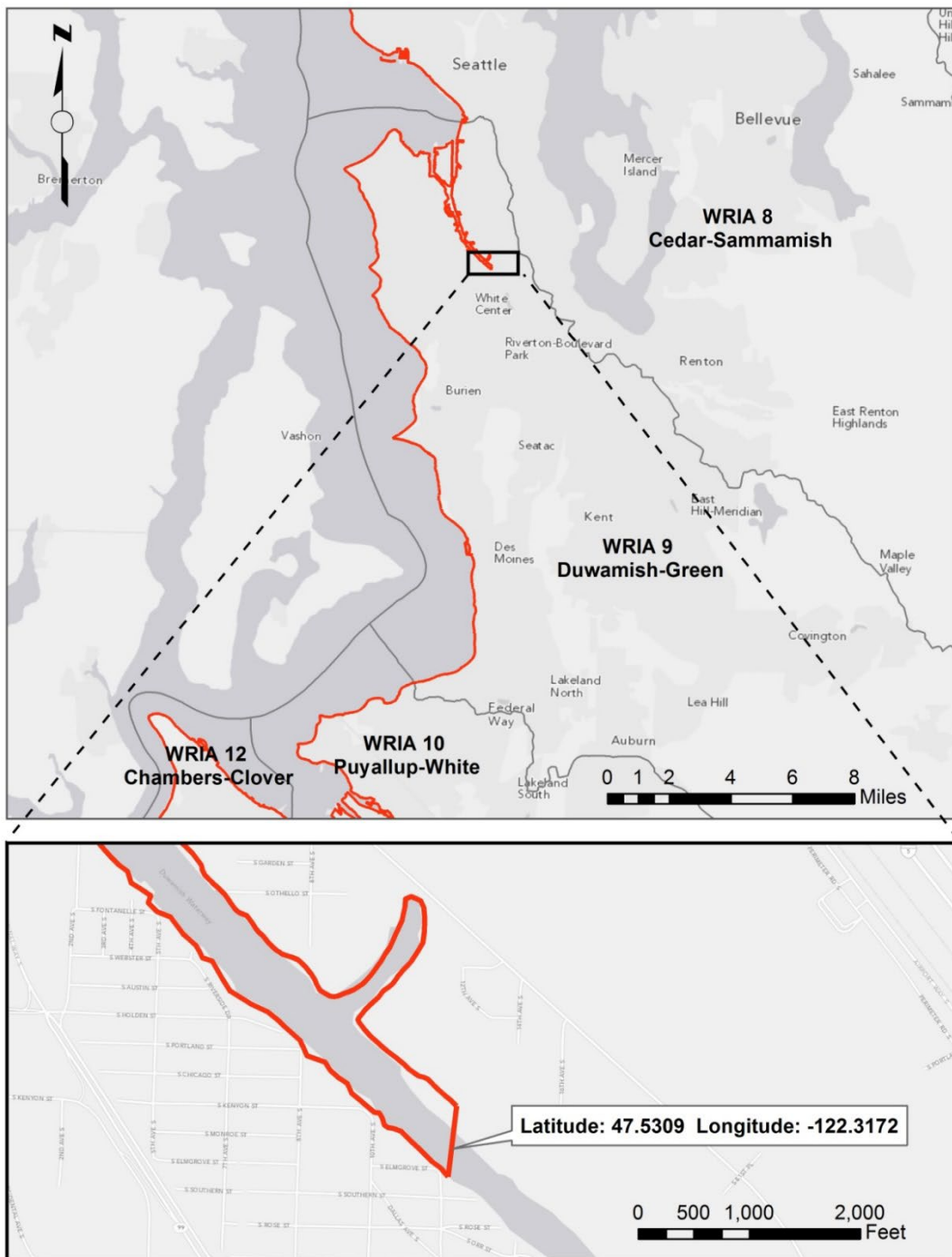
Seattle District Regional General Conditions - Figures

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

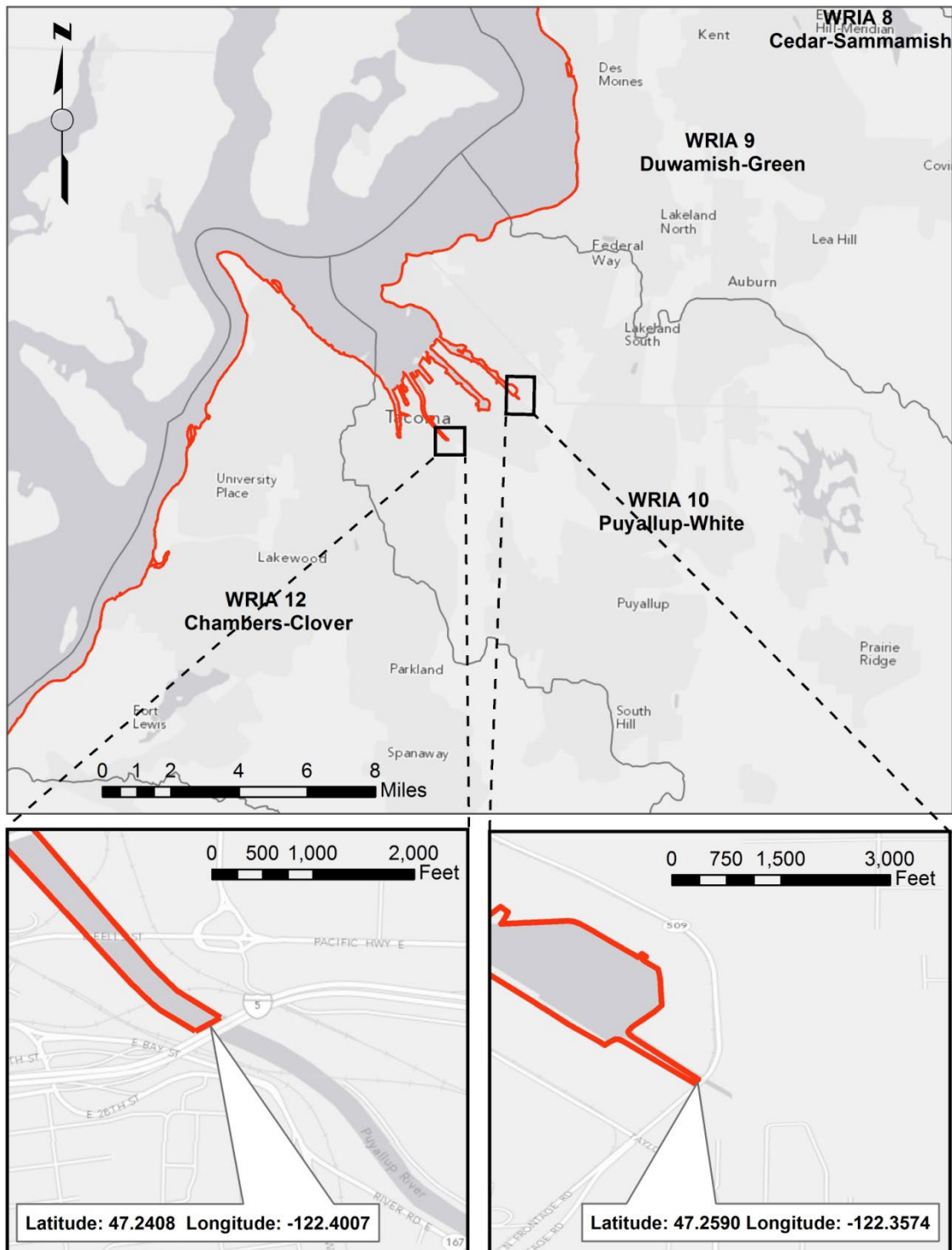
a. WRIA 8



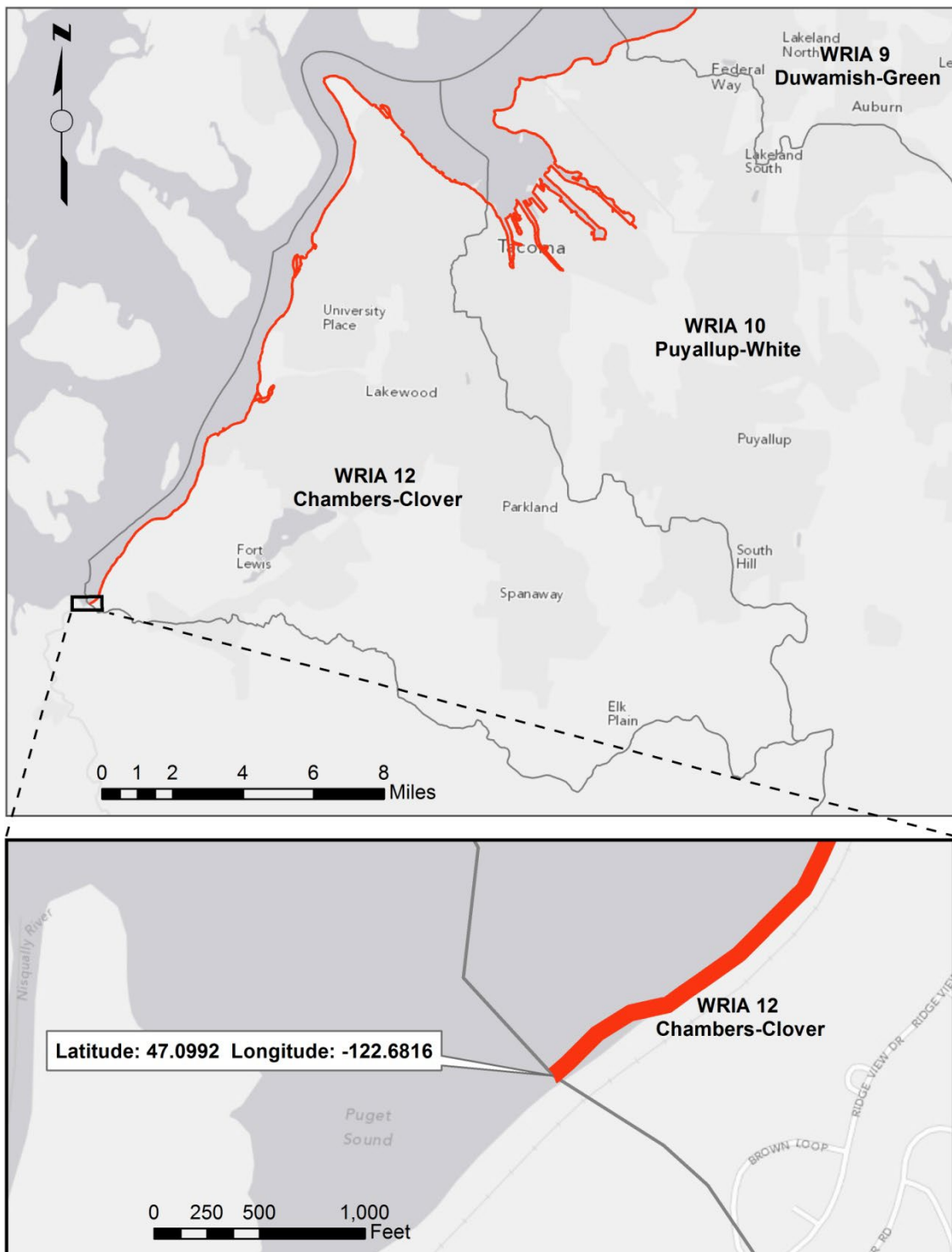
b. WRIA 9



c. WRIA 10



d. WRIA 12



e. WRIA 11

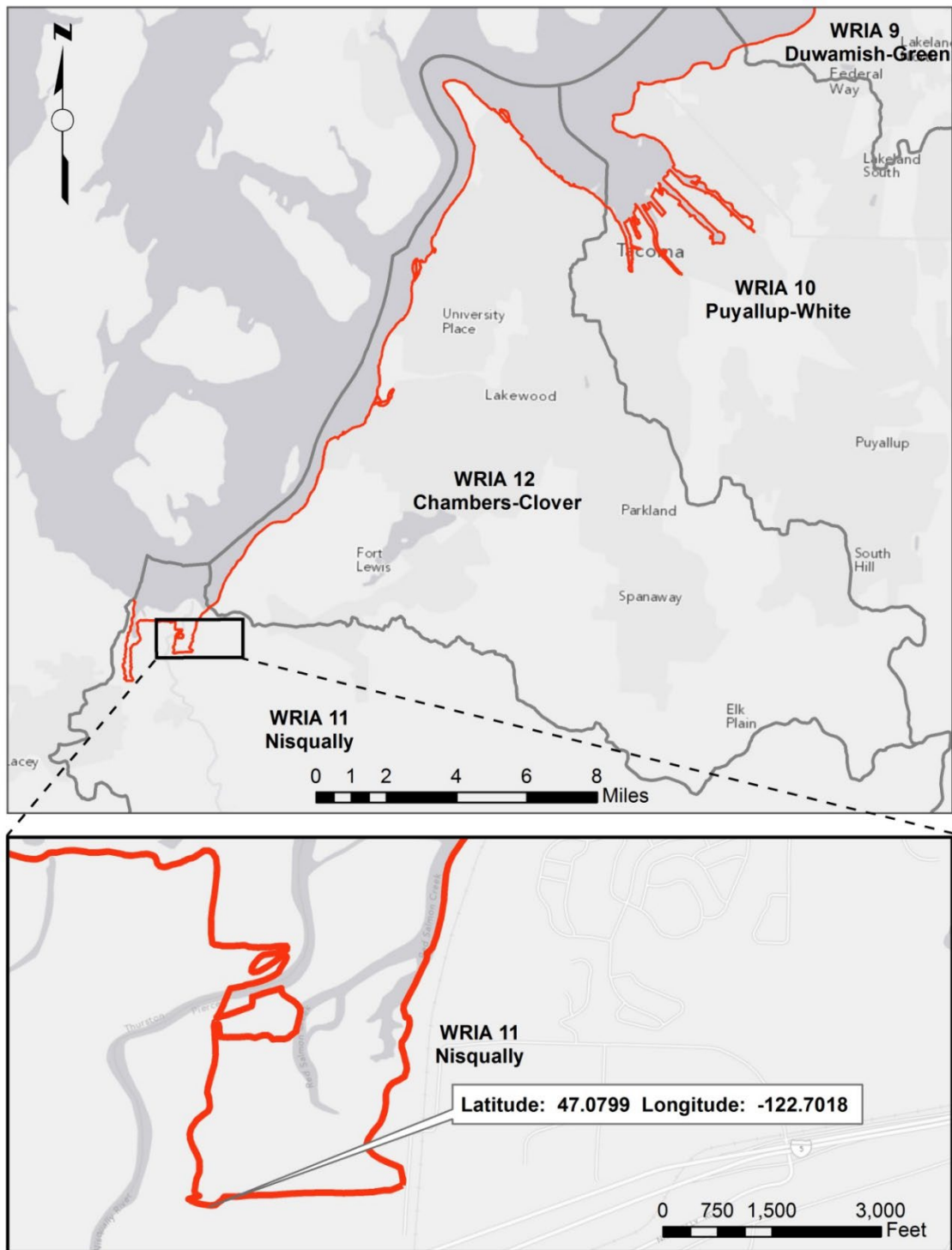
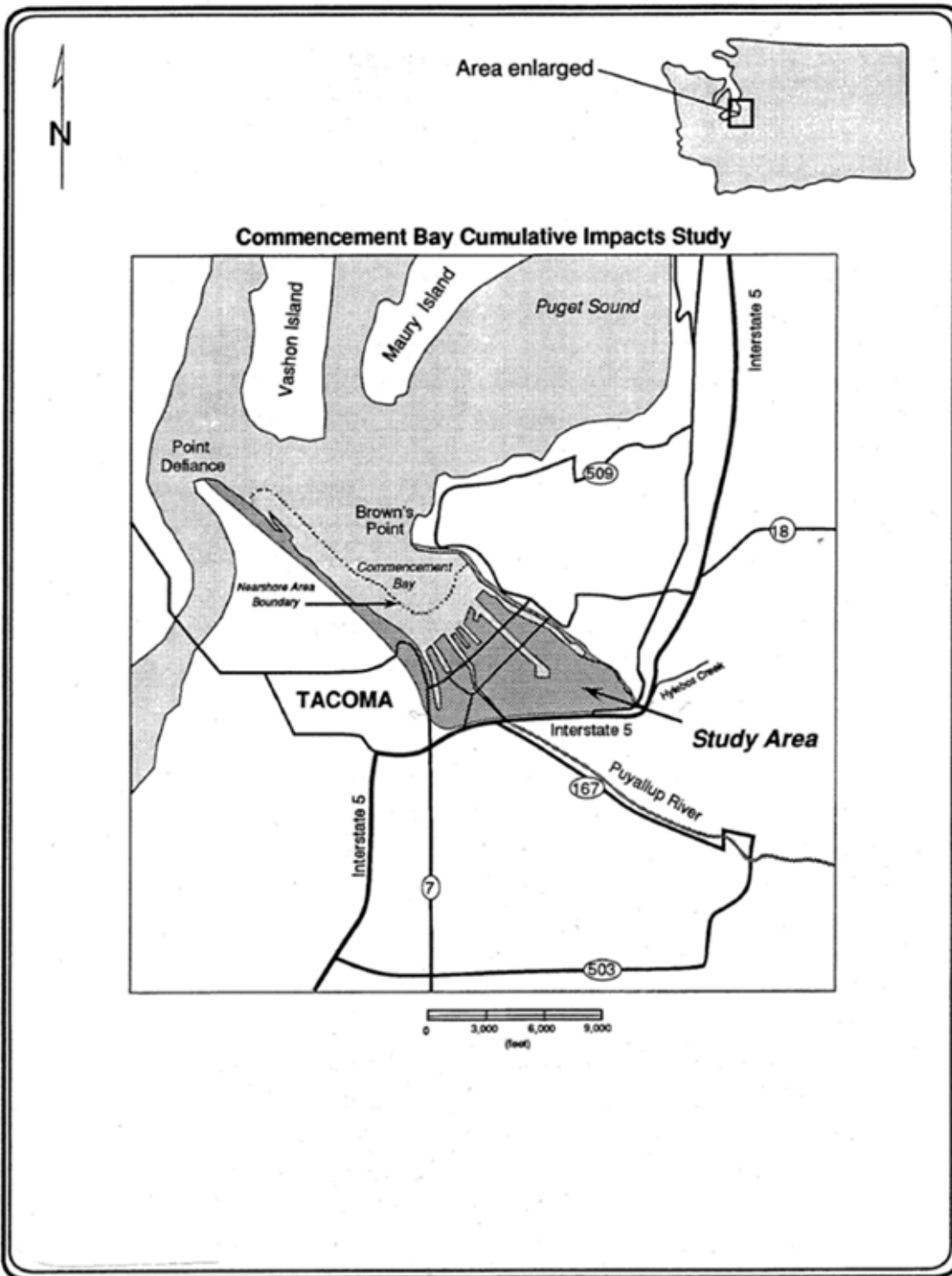


Figure 2. RGC 4 - Commencement Bay Study Area



Yakama Nation Fisheries
Inadvertent Discovery Protocol
Pom Pom Project

Plans and Procedures:

If the monitor or any member of the construction work force believes that they have encountered archaeological materials, the Monitor/ member of the work force will:

1) **Stop Work:**

Direct the onsite foreman or designee to stop excavation work.

2) **Immediately notify the Yakama Nation CRP and Yakama Nation THPO:**

- Casey Barney, Yakama Nation CRP Program Manager: 509-865-5121 x4378
- Gregg Kiona, Yakama Nation CRP Cultural Specialist: 509-865-5121 x4603
- Jessica Lally; Yakama Nation CRP Archaeologist: 509-865-5121 x4766, 509-406-4419
- Rose Ferri; Yakama Nation Interim THPO: 509-307-2009

If in the event the monitor is unable to contact the CRP or the THPO (i.e., if there is no cellular phone coverage) mark the location of the cultural materials on a map and, if possible, take a GPS point and photos (cell phone cameras work if necessary, and most will have a geolocation of the photo point) of the materials and the surrounding areas (including any possible damage). **DO NOT REMOVE ANY ITEMS. ALL CULTURAL MATERIALS ARE TO BE LEFT AS THEY WERE FOUND.**

3) **Take appropriate steps to secure the discovery:**

This may include placement of physical barriers, cones, pin flags, flagging tape, etc. Designate a no-work area which prohibits all machinery, vehicles, and unauthorized individuals from accessing the area. Adequacy of the no-work area can be reassessed and defined in communication with Yakama Nation CRP Archaeologist, and re-established if needed.

4) **Once on site, Yakama Nation CRP Archaeologist will determine next steps for documentation.**

Upon discovering cultural resources, at the very minimum, the following must be documented by the present archaeologist for the project. Depending on the finding, a site treatment plan will be determined in coordination with the THPO, CRP, and Project Archaeologist. The Culture Committee will have the final determination on all decisions regarding the disposition of the finding. **Work cannot commence without Yakama Nation Culture Committee Clearance.**

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Site documentation will at minimum include:

- a. GPS data including artifact locations, known site extents, photo locations and other items of note (i.e. disturbance areas of landmarks).
- b. Photos of artifacts, inclusive of professional scale. Include photos of all sides of artifact (ventral and dorsal for flakes; Sides A, B and profile for other artifacts such as projectile points).
- c. make note of measurements: flakes = maximum dimension; tools = length x width x height.
- d. make note of artifact type, stage of manufacture, material type.
- e. acquire overview photos and GPS locations of photos.

*** Documentation is a critical step! It will be utilized to help us determine project effect and next steps. Please keep in mind all aspects of full documentation per Yakama Nation CRP site forms, professional standards, and contemplation of NRHP eligibility criteria.*****

5) **All work will remain stopped at the location until such time that next steps are defined. These steps may include:**

- a. Additional archaeological work to determine site extent
- b. Formal documentation, determination of effect, review by the CRP, THPO, and approval by Cultural Committee.

6) **Work cannot re-commence without approval.**

Questions and concerns can be directed to the CRP Manager and the THPO. Archaeologists and Cultural Specialists **DO NOT** have the authority to provide a Cultural Clearance.

Procedures for the Inadvertent Discovery of Human Skeletal Materials:

Any human remains, burial sites, or burial related materials that are discovered during construction will at all times be treated with dignity and respect.

If ground disturbing activities reveal human remains or funerary artifacts during the course of construction, then immediately halt construction activity that resulted in the exposure of the discovery as well as all other ground disturbing activity within a buffer of 30 meters/ 100 feet in diameter of the point of discovery.

The Monitor or foreman (or designee) will immediately call the THPO and Yakama Nation CRP (see above phone numbers). Monitor, on-site archaeologist will established an avoidance buffer sufficient to protect the discovery Buffer may be redefined after inspection by Yakama Nation CRP.

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The Yakama Nation Tribal Police will be contacted by the THPO or Yakama Nation CRP to begin the process of determining if the finding is part of a crime scene or Native American.

After all construction activity has stopped, the following steps shall be taken to ensure that no further disturbance occurs to the discovery, while Yakama Nation Tribal Police are in route:

- o Ensure security buffer is adequate and secure.
- o Prevent vehicle traffic through the area immediately surrounding the discovery.
- o The remains will not be touched, moved, or further disturbed or photographed beyond what is needed for identification purposes. Tribal Police will determine if the remains are forensic or archeological in nature. Should the remains be determined archaeological, a site treatment plan will be determined in coordination with the THPO, CRP and Tribal Government. The Culture Committee will have the final determination on all decisions regarding the disposition of the human remains. Work cannot commence without Yakama Nation Culture Committee Clearance. Questions and concerns can be directed towards the Yakama Nation THPO and the YNCRP Manager. Archaeologists and Cultural Specialists do not have the authority to provide approval of final recommendations. All final dispositions/recommendations will be approved by the Yakama Nation Cultural Committee.