ADDENDUM NO. 2

May 22, 2020

Maddox Creek Restoration Project
#WA402227

NOTICE TO PROSPECTIVE BIDDERS

NOTICE IS HEREBY GIVEN BY SKAGIT COUNTY that the Contract Provisions and Plans have been modified as follows:

1. **Pg 39. Section 1-08.5 Time of Completion is modified to read:**
   Work shall not commence at the project site before June 15, 2020 and shall be completed by September 30, 2020. No work shall be done below the ordinary high water mark of Maddox Creek outside of the allowable in-stream construction window set by permit NWS-2019-01038 included in Appendix D per this addendum (see below). This window is June 15, 2020 through August 15, 2020.

   This project shall be physically completed within thirty (30) working days.

2. **Pg. 39 Section 1-08.9 is added with the following language:**
   Revise the fourth paragraph to read:

   When the Contract Work has progressed to Substantial Completion as defined in Section 1-08.5 of the Standard Specifications, the Engineer may determine that the work is Substantially Complete. The Engineer will notify the Contactor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, the formula for liquidated damages shown above will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Contractor shall complete the remaining Work as promptly as possible. Upon request by the Project Engineer, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

   The Contractor further agrees that, from the compensation otherwise to be paid, the Contracting Agency may charge actual costs to the Contract for any time over the agreed to completion date where work remains uncompleted, which sum is agreed upon as the actual damages which the Contracting Agency will sustain in case of the failure of the Contractor to complete the work in the time stipulated and this sum is not to be construed in any sense a penalty. These actual costs will be, but not limited to:

   1. Any fines by Permitting Agencies or costs imposed by local authorities for work not being completed on time.
   2. Additional special inspections and engineering services that might be required.
   3. It is not the intent of Contracting Agency to recoup extra management expenses.

3. **Pg. 42 Section 2-01.2(2) Waste Site is modified to read:**

   All excavated soil that is not used as "Selected Materials" (see Section 2-03.3) shall be disposed of offsite at a location to be determined by the Contacting Agency. The primary site shall be included in the total bid amount. Optional sites shall have unit prices provided but are not to be included in the total bid amount. The primary site shall be located at:

   Skagit Aggregates – Big Rock Pit
   14107 State Highway 9
   Mount Vernon, WA 98273

   Alternate Site:

   1. 18663 Milltown Road
      Mount Vernon, WA 98273
      Material will need to be stockpiled using Contractor provided equipment. Site will be flagged but will be approximately 115' x 150'. Material stockpiled at this site will need to be stabilized for erosion control through the winter months. This site shall be included in the Temporary Erosion and Sediment Control Plan outlined in 8-01.3(1)A1.

   Cleared wood material that is not used as "Selected Materials" (See Section 2-03.3) shall be chipped or mulched on site, per Section 2-01.2(3). Mulching shall be stockpiled in the "Staging and stockpile area" as shown on Sheet 12.

   The demolished culvert and all unusable debris shall be disposed of offsite at a waste site, per Section 2-02.2(2).

4. **Appendix D – Permits has been modified to include the Army Corp of Engineers Permit NWS-2019-01038.**

5. **Appendix D – Permits Department of Ecology permit has been removed.**

6. **Appendix F – Cultural Monitoring Plan has been added.**

7. **Bid Proposal is modified to include Item 13[1]**

   Item 13[1] is not to be included in the Total Bid Price as explained in item 3 above but will be included in the Bid Proposal as an alternate haul location.

8. **Cover Pages of Contract Provisions and Specifications and Proposal for Bidding Purposes packets**

   Remove the following language:
   Must be an approved contractor on the Municipal Research and Services Center (MRSC) Roster in order to Bid this project: http://www.mrscrosters.org.

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch May 12, 2020

Ms. Emily Derenne
Skagit County Department of Public Works
1800 Continental Place
Mount Vernon, Washington 98273

Reference: NWS-2019-1038
Skagit County Public Works (Maddox Creek Culvert Removal)

Dear Ms. Derenne:

We have reviewed your application to excavate 20 cubic yards and discharge 9 cubic yards of streambed mix waterward of the existing ordinary high water mark to remove a 233-foot, 6-foot diameter culvert and construct 250 linear feet of new stream channel in an unnamed stream referred to as "Maddox Creek" at Mount Vernon, Skagit County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities* (Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated March 16, 2020.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 27, Terms and Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) programmatic consultation Fish Passage and Restoration Actions in Washington State (FPRP III) (National Marine Fisheries Service (NMFS) Reference Number WCRO-2014-00004), you must implement and abide by the ESA requirements and/or agreements set forth in the Biological Opinion (BO) dated June 21, 2017, and the Project Information Form dated May 7, 2020 in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms (NMFS Reference Number WCRO-2014-00004-1821). The BO is available on the U.S. Army Corps of Engineers (Corps) website (Permit Guidebook, Endangered Species, Programmatic Consultations, Fish Passage and Restoration Programmatic Consultations). Within 45 days of completing the permitted work in

waters of the U.S., you must provide the Corps the information requested in the FPRP Action Completion Reporting Form in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms. If fish salvage occurs as part of your project, you must also provide the Corps the information requested in the FPRP Fish Salvage Reporting Form in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms, within 45 days of completing the permitted work in waters of the U.S. All information must prominently display the reference number NWS-2019-1038. Failure to comply with these requirements constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of their BO and with the ESA. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and the MSA.

b. Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) 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 NOAA Fisheries, 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 NOAA Fisheries to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

c. In order to meet the requirements of the Endangered Species Act you may conduct the authorized activities from June 15 through August 31 in any year this permit is valid. You shall not conduct work authorized by this permit from September 1 through June 14 in any year this permit is valid.

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

Please be reminded that Special Condition "a" of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the programmatic Biological Opinion (BO) for this project. In particular, within 45 days of project completion, you must provide the Action Completion Reporting Form, as described in the BO.

Please note that National General Condition 21, *Discovery of Previously Unknown Remains and Artifacts*, found in the *Nationwide Permit Terms and Conditions* enclosure, details procedures that must be followed should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

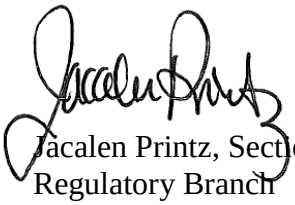
The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for this NWP. No further coordination with Ecology for WQC and CZM is required.

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

Our verification of this NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Branch, Permit Information" and then "Contact Us." If you have questions, please contact the project manager, Ms. Jennifer Lang, at jennifer.w.lang@usace.army.mil or (206) 764-6071.

Sincerely,



Jacalen Printz, Section Chief
Regulatory Branch

Enclosures

US Army Corps of Engineers
Seattle District

NATIONWIDE PERMIT 27
Terms and Conditions

Effective Date: March 19, 2017

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 an intact aquatic habitat or riparian area of the same type that exists in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

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

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments. Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

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

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

engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 32), except for the following activities: (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies; (2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency. However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Authorities: Sections 10 and 404) Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

B. CORPS NATIONAL GENERAL CONDITIONS FOR ALL NWPs

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. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

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

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

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

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

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

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

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

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

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

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

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

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

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

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

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible

inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. (b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status. (c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs. (e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take"

provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required. (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

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

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out

appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. (d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district

engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)). (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation. (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)). (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation. (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting

a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the 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 dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

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

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

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

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

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include: (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

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

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

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

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

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

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

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

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals. (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal. (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes. (3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or

other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision: 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre. 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method

may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns. 3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer. 4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

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

C. CORPS SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS: The following conditions apply to all NWPs for the Seattle District in Washington State, unless specified.

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

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

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

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

3. New Bank Stabilization in Tidal Waters of Puget Sound: Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs)
8, 9, 10, 11 and 12 (within the areas identified on Figures 1a through 1e on Corps website) cannot be authorized by NWP.

4. Commencement Bay: The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see Figure 2 on Corps website):

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

5. Bank Stabilization: All projects including new or maintenance bank stabilization activities require PCN to the Corps of Engineers (see NWP general condition 32). For new bank stabilization projects only, the following must be submitted to the Corps of Engineers:

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

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

6. Crossings of Waters of the United States: Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the

Corps of Engineers (see NWP general condition 32). If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

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

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, project proponents must provide a monitoring plan with the PCN that specifies how the proposed culvert will be assessed over a five-year period from the time of construction completion to ensure its effectiveness in providing passage at all life stages at all flows where the salmonid species would naturally seek passage. Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

7. Stream Loss: A PCN is required for all activities that result in the loss of any linear feet of stream beds. No activity shall result in the loss of any linear feet of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. A stream may be rerouted if it is designed in a manner that maintains or restores hydrologic, ecologic, and geomorphic stream processes, provided there is not a reduction in the linear feet of stream bed. Streams include brooks, creeks, rivers, and historical waters of the U.S. that have been channelized into ditches. This condition does not apply to ditches constructed in uplands. Stream loss restrictions may be waived by the district engineer on a case-by-case basis provided the activities result in net increases of aquatic resource functions and services.

8. Mitigation: Pre-construction notification is required for any project that will result in permanent wetland losses that exceed 1,000 square feet. In addition to the requirements of General Condition 23 (Mitigation), compensatory mitigation at a minimum one-to-one ratio will be required for all permanent wetland losses that exceed 1,000 square feet. When a PCN is required for wetland losses less than 1,000 square feet, the Corps of Engineers may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation for impacts to marine waters, lakes, and streams will be determined on a case-by-case basis. If temporary impacts to waters of the U.S. exceed six months, the Corps of Engineers may require compensatory mitigation for temporal effects.

9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat
Essential Fish Habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If EFH may be adversely affected by a proposed activity, the prospective permittee must provide a written EFH assessment with an analysis of the effects of the proposed action on EFH. The assessment must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) that may be affected. If the Corps of Engineers determines the project will adversely affect EFH, consultation with NOAA Fisheries will be required. Federal agencies should follow their own procedures for complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. If PCN is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

10. Forage Fish: For projects in forage fish spawning habitat, in-water work must occur within designated forage fish work windows, or when forage fish are not spawning. If working outside of a designated work window, or if forage fish work windows are closed year round, work may occur if the

work window restriction is released for a period of time after a forage fish spawning survey has been conducted by a biologist approved by the Washington State Department of Fish and Wildlife (WDFW). Forage fish species with designated in-water work windows include Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasi*), and surf smelt (*Hypomesus pretiosus*). This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

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

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

13. Temporary Impacts and Site Restoration

a. Temporary impacts to waters of the U.S. must not exceed six months unless the prospective permittee requests and receives a waiver by the district engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.
b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the district engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).
c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas must include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.
d. The permittee must revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation must begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps of Engineers. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.
e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation (SAV) that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved by the end of the monitoring period, contingencies must be implemented, and additional monitoring will be required.

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

D. CORPS REGIONAL SPECIFIC CONDITIONS FOR THIS NWP:

1. A pre-construction notification (PCN) must be submitted to the district engineer (see NWP general condition 32) for any proposed project located in a Department of the Army permit compensatory mitigation site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund)

site, Resource Conservation and Recovery Act hazardous waste clean-up site, Washington State Department of Ecology compensatory mitigation site, or Washington State Model Toxics Control Act clean-up site.

2. For projects subject to PCN, if there is a loss of waters of the U.S., the project proponent must explain in the PCN why the loss is necessary and show how it would be fully offset by the beneficial elements of the project.

3. The PCN must contain a description of pre-project site conditions (including photographs), aquatic functions the site provides, and benefits anticipated from project construction.

4. The project proponent must include maintenance and monitoring plans with the PCN.

5. Restoration projects involving shellfish seeding must use shellfish native to the watershed.

E. ECOLOGY 401 CERTIFICATION: GENERAL CONDITIONS

In addition to all the Corps National and Seattle Districts' Regional permit conditions, the following State General Section 401 Water Quality Certification (Section 401) conditions apply to all Nationwide Permits whether **certified** or **partially certified** in the State of Washington.

1. **For in-water construction activities**. Ecology Section 401 review is required for projects or activities authorized under NWPs that will cause, or may be likely to cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC). State water quality standards and sediment management standards are available on Ecology's website. Note: In-water activities include any activity within a wetland and/or activities below the ordinary high water mark (OHWM).

2. **Projects or Activities Discharging to Impaired Waters**. Ecology Section 401 review is required for projects or activities authorized under NWPs if the project or activity will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listed parameter. To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

3. **Application**. For projects or activities that will require Ecology Section 401 review, applicants must provide Ecology with a Joint Aquatic Resources Permit Application (JARPA) along with the documentation provided to the Corps, as described in National General Condition 32, Pre-Construction Notification, including, when applicable: (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, best management practices (BMPs), and any other Department of the Army or federal agency permits used or intended to be used to authorize any part of the proposed project or any related activity. (b) Drawings indicating the Ordinary High Water Mark (OHWM), delineation of special aquatic sites and other waters of the state. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland rating forms are subject to review and verification by Ecology staff. Guidance for determining the OHWM is available on Ecology's website. (c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See State General Condition 5 for details on mitigation requirements. (d) Other applicable requirements of Corps Nationwide Permit General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP. (e) Within 180 calendar days from receipt of applicable documents noted above **and** a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program Ecology will provide the applicant notice of whether an individual Section 401 will be required for the project. If

Ecology fails to act within a year after receipt of **both** of these documents, Section 401 is presumed waived.

4. **Aquatic resources requiring special protection**. Certain aquatic resources are unique, difficult-to-replace components of the aquatic environment in Washington State. Activities that would affect these resources must be avoided to the greatest extent possible. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings. Ecology Section 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Seattle District Regional General Condition): (a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):

- Estuarine wetlands.
- Wetlands of High Conservation Value.
- Bogs.
- Old-growth and mature forested wetlands.
- Wetlands in coastal lagoons.
- Interdunal wetlands.
- Vernal pools.
- Alkali wetlands.

(b) Fens, aspen-dominated wetlands, camas prairie wetlands. (c) Marine water with eelgrass (*Zostera marina*) beds (except for NWP 48). (d) Category I wetlands. (e) Category II wetlands with a habitat score ≥ 8 points. This State General Condition does not apply to the following Nationwide Permits: NWP 20 – *Response Operations for Oil and Hazardous Substances,* NWP 32 – *Completed Enforcement Actions*

5. Mitigation. Applicants are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable. For projects requiring Ecology Section 401 review with unavoidable impacts to aquatics resources, adequate compensatory mitigation must be provided.

(a) Wetland mitigation plans submitted for Ecology review and approval shall be based on the most current guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (available on Ecology's website) and shall, at a minimum, include the following:

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

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publications #09-06-032 (Western Washington) and #10-06-007 (Eastern Washington)) for guidance on selecting suitable mitigation sites and developing mitigation plans. Ecology encourages the use of alternative mitigation approaches, including credit/debit methodology, advance mitigation, and other programmatic approach such as mitigation banks and in-lieu fee programs. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. Information on alternative mitigation approaches is available on Ecology's website.

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

6. Temporary Fills. Ecology Section 401 review is required for any project or activity with temporary fill in wetlands or other waters of the state for more than 90 days, unless the applicant has received written approval from Ecology. Note: This State General Condition does not apply to projects or activities authorized under NWP 33, *Temporary Construction, Access, and Dewatering*

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

(a) For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology's current stormwater manual.

(b) Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

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

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

F. ECOLOGY 401 CERTIFICATION: SPECIFIC CONDITIONS FOR THIS NWP:

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

1. The project or activity involves fill in tidal waters.

2. The project or activity affects ½ acre or more of wetlands.

3. The project or activity is a mitigation bank or an advanced mitigation site.

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

G. COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSE FOR THIS NWP:
(Note: This is only applies in the following counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom)

Response: Ecology concurs that this NWP is consistent with the CZMP, subject to the following condition: An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

General Conditions: For Non-Federal Permittees
1. Necessary Data and Information. A Coastal Zone Management Program "Certification of Consistency" form is required for projects located within a coastal county. "Certification of Consistency" forms are available on Ecology's website. The form shall include a description of the proposed project or activity and evidence of compliance with the applicable enforceable policies of the Washington Coastal Zone Management Program (CZMP). Also, a map of the site location is required.

2. Timing. Within 6 months from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 6 month period, concurrence with the CZMP is presumed.

General Conditions: For Federal Permittees (Agencies)
1. Necessary Data and Information. Federal agencies shall submit the determination, information, and analysis required by 15 CFR 930.39 to obtain a federal consistency determination.
2. Timing. Within 60 days from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 60 day period, concurrence with the CZMP is presumed.

CULTURAL RESOURCES REPORT COVER SHEET

Author: Kelly R. Bush and Caspian Hester

Title of Plan: Archaeological Monitoring Plan: Maddox Creek Culvert Removal and Stream Enhancement, Mount Vernon, Skagit County Washington

Date of Report: April 23, 2020

County: Skagit Section: 29 Township: 34 N Range: 4 E

Quad: Mount Vernon Acres: ~1.71

PDF of report submitted (REQUIRED) ☒ Yes

Historic Property Inventory Forms to be Approved Online? ☐ Yes ☒ No

Archaeological Site(s)/Isolate(s) Found or Amended? ☐ Yes ☒ No

TCP(s) found? ☐ Yes ☒ No

Replace a draft? ☐ Yes ☒ No

Satisfy a DAHP Archaeological Excavation Permit requirement? ☐ Yes # ☒ No

Were Human Remains Found? ☐ Yes DAHP Case # ☒ No

DAHP Archaeological Site #:

_____

ARCHAEOLOGICAL MONITORING PLAN: MADDOX CREEK CULVERT REMOVAL AND STREAM ENHANCEMENT, MOUNT VERNON, SKAGIT COUNTY, WASHGINTON

Prepared for: Skagit County Public Works

Under Contract to: Natural Systems Design

April 23, 2019

Prepared by:

ERCI

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..... Dr. Guy Tasa, State Physical Anthropologist

CONTENTS

FIGURES

TABLES

1.0 INTRODUCTION

Project	20-735 NSD _ SCPW Maddox Creek
County	Skagit
TRS	Township 34 N, Range 4 E, Section 29
Quad	MOUNT VERNON
Parcel ID	P28758
Address	None
Property Owner	City of Mount Vernon
Area	~1.71 acres
Lat/Long	48°24'2"N/122°19'7.6"W
UTM Zone	Zone 10 550434 Easting 5361178 Northing
Elevation	~110'-120'
Nearest Water Body	Skagit River
Nearest Arch Site	SK00521 – ~0.25 mile
Soils	Bow gravelly loam, Hoogdal silt loam
Geology	Everson Glaciomarine Drift, Fraser-age and Holocene alluvium sand

This monitoring plan outlines how Equinox Research and Consulting International Inc. (ERCI) will provide professional archaeological monitoring during ground-disturbing activities for the Maddox Creek Barrier Removal (the Project), in Skagit County, Washington (Figure 1–Figure 5). Archaeological fieldwork, and reporting will be directed by a Secretary of the Interior-qualified archaeologist using Washington State standards for cultural resource reporting.

Skagit County Public Works is receiving funding from the Washington Department of Ecology (DOE) for the Project. As a state capitol project it is subject to Executive Order 05-05 which stipulates that all state agencies "Take reasonable action to avoid, minimize or mitigate adverse effects to the archaeological or cultural resource." The DOE is responsible for fulfilling the requirements of this project including government to government consultation with affected Tribes.

Figure 1: Regional map showing the location of the APE.

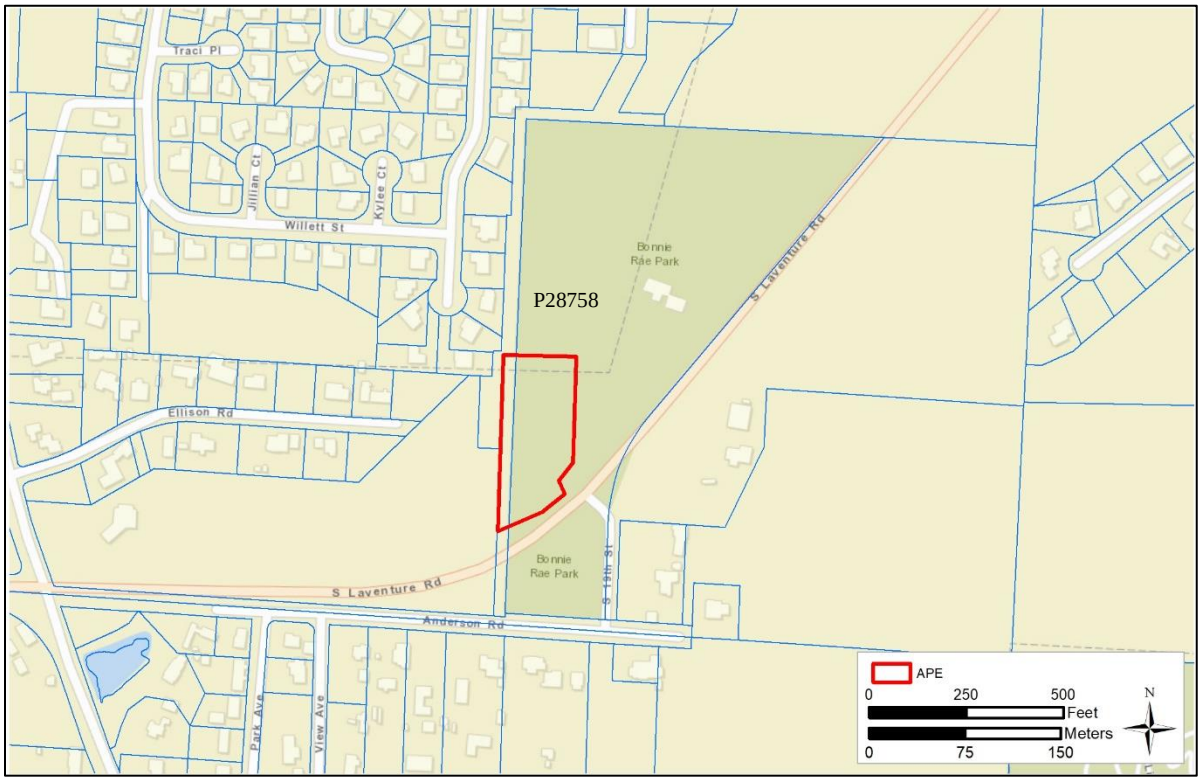

Figure 2: Skagit County Assessor's map showing the APE outlined in red.

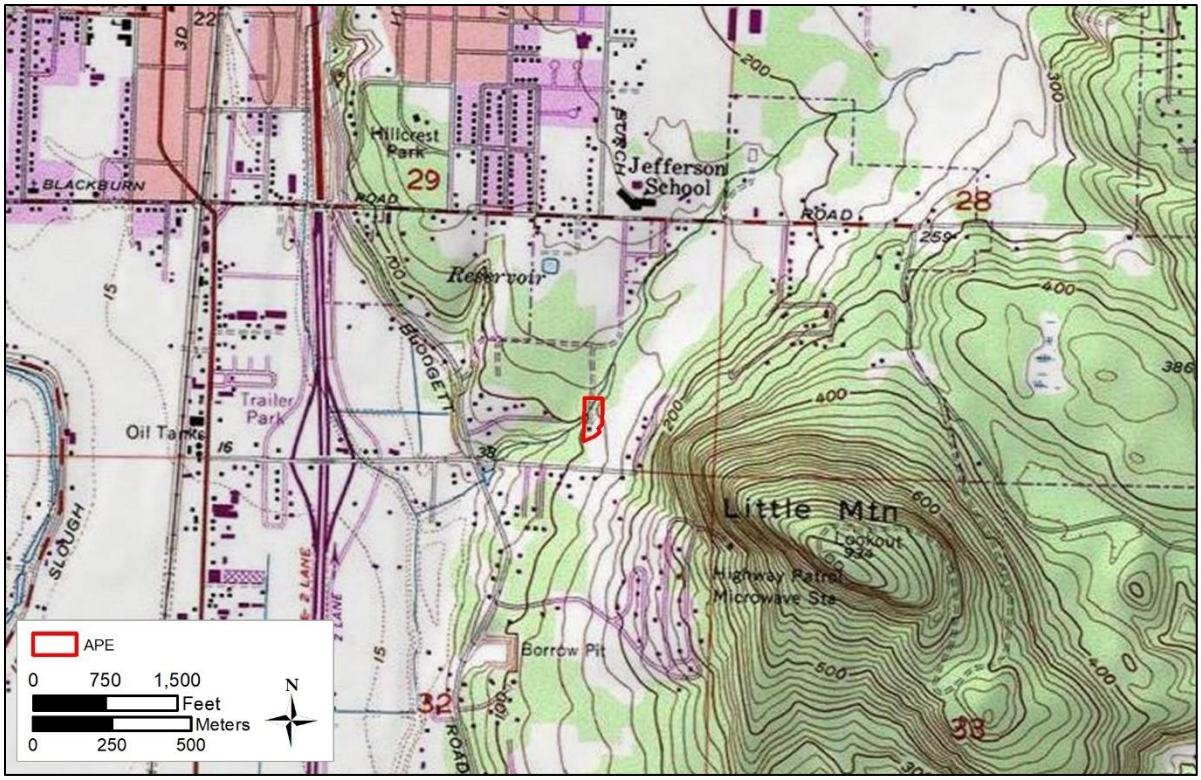

Figure 3: USGS Mount Vernon 7.5-minute quadrangle map showing the APE in red.

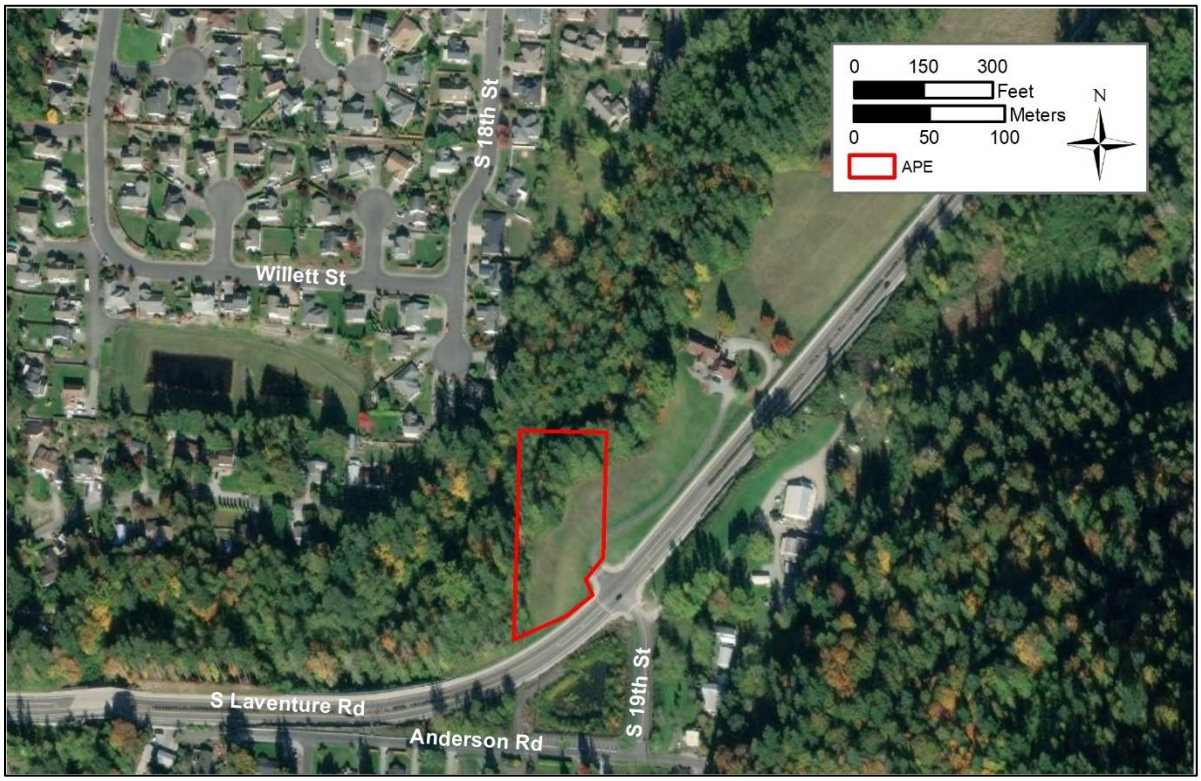

Figure 4: Aerial showing the APE outlined in red.

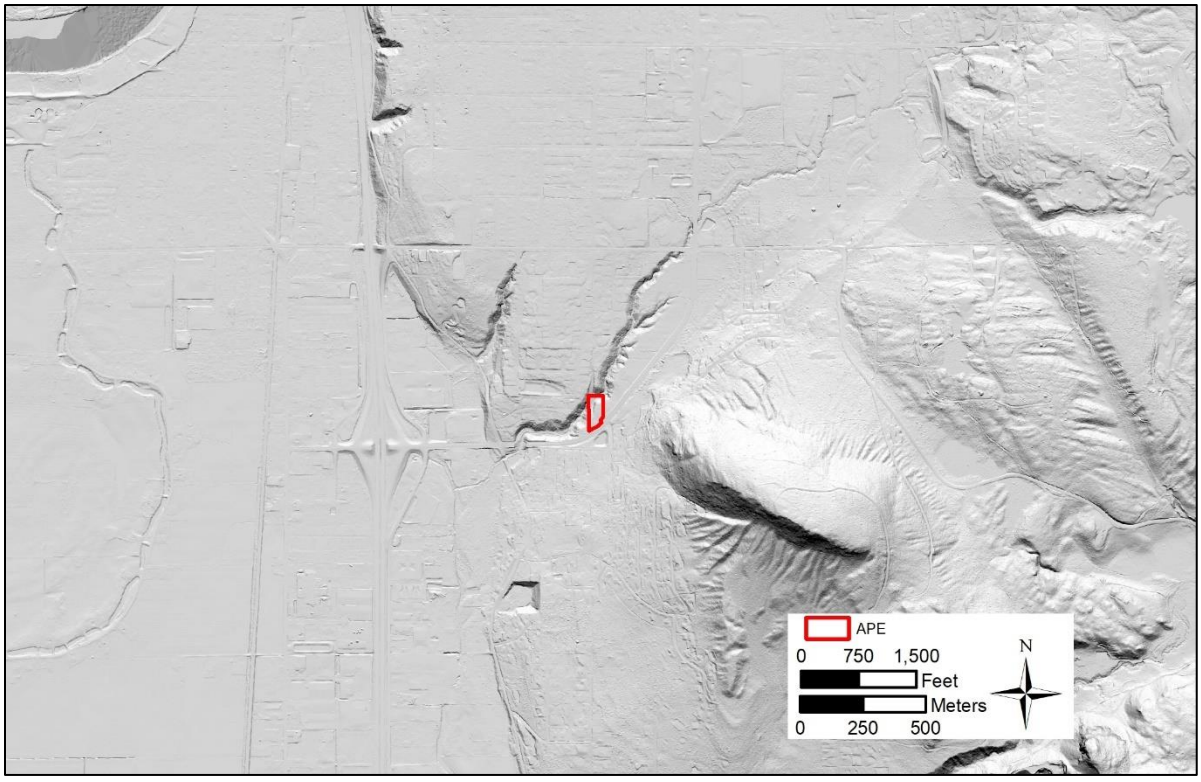

Figure 5: LIDAR with APE outlined in red.

2.0 PROJECT LOCATION

The Project will occur within an unopened right-of-way shared by the Skagit County and the City of Mount Vernon. Currently this area functions as an undeveloped trail across Maddox Creek. Upstream of the culvert is Bonnie Rae Park. Downstream is native riparian vegetation. The APE is bounded to the south by South LaVenture Avenue and to the East by a residence. Access to the Project will occur from South LaVenture Avenue via Bonnie Rae Park.

3.0 PROJECT DESCRIPTION

Skagit County Public works is removing a 210-foot-long failing culvert. Approximately 9,700 cubic yards of fill material will be removed during the Project. Ground disturbances should not exceed a width of 215-feet, length of 410 feet, or a depth of 36 feet. In total 1.71 acres may be disturbed.

4.0 REGULATORY FRAMEWORK

Governor's Executive Order 05-05 was signed in November of 2005 and recognizes the rich and diverse cultural heritage of Washington State. This order requires that state agencies consult with the Department of Archaeology and Historic Preservation (DAHP) and affected Tribes into the planning process for any capital construction projects or land acquisition projects for the purpose of capital construction. This executive order recognizes DAHP as the environmental agency with special expertise in cultural resources (WAC 197-11.920). Consultation is the responsibility of the State agency with the capitol construction project and requires a face to face meeting with affected Tribes (EO 05-05 1b). Consultation with DAHP can be informal or formal and may require background research and/or field work to identify and evaluate archaeological sites or Historic Properties for eligibility to the State or Federal Register. If any of these resources are identified, reasonable steps must be taken to avoid, minimize or mitigate effects to these resources. Although some projects are exempted from

investigation the best risk management is done early in the planning stages of a project. Typically, the only projects that do not trigger an investigation are those used to refinance an existing loan or those from a revolving fund.

The goal of this legislation is to help state agencies lead by example and to provide some consistency in the planning processes between the federal and state regulations. To help streamline review time, and to provide a framework for the resolution of concerns by affected Tribes on any state funded or permitted project or projects on state lands.

5.0 TRIBAL CONSULTATION

Agencies for the government recognize the long and unique relationship that the government has had with Indian tribes. These responsibilities have grown from the historic relationship between the government and the Indian tribes including treaties, public laws, policies, statutes and executive orders including the Centennial Accord which is regulated by RCW 43.376..

Department of Ecology Project Manager Sylvia Graham is responsible for consulting with tribal representatives from the Samish Indian Nation, Sauk–Suiattle Indian Tribe, The Stillaguamish Tribe of Indians, the Swinomish Indian Tribal Community, and the Upper Skagit Indian Tribe. Tribal representatives are the only people qualified to determine if Traditional Cultural Properties exist within the APE, whether they will be affected by the undertaking and how any suggested management strategies might work.

6.0 PREVIOUS ARCHAEOLOGY

For discussions of the archaeology and cultural resources of the region, see Ames (1995, 2003, 2005a, 2005b), Ames and Maschner (1999), Avey (1991), Blukis Onat and Hollenbeck (1981), Blukis Onat et al. (1980), Borden (1950, 1951, 1962, 1968, 1975), Boyd (1998, 1999), Burtchard (2007), Burtchard et al. (2003, 1998), Butler (1961), Butler and Campbell (2004), Campbell (1991), Carlson (1990), Carlson and Dalla Bona (1996), Fladmark (1982), Hearne and Hollenbeck (1996), Hollenbeck (1987), Hollenbeck and Carter (1986), Kidd (1964), Lewarch (1979), Lewarch and Larson (2003), Lewarch et al. (2005, 2006), Matson and Coupland (1995), Matson et al. (2003), Mattson (1971, 1989), Mierendorf (1986), Mierendorf et al. (1998), Meltzer (2004), Meltzer and Dunnell (1987), Mitchell (1971, 1990), Nelson (1990), and Prentiss and Kuijt (2004, 2012). Schalk (1988), Smith H.I (1900, 1907) Smith and Fowkes (1901), Smith (1941, 1956), Snyder (1980, 1981), Stein (1984, 2000), Stein and Phillips (2002), Taylor et al. (2001), Wessen (1988), Wessen and Stilson (1987), and Whitlam (1983).

6.1 Previously Recorded Archaeological Sites

Records of four archaeological sites within about one mile of the Project area are on file at the Washington State Department of Archaeology and Historic Preservation (DAHP). A short description of the sites is provided below, and summarized in Table 1.

Table 1: Previously recorded archaeological sites within one mile of the Project area.

Site #	Type	Distance (Miles)	Citations	NRHP Eligibility
45SK521	Historic Agriculture, Historic Objects	~0.2	Raff-Tierney 2014	Potentially Eligible
45SK468	Historic Railroad Properties	~0.8	Shantry 2007	Potentially Eligible

Site #	Type	Distance (Miles)	Citations	NRHP Eligibility
45SK40	Precontact Shell Midden	~0.45	Conca 1985, Bryan 1953, Meyer 1974a, Emerson 1959, Onat 1979	Survey/Inventory
45SK64	Precontact Shell Midden	~0.85	Meyer 1974b, Dancy 1969	Survey/Inventory

45SK521—Belsaw Light Sawmill is a historic site near the toe of Little Mountain on a gentle slope approximately 0.2 mile from the Project area. Raff-Tierney (2014) recorded the remains of a sawmill while conducting a reconnaissance survey. Equipment found on site date to the mid-twentieth century (Raff-Tierney 2014).

45SK468–English Lumber Company Logging Railroad is a historic railroad site in forested foothills approximately 0.8 miles from the Project area. Shantry (2007) encountered six segment cuts of the English Lumber Company railroad. Historic aerials were used in corroborating the affiliation.

45SK40-Delta Margin Midden is a culture-rich precontact shell midden site on a low terrace and alluvial flats, along the banks of an old slough approximately 0.45 miles from the Project area. Bryan (1953) recorded the site as slightly disturbed and recommended further excavation. Emerson (1959) recorded the dimensions of the site as 30 x 10 x 4 m during a pedestrian survey and noted that there appeared to be some intact culture-rich shell midden on the site. Meyer (1974a) updated the site form. Onat (1979) reported that the site was now 80% destroyed.

45SK64 is a culture-rich precontact shell midden site at the edge of the Skagit flood plain at the base of Little Mountain approximately 0.85 miles from the Project area. Dancy (1969) encountered culture-rich shell, fire-modified rock (FMR) and charcoal at the site that was seriously disturbed by construction. Meyer (1974b) observed a culture-rich shell layer with charcoal that was 10-15 inches thick.

6.2 Previous Cultural Resources Surveys

There are nine reports on file with DAHP from previous cultural resource surveys within one mile of the Project area; they are listed below in Table 2, along with annotations for those that included subsurface investigation such as shovel test pits (ST), machine tests (MT) or monitoring.

Table 2: Previous cultural resource reports on file with DAHP.

Author	Title	Date
Arthur and Baldwin	*Archaeological Assessment of the Anderson/LaVenture Road Extension Project- Phase 2, Mount Vernon, Skagit County, Washington.* **No subsurface investigation. No cultural resources.**	2009a
Arthur and Baldwin	*Archaeological Assessment of the Anderson/LaVenture Road Extension Project- Phase 3, Mount Vernon, Skagit County, Washington.* **12 STs. No cultural resources.**	2009b
Arthur	*Cultural Resources Assessment for Petroleum Contaminated Sediment Remediation at 3408 Cedardale Road, Mount Vernon, Washington.* **7 STs. No cultural resources.**	2018
Baldwin et al.	*Archaeological Assessment of the Anderson/LaVenture Road Extension Fowler to Blackburn Project, Mount Vernon, Washington* **22 STs. No cultural resources.**	2009

Author	Title	Date
Baldwin	*Cultural Resources Review of Parcels P28041 and P28043 at Little Mountain Park, Mt. Vernon, Skagit County Washington.* **No subsurface investigations. No cultural resources.**	2013a
Baldwin	*Cultural Resources Review of the Proposed Skagit County Jail Sites, Mount Vernon, Skagit County Washington.* **4 machine tests, No cultural resources.**	2013b
Iversen	*Cultural Resources Assessment for the East Village Short Plat Project, Mount Vernon, Skagit County, Washington.* **15 STs. No cultural resources.**	2017
Iversen and Osiensky	*Cultural Resources Assessment for the Blackburn Village Project, Mount Vernon, Skagit County, Washington.* **35 STs. No cultural resources.**	2019
Schultze et al.	*Cultural Resources Inventory for the Little Mountain Sky Ridge Reservoir Road and Pipeline Project, Skagit County, Washington.* **23 STs. Cultural resources associated with 45SK521.**	2014

6.3 Previous Cemetery Reports

The record of one cemetery within two miles of the Project area is on file with DAHP. A short description is provided below.

45SK394—*Mount Vernon Cemetery* is an active, well maintained cemetery established in 1890 (DAHP 2020).

6.4 National Register Properties

Records of two National Register properties and one Washington State Register property within one and a-half miles of the Project area are on file with DAHP. A short description is provided below and summarized in Table 3.

45SK441—*President Hotel* was built in 1926 using brick and is five stories tall (Woo 2010).

45SK261—*Lincoln Theater and Commercial Block* was built in 1926 and is located in a wedge-shaped building made of brick and terra cotta ornament (Beckes and Pederson 1987).

45SK347—*Weaver Barn* is a shed style barn built by Jerry Weaver in 1933 and was originally used to house milk cows and horses (Lee and Lee 2007).

Table 3: National Register Properties within one and a half miles of the Project area.

Distance	NRHP	Name	Period of Significance
~1.40 miles	45SK441	President Hotel	1926
~1.35 miles	45SK261	Lincoln Theater and Commercial Block	1926
~1.49 miles	45SK347	Weaver Barn	1933

7.0 MONITORING PROTOCOL

ERCI's management recommendations will guide the monitoring protocol during all further work associated with this project. The nature of this project provides enough flexibility to avoid archaeological resources.

Before any ground-disturbing activities begin, the archaeologist will provide sufficient information to the on-site Project representatives/superintendent regarding the laws governing archaeological material and the procedures involved should any be encountered during the Project. **The archaeologist will also provide a training to all workers associated with this project** regarding what areas of the APE have restricted access and what kinds of objects and deposits the archaeologists will be looking for. The archaeologist and the Project proponents will ensure that all people working in the APE understand who the archaeological monitor is and what their role is. Training will include an Unanticipated Discoveries Protocol training for **all** Project personnel who will be working on site. This brief training will be repeated during the Project as new construction workers arrive on the Project. A dated sign-in sheet with the name and affiliation of all participants will be kept on file with ERCI and provided electronically to the Project proponents.

The archaeological monitor will have a copy of the approved monitoring plan on site at **all** times. When the archaeologist is not on site, a copy of the Unanticipated Discovery Protocol will be kept on site at **all** times.

Archaeological monitoring may involve visually examining excavated soils and sidewalls of excavated areas for specific indicators of cultural resources. The monitor may need to stand close to machines and be able to examine the sediments on the ground, in the bucket, or in the back-dirt pile. The monitor may also need to request a closer look at some *in situ* sediments or profiles and will require the ability to talk directly to the machine operator and the on-site superintendent. This may include hand raking through back dirt or asking for slow release of sediments from the machine bucket to improve visibility in certain soil types.

If needed, an additional archaeologist(s) will be called to the project when ground-disturbing activities are being carried out in more than one area at a time. If a artifact rich deposit is encountered a second archaeologist could be called to help evaluated and process the deposit.

The archaeological monitor/s will fill out detailed monitoring forms with descriptions of the Project activities and take a series of before, during and after photographs. A combination of hand sketch-mapping and GPS data will be used to document locational information. The notes, locational data and photos will be used to create a report.

Based on archival research the following deposits may be encountered during Project implementation:

- Sterile imported fill or sterile local alluvial or colluvial deposits sometimes with or without modern refuse
- Historical disturbed culture rich deposits, features or objects
- Historical intact culture-rich deposits, features or objects
- Precontact disturbed or intact culture-rich deposits, features or objects

The protocols provided below are listed according to the type of deposits that may be encountered during Project implementation.

7.1 Sterile Deposits

Sterile imported fills are normally sediment that is very low risk for cultural resources, characterized by uniform particle size and morphology as they have been screened in a commercial quarry. Local sterile fill deposits are characterized by unsorted mixed sediments that match the local natural sediments, but lack any internal structure or soil development, or other indicators of being undisturbed. Intact native sterile deposits are identified by clear, predictable stratification. Sterile deposits will not be avoided or protected in any way during this project. If we find that we can predict where these

deposits are and all the workers have received a UDP training we will not monitor the removal of all of these deposits.

7.2 Historical Disturbed Culture-Rich Deposits

This type of cultural resource is a disturbed deposit that represents evidence of a historic activity older than 50 years, and could include burned sediments, metal, glass, ceramic or wood debris that is not in its original position. This includes deposits that may have been moved around by hand or machine in the last 100 years. Examples might include a buried pile of bricks that has been pushed into its current position sometime in the past, or discarded equipment that has been pushed into position and buried. These deposits lack integrity but can sometimes provide information based on the objects themselves.

If historical objects (such as a bottle with a maker's mark) are encountered in disturbed deposits, the archaeological monitor may carry out a limited amount of documentation. This could include mapping the location, photographing the object, writing a description that includes the measurements and details about the way the object was manufactured. The objective in documenting these items is to record any information that could provide some part of the story of these disturbed deposits. Examples of this would be a single bottle or can, car parts or other roadside trash. Following the documentation process, historical objects from disturbed deposits will be reburied in the trench from which they came or discarded into a waste disposal receptacle.

If a historical object is encountered in a disturbed deposit that the archaeologist believes provides significant information about the historical use of the area, the monitor may carry out more in-depth documentation of the item. For example, if a complete, labeled, glass or ceramic object is encountered, the monitor would photograph it, and record its attributes such as size, morphology and markings. If the monitoring is very busy the monitor may collect temporarily any historic object to be recorded back in the ERCI lab prior to disposal.

Significant objects from disturbed deposits that are significant, unique or previously unknown in that locality (for example: Hudson's Bay Trading Beads, bone toothbrushes, complete clay tobacco pipes) will be bagged and temporarily stored at the offices of ERCI until a suitable long-term management strategy can be developed. This process would be managed by the Lead Agency.

7.3 Historical Intact Culture-Rich Deposits

If two or more artifacts older than 50 years (i.e., historical) are found in clear archaeological association, in the same, intact matrix, this will be considered a feature. If an intact historical feature cannot be avoided, excavating machinery will be moved a safe distance away to continue other Project activities. The archaeological monitor will document the location, nature and character of the intact historical feature, photographically document it, and provide a written description and eligibility recommendation to the DOE, who will consult with the DAHP for concurrence on an eligibility determination.

Intact historical deposits/features will be identified by the following characteristics:

1. A clear/distinct, mostly continuous, interface between the feature and the surrounding matrix.
2. The internal structure of the feature would be easily identified and characterized. An example of this would be a buried cellar, privy, buried boardwalk or foundation.

Additional examples of intact historical deposits/features include:

1. Old infrastructure that retains its spatial connections to a larger system, such as buried brick wastewater vaults or wood stave pipes that are part of a still-intact system.
2. A distinct residential or commercial dump that can be identified to a specific person, business or industry.

If the site rises to the significance of eligible for the National Register of Historic Places additional recordation may be needed prior to removal if not concurrence from DOE and DAHP regarding the removal of this site is required prior to its removal.

7.4 Precontact Disturbed Culture-Rich Deposits

There is a moderate probability for finding intact or disturbed precontact deposits only at the interface between fill and the native soils in the APE. If a suspected precontact culture-rich deposit is observed during monitoring and cannot be avoided, equipment must be moved away and the archaeological monitor will assess the nature of the deposits. This may take up to 2 hours. If the deposits can be avoided, then the Project work can carry on and the deposits will remain undisturbed. If the deposits cannot be avoided the on-site superintendent will ensure that equipment is moved to a safe distance away (30 feet) from the evaluation area. Work can continue elsewhere with a second archaeological monitor during the evaluation. The archaeologist will need to determine if it is disturbed or intact and collect enough information to make an eligibility determination. The archaeologist will document the location, nature and character of the deposit, photographically document it, and provide a written description and eligibility recommendation to the Lead Agency, who will consult with the DAHP and affected tribes for concurrence on an eligibility determination and the plan to move forward.

7.5 Precontact Intact Culture-Rich Deposits

Intact precontact deposits **will be avoided** on this project. If intact culture-rich deposits cannot be avoided, then a discovery/evaluation process must be developed and provided in writing to the Lead Agencies to start consultation with DAHP and the affected tribes. To be clear it is not the intent of this monitoring plan to provide a framework for disturbing intact deposits. The archaeologist will document the location, nature and character of the intact deposit, document it photographically, and provide a written description to the Lead Agencies to assist in this consultation process.

Intact precontact deposits or features will be identified by a combination of the following characteristics:

1. Include but are not limited to: fire-modified rock in a hearth feature, animal bone, concentrations of shell, lithic debitage (stone flakes from stone tool manufacture), flaked or ground-stone tools, burned earth, organic-stained sediments, charcoal, ash, non-local rocks and minerals.
2. Buried rock arrangements in association with nitrogen or carbon rich sediments indicative of human activity;
3. Artifacts in a developed soil that shows no signs of being disturbed
4. Intact features such as a hearth, camas or other root ovens for plant processing, wood arrangements related to fishing, remnants of cooking, and smoking or drying racks.
5. Preserved basketry, matting, cordage or other plant/fiber-based precontact artifacts.

The process will involve the project archaeologist providing documentation and recommendations to the project Proponent (Skagit County Public Works) to provide to the agency (Washington Department of Ecology) to engage in consultation with DAHP and the affected tribes. A Mitigative Plan will need to be developed that will be carried out prior to the Project being able to proceed in this location. All parties will need to be engaged in the construction of the plan.

In the unlikely event that human remains are inadvertently encountered at any time during the Project, the protocol outlined in the Inadvertent or Unanticipated Discoveries Plan (Appendix 1) will be followed.

7.6 Reporting

Within 30 days following Project completion, all archaeological monitoring activities will be detailed in a report and submitted to the agencies and consulting parties.

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DEPARTMENT OF ECOLOGY
State of Washington

APPENDIX 1: DEPARTMENT OF ECOLOGY PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN SKELETAL REMAINS1

PROJECT TITLE: Maddox Creek Culvert Removal and Stream Restoration

COUNTY: Skagit

Section, Township, Range: 29-34-4

1. INTRODUCTION

The following Inadvertent Discovery Plan (IDP) outlines procedures to perform in the event of discovering archaeological materials or human remains, in accordance with state and federal laws.

2. RECOGNIZING CULTURAL RESOURCES

A cultural resource discovery could be prehistoric or historic. Examples include:

a. An accumulation of shell, burned rocks, or other food related materials.

b. Bones or small pieces of bone.

c. An area of charcoal or very dark stained soil with artifacts.

d. Stone tools or waste flakes (i.e. an arrowhead. or stone chips).

e. Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years.

f. Buried railroad tracks, decking, or other industrial materials.

When in doubt, assume the material is a cultural resource.

3. ON-SITE RESPONSIBILITIES

STEP 1: *Stop Work*. If any employee, contractor or subcontractor believes that he or she has uncovered a cultural resource at any point in the project, all work must stop immediately. Notify the appropriate party(s). Leave the surrounding area untouched, and provide a demarcation adequate to provide the total security, protection, and integrity of the discovery. The discovery location must be secured at all times by a temporary fence or other onsite security.

STEP 2: *Notify Archaeological Monitor or Licensed Archaeologist*. If there is an Archaeological Monitor for the project, notify that person. If there is a monitoring plan in place, the monitor will follow the outlined procedure.

STEP 3: *Notify the Project Manager* of this project and contact the Ecology Staff Project Manager, or other applicable contacts:

Project Manager: Name: Emily Derenne Phone:360-416-1449 Email: emilyjd@co.skagit.wa.us	Ecology Staff Project Manager Name: Sylvia Graham Phone:360-255-4393 Email: sygr461@ECY.WA.GOV

Assigned Alternates:

Assigned Project Manager Alternate: Name: Michael See Phone:360-416-1455 Email: michaels@co.skagit.wa.us	Ecology Cultural Resource Specialist (Alternate): Name: Seth Elsen Phone:360-407-6703 email: SELS461@ecy.wa.gov

The Project Manager or applicable staff will make all calls and necessary notifications. **If human remains are encountered**, treat them with dignity and respect at all times. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection and to shield them from being photographed. **Do not call 911 or speak with the media. Do not take pictures unless directed to do so by DAHP. See Section 5.**

4. FURTHER CONTACTS AND CONSULTATION

A. **Project Manager's Responsibilities**:

- *Protect Find*: The Project Manager is responsible for taking appropriate steps to protect the discovery site. All work will stop immediately in a surrounding area adequate to provide for the complete security of location, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed following provisions for treating archaeological/cultural material as set forth in this document.

- *Direct Construction Elsewhere on-Site*: The Project Manager may direct construction away from cultural resources to work in other areas prior to contacting the concerned parties.

- *Contact Senior Staff*: If the Senior Staff person has not yet been contacted, the Project Manager must do so.

B. **Senior Staff Responsibilities**:

- *Identify Find*: The Senior Staff (or a delegated Cultural Resource Specialist), will ensure that a qualified professional archaeologist examines the area to determine if there is an archaeological find.

    - If it is determined not to be of archaeological, historical, or human remains, work may proceed with no further delay.

- If it is determined to be an archaeological find, the Senior Staff or Cultural Resource Specialist will continue with all notifications.

- If the find may be human remains or funerary objects, the Senior Staff or Cultural Resource Specialist will ensure that a qualified physical anthropologist examines the find. **If it is determined to be human remains, the procedure described in Section 5 will be followed.**

- *Notify DAHP*: The Senior Staff (or a delegated Cultural Resource Specialist) will contact the involved federal agencies (if any) and the Washington Department of Archaeology and Historic Preservation (DAHP).

- *Notify Tribes*: If the discovery may be of interest to Native American Tribes, the DAHP and Ecology Supervisor or Coordinator will coordinate with the interested and/or affected tribes.

General Contacts

Federal Agencies:	**State Agencies**:
Agency: Name Title Number Email	Agency: Name Title Number Email

Department of Archaeology and Historic Preservation:

Dr. Allyson Brooks State Historic Preservation Officer 360-586-3066 Assigned Alternate:	Rob Whitlam, Ph.D. State Archaeologist 360-586-3050 Assigned Alternate:

The DAHP or appropriate Ecology Staff will contact the interested and affected Tribes

Tribes consulted on this project are:

Tribe: Samish Tribe Jacquelyn Ferry THPO 360-293-6404 x126 jferry@samishtribe.nsn.us	Tribe: Sauk-Suiattle Benjamin Joseph THPO 360-436-1124 bjoseph@sauk-suiattle.com
Tribe: Stillaguamish Tribe Kerry Lyste THPO 360-652-3687 x14 KLyste@stillaguamish.com	Tribe: Swinomish Tribe Josephine Jefferson THPO 360-466-7352 jjefferson@swimomish.nsn.us
Tribe: Upper Skagit Tribe Scott Schuyler Cultural Resources 360-854-7009 sschuyler@upperskagit.com	

Further Activities

- Archaeological discoveries will be documented as described in Section 6.
- Construction in the discovery area may resume as described in Section 7.

5. SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL

Any human skeletal remains, regardless of antiquity or ethnic origin, will at all times be treated with dignity and respect. Do not take photographs by any means, unless you are pre-approved to do so.
If the project occurs on federal lands or receives federal funding (e.g., national forest or park, military reservation) the provisions of the Native American Graves Protection and Repatriation Act of 1990 apply, and the responsible federal agency will follow its provisions. Note that state highways that cross federal lands are on an easement and are not owned by the state.

If the project occurs on non-federal lands, the Project Manager will comply with applicable state and federal laws, and the following procedure:

A. **In all cases you must notify a law enforcement agency or Medical Examiner/Coroner's Office**:

In addition to the actions described in Sections 3 and 4, the Project Manager will immediately notify the local law enforcement agency or medical examiner/coroner's office.

The Medical Examiner/Coroner (with assistance of law enforcement personnel) will determine if the remains are human, whether the discovery site constitutes a crime scene, and will then notify DAHP.

Skagit County Coroner
360-416-1998

B. **Participate in Consultation**:

Per RCW 27.44.055, RCW 68.50, and RCW 68.60, DAHP will have jurisdiction over non-forensic human remains. Ecology staff will participate in consultation.

C. **Further Activities**:

- Documentation of human skeletal remains and funerary objects will be agreed upon through the consultation process described in RCW 27.44.055, RCW 68.50, and RCW 68.60.

- When consultation and documentation activities are complete, construction in the discovery area may resume as described in Section 7.

6. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D until a formal Determination of Eligibility is made.

Project staff will ensure the proper documentation and field assessment will be made of any discovered cultural resources in cooperation with all parties: the federal agencies (if any), DAHP, Ecology, affected tribes, and a contracted consultant (if any).

All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist on a cultural resource site or isolate form using standard and approved techniques. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for minimal subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.

If assessment activity exposes human remains (burials, isolated teeth, or bones), the process described in Section 5 will be followed.

7. PROCEEDING WITH WORK

Work outside any discovery location may continue while documentation and assessment of the cultural resources proceed. A professional archaeologist must determine the boundaries of the discovery location. In consultation with Ecology, DAHP and any affected tribes, the Project Manager will determine the appropriate level of documentation and treatment of the resource.

Work may continue at the discovery location only after the process outlined in this plan is followed and the Project Manager, DAHP, any affected tribes, Ecology determine that compliance with state law is complete.

8. RECIPIENT/PROJECT PARTNER RESPONSIBILITY

The Project Recipient/Project Partner is responsible for implementing this IDP. The Project Manager and staff will review the IDP during a project kickoff or pre-construction meeting.

We recommend that you print images in color for accuracy.

Implement the IDP / UDP if …

You see chipped stone artifacts.

- Glass-like material
- Angular
- “Unusual” material for area
- “Unusual” shape
- Regularity of flaking
- Variability of size

Implement the IDP / UDP if …

You see ground or pecked stone artifacts.

- Striations or scratching
- Unusual or unnatural shapes
- Unusual stone
- Etching
- Perforations
- Pecking
- Regularity in modifications
  - Variability of size, function, and complexity

Implement the IDP / UDP if …

You see bone or shell artifacts.

- Often smooth
- Carved
- Often pointed if used as a tool
- Often wedge shaped like a "shoehorn"

Bone Awls from Oregon and Bone Wedge from California

Implement the IDP / UDP if …

You see bone or shell artifacts.

- Often smooth
- Unusual shape
- Perforated
- Variability of size

Implement the IDP / UDP if …

You see fiber or wood artifacts.

- Wet environments needed for preservation
- Variability of size, function, and complexity
- Rare

Implement the IDP / UDP if …

You see historic period artifacts.

Artifacts from Downtown Seattle, Alaskan Way Viaduct (Upper Left and Lower) and Unknown Site (Upper Right)

Implement the IDP / UDP if …

- Human activities leave traces in the ground that may or may not have artifacts associated with them
- "Unusual" accumulations of rock (especially fire-cracked rock)
- "Unusual" shaped accumulations of rock (e.g., similar to a fire ring)
- Charcoal or charcoal-stained soils
- Oxidized or burnt-looking soil
- Accumulations of shell

Implement the IDP / UDP if …

- Accumulations of bones or artifacts
- Look for the "unusual" or out of place (e.g., rock piles or accumulations in areas with few rock)
  - "Unusual" accumulations of rock (especially fire-cracked rock)
- "Unusual" shaped accumulations of rock (e.g., similar to a fire ring)
- Look for the "unusual" or out of place (e.g., rock piles or accumulations in areas with few rock)

Implement the IDP / UDP if …

- Often have a layered or "layer cake" appearance
- Often associated with black or blackish soil
- Often have very crushed and compacted shells

Site located within WSDOT ROW near Anacortes Ferry Terminal

Implement the IDP / UDP if …

You see historic foundations or buried structures.

END OF ADDENDUM No. 2

THIS ADDENDUM MUST BE ACKNOWLEDGED BY SIGNATURE ON THE REVISED PROPOSAL PACKET DATED MAY 22, 2020

DATE OF BID OPENING: June 1, 2020 at 2:45 p.m.

Emily Derenne
Project Manager

Michael See
Natural Resource Division Manager