CONTRACT PROVISIONS
For
WEEKS POINT RESTORATION PROJECT

Prepared by:

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A. Bid Deposit (Bid Bond)
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<u>Construction Submittals and Timeline</u>

The following are required along with the bid proposal:

1. Qualification Information -------------------------------- See Section 1-02
2. List of All Sub-Contractors------------------------------ See Section 1-02
3. Bid Deposit (Bid Bond) ----------------------------------- See Section 1-02

NOTICE OF INVITATION FOR BIDS

Sealed bids for the following project will be received by email to the Northwest Straits Foundation (NWSF), at **bids@nwstraitsfoundation.org**, up to the hour of **3:00 PM on Thursday, April 2, 2026**, for the construction of Weeks Point Restoration. The Subcontractor List must be submitted with the bid package within the deadline listed above. The bids will immediately thereafter be opened. Bid Proposals received after the deadline will not be considered. The project is subject to prevailing wages under RCW 39.12 (Public Works).

Mandatory Pre-Bid Meeting: There will be a mandatory on-site pre-bid meeting at:
12:00 p.m., Thursday, March 19, 2026, at **312 Weeks Point Way, Lopez Island**, **WA**.

The Work to be performed involves site preparation and shoreline restoration. These activities shall include: site protection; TESC installation; site/archaeological resource protection; clearing and grubbing; removing of armor; installation of rockery wall; placement of beach nourishment and planting soil and mulch; and other work necessary to complete the Project. All access to the site will be by land.

Engineer's Estimate for this work is $275,000 to $290,000. All physical work shall be completed in the time specified in Section 1-08.5 and in-water work shall be subject to environmental permit conditions (See Appendix C).

Plans, Contract Provisions, addenda, pertinent supplementary information, and plan holders list for this project are available on-line as of March 10, 2026, through www.bxwa.com and also at:

https://nwstraitsfoundation.org/stewardship-opportunities/nearshore-restoration-projects/ .

Free-of-charge access to project bid documents (plans, specifications, addenda, and Bidders List) is provided to Prime Bidders, Subcontractors, and Vendors by going to www.bxwa.com and clicking on "Posted Projects", "Public Works", and "Northwest Straits Foundation". Note: Bidders are encouraged to "Register as Bidder" in order to receive automatic e-mail notification of future addenda and to be placed on the "Self-Registered Bidders List". Contact Builders Exchange of Washington at (425) 258-1303 should you require assistance with access or registration.

WSDOT standard plans are available electronically at: http://www.wsdot.wa.gov/Design/Standards.

All bid proposals shall be accompanied by a bid deposit in the form of a certified or cashier's check or surety bid bond made payable to the Northwest Straits Marine Conservation Foundation, for a sum not less than five percent (5%) of the total amount of such bid including sales tax, and all listed additives and alternates.

The NWSF reserves the right to reject any and all bids and to waive any informalities or irregularities in the bid or in the bidding process, and make the award as deemed to be in the best interest of the NWSF. All bidders and subcontractors shall have a contractor's license to work in the State of Washington.

Publication: March 4, 2026

Lisa Kaufman
Director of Programs

INFORMATION AND CHECKLIST FOR BIDDERS

The following supplements the information in the Call for Bids and is hereby made a part of the Contract Documents.

1. Examination of Plans, Specifications, and Site

The Bidder shall make an alert, heads-up, eyes-open reasonable examination of the project site and conditions under which the Work is to be performed, including but not limited to: current site topography, soil and moisture conditions; underground obstructions; the obstacles and character of materials which may be encountered; traffic conditions; public and private utilities; the availability and cost of labor; and available facilities for transportation, handling, and storage of materials and equipment.

2. Interpretation of Bid Documents

The Bidder shall promptly notify Contracting Agency of any discovered omissions, conflicts, ambiguities, or discrepancies in the Bid Documents. Questions or comments about these Bid Documents should be directed in writing only by email to the attention of: Lisa Kaufman, kaufman@nwstraitsfoundation.org.

Questions received less than 2 working days prior to the date of bid opening may not be answered. Any interpretation or correction of the Bid Documents, if needed, will be made only by **addendum**, and notice of such addendum will be e-mailed to each person registered as a bidder on Builder's Exchange (see Call for Bids for details). Contracting Agency will not be responsible for any other explanations or interpretations of the Bid Documents. **No oral interpretations of any provision in the Bid Documents will be made to any Bidder**.

3. Qualification of Bidders

The Bidder shall demonstrate to the satisfaction of NWSF that the Bidder and their Subcontractors are qualified to perform the work under this Contract and therefore are a responsible Bidder. To be responsible, the Bidder, including the General Contractor and their subcontractors must demonstrate an appropriate level of experience, technical competence and successful past performance of work.

In the event NWSF finds the Bidder's qualification information lacking or if NWSF determines that the Bidder, including the General Contractor and subcontractors are not qualified, NWSF may reject the Bidder, meet with the Bidder, request additional information, and/or allow the Bidder opportunity to correct the deficiency by (1) providing additional information and/or (2) proposing other project personnel or subcontractors, and/or take other appropriate measures. Timeliness of Contract Execution is critical to the success of this project, therefore NWSF may give a Bidder limited or no opportunity and time to remedy a matter(s) of responsibility before rejecting the bid and going to the next low bidder. Such decisions are at the discretion of NWSF.

See Section 1-02.1 of the Special Provisions for specifics on pre-qualification of bidders and determination of "Similar in Scope and Complexity".

4. Special Schedule Considerations/Sequencing of Work

See Section 1-08.5 of the Special Provisions for identification of other work that may be performed on or near the project site by others.

The Bidder's attention is especially called to the following, which they must allow for in their planning and their Bid Proposal:

- **No work shall begin on site until after September 1, 2026.**

- Work below the Ordinary High Water Mark shall not occur from February 16 through August 31 of any year for the protection of migrating juvenile salmon as required by the Hydraulic Project Approval permit.
- Contract time shall begin on the first working day following the Notice to Proceed date. The work shall be completed in 30 working days.
- All access to the site is by land.

5. Additives / Alternates and Determination of Low Bidder

There are no Additive or Alternate bid items on this Project.

6. Bidding Checklist

All bids shall be submitted on the exact forms provided in these Bid Documents or Addenda, or on a photocopy of those documents, and as listed below. Failure to submit any of these forms is grounds for rejection of the bid.

Sealed bids shall be submitted as specified in the Call for Bids. Each bid must be submitted by email with the subject line stating the name of the Bidder, and "Bid Proposal for Weeks Point Restoration

a. Proposal

Bidders must bid on all items contained in the Proposal, including all Bid Schedules, Additives, and Alternates (if any). See also the instructions for entry at the top of the Bid Schedules themselves. The Proposal Signature page must be completed and signed.

b. Form of Proposal

Submit one copy of all documents. The original shall be a minimum of 10-point font size. The cover sheet shall include this Contract Title, Contract Number, Bidder's name, mailing address, email address, and telephone. Bid security must be scanned and then forwarded by email with the bid proposal.

c. Bid Security

Submit a deposit of not less than five percent (5%) of the total bid, including sales tax and all listed additives and alternates. Deposit may be by a cashier's check or certified check. **Cash will not be accepted. If by Bid Bond, the bond form will be on a standard surety provided form.** The Surety must meet the requirements of Section 1-02.7 of the Standard Specifications. If an attorney-in-fact signs bond, a certified and effectively dated copy of their Power of Attorney must accompany the bond.

d. Responsible Bidder Determination Form

e. Subcontractor List

List on a separate sheet of paper the name, address, and contractor's or business license number of each subcontractor, equipment or material supplier who will provide labor, equipment or supplies on the project for which the subcontractor or supplier will be paid and amount exceeding five percent (5%) of the contractor's base bid. For each subcontractor/supplier listed, also describe the kind of work, percentage of the work/supplies, equipment or materials the subcontractor/supplier will provide.

7. Contracting Checklist

The following forms are to be executed by the successful Bidder after the Contract is awarded, as detailed below. Most of these forms are included in these Bid Documents and should be carefully examined by the Bidder.

a. Construction Contract

b. Payment and Performance Bonds

One copy of the payment and performance bonds, for 100 percent of the Contract Award Amount, including sales tax, shall be executed by the successful Bidder and his surety company, using the Payment and Performance Bond form published by and available from the American Institute of Architects (AIA) – form A312. These bonds cover successful completion of all work and payment of all laborers, subcontractors, suppliers, etc.

A notarized and effectively dated copy of Power of Attorney must accompany the bond. Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specifications.

c. Declaration Of Option For Management Of Statutory Retained Percentage

d. Bond in Lieu of Retained Funds, if bidder selects that option.

e. Certificates of Insurance – To be executed by an insurance company acceptable to Owner, on ACORD Forms. Required coverage, certificates, and endorsements are listed in Section 1-07.18 of the Special Provisions.

The above bid and contract documents must be executed by Contractor's President or Vice-President if a corporation, or by a partner if a partnership. In the event another person has been duly authorized to execute contracts, a copy of the resolution or other minutes establishing this authority must be attached to the Proposal and Agreement documents.

BID PROPOSAL

Bidder Name ______________________________
Date ______________________________

To: Northwest Straits Marine Conservation Foundation

Bellingham, WA 98225

Pursuant to and in compliance with your Call for Bids and Bid Documents for construction of **Weeks Point Restoration,** the undersigned (Bidder) hereby certifies that Bidder has carefully examined the Bid Documents as well as the premises and conditions affecting the Work, and thoroughly understands the nature of said Work, and hereby proposes to undertake and complete all Work embraced in this improvement in accordance with the Contract Documents and at the following schedule of rates and prices.

The Bidder understands that the quantities mentioned herein are approximate only and are subject to increase or decrease, and hereby proposes to perform all quantities of work as either increased or decreased in accordance with the Contract Documents. The Bidder agrees to hold the prices below for 90 calendar days after the day of Bid Opening.

As evidence of good faith, (*check one*)

☐ bid bond or ☐ cashier's check, or ☐ certified check

made payable to Northwest Straits Foundation, equal to five percent (5%) of the Total Bid Price including sales tax, and all listed additives and alternates is attached hereto. Bidder understands that, should this offer be accepted by Contracting Agency within 45 calendar days after the day of Bid Opening, or by a mutually agreed on later date, and the Bidder fails or refuses to enter into an Agreement and furnish the required performance bond and required insurance within 20 calendar days after Notice of Award, the Contract shall be null and void and the Bid Deposit or Bond accompanying this Proposal shall be forfeited and become the property of the Northwest Straits Marine Conservation Foundation as liquidated damages, all as provided for in the Contract Documents.

Bidder hereby agrees to complete the Physical Work in all respects within the number of working days specified in Section 1-08.5 of the Special Provisions.

If the Contract is awarded to the Bidder within 30 calendar days of the time set for the opening of bids, the Bidder agrees to execute a contract for the above Work as bid, in the form of the Agreement bound in these Contract Provisions, and to provide surety bond(s) as required, using the form(s) bound in these Contract Provisions.

WA State Contractor's Registration No. ______________________________
and Expiration Date ______________________________
UBI No. ______________________________
Industrial Insurance Account No. ______________________________
Employment Security Department No. ______________________________
State Excise Tax Registration No. ______________________________
DUNs No. ______________________________

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Weeks Point Shoreline Restoration **Bid Schedule**

Show prices in figures only (ink or typed). Show cents to 2 decimal points. Where conflict occurs between the unit price and the total amount specified for any item, the Unit Price shall prevail, and totals shall be corrected to conform thereto. If any Unit Price is left blank, it will be considered no charge for that bid item, regardless of what has been placed in the Amount column.

Item No.	Item Description (Specification Reference[1])	Unit	Estimated Quantity	Unit Price	Amount
	GENERAL REQUIREMENTS				
1	*Mobilization and Demobilization*	*LS*	*1*		
2	*Construction Surveying/Staking*	*LS*	*1*		
3	*Erosion Control (TESC Plan if needed)*	*LS*	*1*		
4	*Ground Protection (Rubber Mats or Steel Plates)*	*LS*	*1*		
	EARTHWORK				
5	*Stockpile and Replace Beach Logs from Work Area, Restore Lawn as Needed*	*LS*	*1*		
6	*Wood Bulkhead Removal (& Concrete, Dispose Off-Site)*	*CY*	*20*		
	MISCELLANEOUS CONSTRUCTION LABOR				
7	*Place Beach Nourishment and Grade Beach*	TN	*1323 (912 CY)*		
8	*Construct South Rockery Wall*	CY	*27*		
9	*Pickleweed Salvaging and Replanting (~640 SF)*	*LS*	*1*		
10	*Placement of Topsoil, Mulch*	*LS*	*1*		
	MATERIAL COST				
11	*Beach Nourishment Gravel (Delivered)*	*TN*	*631 (451 CY)*		
12	*Beach Nourishment Gravel-Sand (Delivered)*	*TN*	*692 (461 CY)*		
13	*Armor Rock (Delivered, all angular)*	*TN*	*37 (27 CY)*		
14	*Quarry Spalls (Delivered)*	*TN*	*22 (16 CY)*		
15	*Geotextile (Import)*	*SY*	*80*		
16	*Topsoil, 12" Depth (Delivered)*	*CY*	*12*		
17	*Arborist Wood Chip Mulch, 3" Depth (Delivered)*	*CY*	*3*		
				Total Bid Price	

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BID PROPOSAL SIGNATURE PAGE

PROJECT: Weeks Point Restoration

By signing below, Bidder acknowledges receipt and understanding of the following Addenda to the Bid Documents:

Addendum No.	Date of Receipt	Addendum No.	Date of Receipt
1		3	
2		4	

NOTE: Failure to acknowledge receipt of Addenda may be considered as an irregularity in the Bid Proposal and Owner reserves the right to determine whether the bid will be disqualified.

By signing below, Bidder certifies that:

1. Bidder has reviewed the insurance provisions of the Bid Documents and will provide the required coverage.
2. Bidder expressly agrees to all provisions of the WSDOT/APWA Standard Specifications for Road Bridge and Municipal Construction (2018) and as modified in the Bid Documents, including all indemnity provisions and Title 51 waiver of immunity for workplace injuries contained in General Requirements Section 1-07.14.

It is understood that Owner may accept or reject all bids.

Bidder ______________________________

Signature of Authorized Official ______________________________

Printed Name & Title ______________________________

Email of Primary Contact ______________________________

Physical Address of Office in WA ______________________________

Phone No. ________________ Date ________________

This address and phone number is the one to which all communications regarding this proposal will be sent.

Circle One: Individual / Partnership / Joint Venture / Corporation

State of Incorporation, or if not a corporation, where business entity was formed: ____________

If a co-partnership, give firm name under which business is transacted; proposal must be executed by a partner. If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign).

BID SECURITY

☐ **Bid Deposit:** The undersigned Principal hereby deposits a Bid Deposit with the Northwest Straits Foundation in the form of a certified check or cashier's check in the amount of

____ dollars
($__________________________), which amount is not less than five percent of the total bid.

☐ **Bid Bond:** The undersigned, ____ (Principal), and

__________________________________ (Surety), are held and firmly bound unto the Northwest Straits Foundation (Obligee) in the penal sum of ____ dollars ($______________________), which amount is not less than five percent of the total bid, which for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

Conditions: The Bid Deposit or Bid Bond shall be an amount not less than five percent ((5%) of the total bid, including sales tax and is submitted by Principal to Obligee in connection with a Proposal for Clark's Point Breakwater Removal , according to the terms of the Bid Documents, including the Bid Proposal.

Now therefore,

a. If the Bid Proposal is rejected by Owner, or

b. If the Bid Proposal is accepted and Principal shall duly make and enter into an Agreement with Obligee in accordance with the terms of the Bid Documents, and shall furnish bond(s) for the faithful performance of said Project and for the payment of all persons performing labor or furnishing materials in connection therewith, with Surety or Sureties approved by Obligee, and shall furnish satisfactory evidence of insurance as required, then this Bid Security shall be released, otherwise it shall remain in full force and effect and Principal shall forfeit the Bid Deposit or Surety shall immediately pay and forfeit to Obligee the amount of the Bid Bond, as penalty and liquidated damages.

The obligations of Surety and its Bid Bond shall be in no way impaired or affected by any extension of time within which Owner may accept or consider bids, or contract with the Bidder, and Surety does hereby waive notice of any such extension.

Signed and dated this ____________________ Day of ________________________ 20___

___________________________	___________________________
Principal	Surety
___________________________	___________________________
Signature of Authorized Official	Signature of Authorized Official
___________________________	___________________________
Title	Attorney in Fact (Attach Power of Attorney)

Name, address and phone number of local office of Agent and/or Surety Company ____
____
____

Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specifications.

RESPONSIBLE BIDDER DETERMINATION FORM

Name of Bidder ______________________________

You may attach extra pages if necessary to answer these questions

1. List up to five projects of a similar nature and size which have been completed by the Bidder as a Prime Contractor within the last five years:

Project Name / Agency-Owner	Year Completed	Contract Amount	Owner Reference Name and Phone #

2. Name your proposed Superintendent and how long with your company:

____

3. What Surety Company will furnish the required Payment and Performance Bonds?

______________________________ of ______________________________

Name Address

4. Have you and/or your owners been convicted of a crime involving bidding on a public works contract in the last 5 years?
 No **Yes** *If yes, give details*:

____

5. Have you and/or your owners had any public works contract terminated for cause or for default in the last five years?
 No **Yes** *If yes, describe the project and the circumstances below:*

Project Name / Agency-Owner	Owner Reference Name and Phone #	Explain circumstances around the termination.

6. Have you been disqualified from bidding on any public works contract(s)?
   ☐ No ☐ Yes If yes, give details:
   ____

7. Is the Bidder currently debarred or suspended by the Federal Government?
   ☐ No ☐ Yes

8. Has Bidder, or any representative or partner thereof, ever failed to complete a contract?
   ☐ No ☐ Yes If yes, give details:
   ____

9. Has the Bidder and/or its owners had any lawsuits with judgments entered against the Bidder in the last five years?
   ☐ No ☐ Yes If yes, describe the judgment and the circumstances.
   ____

10. Does the Bidder owe any delinquent taxes to the Washington State of Revenue?
    ☐ No ☐ Yes…
    If yes, does the Bidder have a payment plan approved by the Department of Revenue? ☐ No ☐ Yes

11. Does the Bidder have any prevailing wage violations as determined by WA Labor & Industries in the past five years?
    ☐ No ☐ Yes… If yes, please provide a list of the violations, along with an explanation of each violation and how it was resolved.

Pursuant to the Special Provisions of the referenced project, the Bidder does hereby verify that it meets all of the mandatory and supplemental criteria per Section 1-02.14 of the Special Provisions. The Bidder also verifies that the form that The Bidder utilizes for subcontracting work includes subcontractor responsibility language required by RCW 39.06.020, and establishes procedures which are used to validate the responsibility of each subcontractor (including sub-tier subcontractors if applicable).

The undersigned certifies under penalty of perjury that the foregoing information is complete, true, and accurate to the best of his/her knowledge. The undersigned authorizes Northwest Straits to verify all information contained herein. (If this information is not complete and accurate, the bid may be considered non-responsive.)

Signature of Bidder ____

Title:______________________________ Date: ______________________________

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PAYMENT and PERFORMANCE BOND

One copy of the payment and performance bonds, for 100 percent of the Contract Award Amount, including sales tax, shall be executed by the successful Bidder and his surety company, using the Payment and Performance Bond form published by and available from the American Institute of Architects (AIA) – form A312. These bonds cover successful completion of all work and payment of all laborers, subcontractors, suppliers, etc.

Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Award Amount by 15% or more, the Contractor shall provide either new payment and performance bonds for the revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Contractor shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more. No payment or performance bond is required if the Contract Sum is $35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

A notarized and effectively dated copy of Power of Attorney must accompany the bond. Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specifications.

DECLARATION OF OPTION FOR MANAGEMENT OF STATUTORY RETAINED PERCENTAGE

Note: This form must be submitted at the time Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of **RCW 60.28**, at the option of Contractor, shall be:

☐ (1) Retained in a fund by Contracting Agency.

☐ (2) In lieu of the Contracting Agency withholding retainage, Contractor will submit a Bond in Lieu of Retained Funds, using the attached form.

____

Contractor Signature

Title (Printed)

____

Date

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BOND IN LIEU OF RETAINED FUNDS

Bond No.

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, (hereinafter called Principal) and Northwest Straits Foundation, (hereinafter called Obligee) on the day of ____________________

20 ________ entered into a written Contract for Weeks Point Restoration, which said Contract is hereby referred to and made a part hereof by reference; and

WHEREAS, the above-named Principal has requested that Obligee not withhold 5 percent retainage, or that Obligee release all or a portion of the retainage currently withheld, and

WHEREAS, the Obligee is willing to release retained percentage in advance of contract terms relating to payment provided the Principal shall file bond to indemnify the Obligee for all loss, cost or damages which the Obligee may sustain by reason of payment of retainage to the Principal, and to satisfy all claims and liens which are or could be filed against the retained percentage in the same manner and priority as set forth in Chapter 60.28 RCW for retained percentages;

THEREFORE, Principal and

a corporation organized and doing business under and by virtue of the laws of the State of

and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Washington (hereinafter called Surety), as Surety, are held and firmly bound unto Obligee in the full and just sum of:

(*Five Percent of Total Amount of Contract*)

Dollars ($ __________) __________ lawful money of the United States of America, or five (5) percent of all monies now or hereafter earned by the Principal in connection with the above- referenced Contract, whichever is greater, for the payment of which, well and truly to be made, Principal and Surety hereby bind themselves and their and each of their successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE AS FOLLOWS:

1. If the Principal shall indemnify the Obligee for all loss, costs or damages, including attorneys fees, which the Obligee may sustain by reason of payment of retained percentage to the Principal, and if the Principal shall
   a. pay and satisfy all claims and liens of any person arising under the above-referenced contract, including, but not limited to, any person performing labor or furnishing supplies, materials or equipment toward completion of the above-referenced contract; and
   b. pay and satisfy all claims and liens of the State of Washington with respect to taxes imposed by Title 82 RCW and any other taxes or monies due to the State and which are

or could be made against the retained percentage as provided by Chapter 60.28 RCW; and

c. pay and satisfy all claims and liens of any claims of the Obligee which are or could legally have been made against the retained percentage pursuant to Chapter 60.28 RCW or the Contract; and

d. provide all necessary affidavits and releases proving satisfaction of all such claims and liens; and

e. paid all sums due to Obligee;

and if Obligee

a. has received the Washington State Department of Revenue's certification that all taxes, increases and penalties due and to become due from Principal with respect to such Contract or otherwise have been paid in full or are readily collectible without recourse to the State's lien on this Bond; and

b. is satisfied that the claims of materialmen and laborers who have filed claims against such bond, together with sums sufficient to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees associated therewith, have been paid; and

c. is satisfied that all other taxes, increases, and penalties due and owing from the Contractor have been paid;

then this obligation shall be null and void; otherwise to remain in full force and effect.

2. This Bond, including any proceeds therefrom, is subject to all claims and liens arising out of the work performed under said Contract, in the same manner and priority as set forth for the retainage under RCW Ch. 60.28.

3. Any amount(s) determined by Obligee to be due and payable from the retainage in accordance with the provisions of RCW Ch. 60.28 shall be paid by Surety not later than thirty (30) days from and after Surety's receipt of Obligee's written identification of the appropriate payee and amount payable.

4. Surety waives notice of any extension of time or other modification to the Contract.

5. Surety agrees to and is bound by the laws and subject to the jurisdiction of the courts of the State of Washington with respect to this Bond. The venue for any action hereunder shall be in Whatcom County, Washington.

IN WITNESS WHEREOF, said Principal and said Surety have caused these presents to be duly signed and sealed this__________________day of__________________, 20_.

Principal	Surety
By	By
Title	Title

ATTEST: (if Corporation)

By ____________________ Address of local office and gent of Surety Company is:

Title ____________________ ______________________________

INTRODUCTION TO THE SPECIAL PROVISIONS

The Special Provisions presented herein define work scope and minimum requirements for specific bid items associated with the materials and the implementation / construction of the proposed Weeks Point Beach Improvment Project. The specifications provided in the following sections supplement the WA Department of Transportation Standard Specifications listed below (2025 edition, referred to as WSDOT thereafter), with new, replaced or modified requirements specific to this project.

WSDOT Specification: Standard Specifications for Road, Bridge, and Municipal Construction (M 41-10), WA Department of Transportation, 2025 edition.

These Special Provisions supplement and further explain design notes presented on the Contract Plans (Plans). They do not replace or modify design sheet notes.

In addition, Contractor shall refer to permit documents for all permitting conditions and constraints, and other relevant regulatory requirements.

Refer to General Provisions and WSDOT Standard Specifications for Bid Items 1, 3, 4, and 5.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are not labeled as such. The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

- (February 25, 2021, WSDOT GSP)
-

Also incorporated into the Contract Documents by reference are:

- Manual on Uniform Traffic Control Devices for Streets and Highways, currently adopted edition, with Washington State modifications, if any
- Standard Plans for Road, Bridge and Municipal Construction, WSDOT/APWA, current edition

Contractor shall obtain copies of these publications, at Contractor's own expense.

✶ ✶ IMPORTANT - PLEASE READ ✶ ✶

These Special Provisions supplement, add new, replace, or modify the combined Standard Specifications and Amendments. For clarification of the purpose of the sections provided, these Special Provisions have the following added section descriptors:

Supplement:	Text supplements, slightly modifies, or adds clarification to the identified section of the Standard Specifications.
New:	Item/specification is unique to this Contract and will not be found in the Standard Specifications.
Replacement:	A replacement of the entire identified section or subsection of the Standard Specifications.
Modification:	A replacement of the identified sentence or paragraph of the Standard Specifications.
WSDOT GSP:	A WSDOT General Special Provision applicable to this Contract, or required to be inserted in the specifications of all projects with Federal Aid.
APWA GSP:	A General Special Provision from APWA WA State Chapter Construction Standards Committee, applicable to this Contract.

PROJECT DESCRIPTION

This project provides for construction of **Weeks Point Restoration** and other work, all in accordance with the attached plans, these special provisions and the standard specifications.

The Work to be performed involves site preparation and shoreline restoration. These activities shall include: site protection; TESC installation; site/archaeological resource protection; clearing and grubbing; removing of armor; installation of rockery wall; placement of beach nourishment and planting soil and mulch; and other work necessary to complete the Project. All access to the site will be by land.

Engineer's Estimate for this work is $275,000 to $290,000. All physical work shall be completed in the time specified in Section 1-08.5 and in-water work shall be subject to environmental permit conditions (See Appendix C).

DIVISION 1
General Requirements

1-01 DEFINITIONS AND TERMS

1-01.3 Definitions

(August 3, 2015 APWA GSP) *Modification*

Delete the heading **Completion Dates** and the three paragraphs that follow it, and replace them with the following:

Dates

Bid Opening Date
The date on which the Contracting Agency publicly opens and reads the Bids.

Award Date
The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

Contract Execution Date
The date the Contracting Agency officially binds the Agency to the Contract.

Notice to Proceed Date
The date stated in the Notice to Proceed on which the Contract time begins.

Substantial Completion Date
The day the Engineer determines the Property Owner has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, any remaining traffic disruptions will be rare and brief, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

Physical Completion Date
The day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

Completion Date
The day all the Work specified in the Contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date.

Final Acceptance Date
The date on which the Property Owner and Contracting Agency accepts the Work as complete.

The following substitution of words shall prevail throughout the Standard Specifications: Wherever

the word “Washington State Parks” is used, it shall mean Property Owner. Wherever the word

“State Parks” is used, it shall mean Property Owner.

Wherever the word “Contracting Agency” is used, it shall mean Northwest Straits Marine Conservation Foundation.

Wherever the word “Bidder” is used, it shall mean the contractor responsible to perform the work under this contract.

Wherever, in the Contract or the Contract Documents, the following words and terms or pronouns in place of them are used, the meaning will be construed as follows:

Engineer: The Project Engineer for the Contracting Agency, acting directly or through their duly authorized representative, except as expressly provided otherwise.

Project Manager: The Contracting Agency.

Item of Work: For the purpose of this project, an item of work shall be considered a unit of work. Payment will be made for actual work satisfactorily performed at Unit Price reflected on the Schedule of Values.

Supplement

All references to “State Materials Laboratory” shall be revised to read “Property Owner designated location”.

All references to “final contract voucher certification” shall be interpreted to mean the final payment form established by the Property Owner.

The venue of all causes of action arising from the advertisement, award, execution, and performance of the contract shall be in the Superior Court of the County where the Contracting Agency’s headquarters are located.

Contract Documents
See definition for “Contract”.

Contract Time
The period of time established by the terms and conditions of the Contract within which the Work must be physically completed.

Notice of Award
The written notice from the Contracting Agency to the successful Bidder signifying the Contracting Agency’s acceptance of the Bid Proposal.

Notice to Proceed
The written notice from the Contracting Agency or Engineer to the Contractor authorizing and directing the Contractor to proceed with the Work and establishing the date on which the Contract time begins.

Traffic
Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic.

Working Day
A business day is any day from Monday through Friday except holidays as listed in Section 1-08.5 of the Standard Specifications as “nonworking days”.

1-02 BID PROCEDURES AND CONDITIONS

1-02.1 Prequalification of Bidders

(January 24, 2011 APWA GSP) *Replacement*

This section is deleted in its entirety and replaced with the following:

The Bidder shall demonstrate to the satisfaction of Contracting Agency that the Bidder and their Subcontractors are qualified to perform the work under this Contract and therefore are a responsible Bidder. To be responsible, the Bidder, including the General Contractor and their subcontractors, must demonstrate an appropriate level of experience, technical competence and successful past performance of work. The information requested in this section will assist the Contracting Agency in making such determination.

In the event the Contracting Agency finds the Bidder’s qualification information lacking or if the Contracting Agency determines that the Bidder, including the General Contractor and subcontractors are not qualified, the Contracting Agency may reject the Bidder, meet with the Bidder, request additional information, allow Bidder opportunity to correct the deficiency by (1) providing additional information and/or (2) proposing other project personnel or subcontractors, and/or take other appropriate measure. Timeliness of Contract Execution is critical to success of this project; therefore, the Contracting Agency may give a Bidder limited or no opportunity and time to remedy a matter(s) of responsibility before rejecting the bid and going to the next low bidder. Such decisions are in the sole discretion of the Contracting Agency.

For purposes of this section, the elements of “Similar in Scope and Complexity” is a project having the following elements:

1. Excavation and grading within limited construction access areas located in or adjacent to environmentally sensitive areas including, but not limited to wetlands, waterways, other naturally occurring water bodies, riparian zones and floodplains.
2. Construction of structures within the areas described in item 1 above that were constructed for the purposes of improving aquatic habitat conditions within waterways.
3. Management of sediment laden water within areas described in item 1 above;
4. Construction schedule dictated by permit conditions related to sensitive areas;
5. Simultaneous construction work in multiple, discontinuous locations;

Bidder was the general contractor responsible for managing and coordinating all subcontractors, including but not limited to earthwork and construction of habitat improvement structures.

The Bidder shall demonstrate successful past experience and competence in managing no less than 2 construction projects within the last 5 years each with an initial construction value of at least $100,000 and that meet the Similar in Scope and Complexity elements. To qualify as a project, the Owner must have determined the project to be substantially complete or issued final acceptance.

1. Identify all construction contracts (whether completed or in progress) entered into and performed by the Bidder within the past 5 years that meet the Similar in Scope and Complexity elements. Projects for which the Bidder was a subcontractor are not eligible under this criterion.
2. For each project, identify the name of the project, describe the project and how it meets the Similar in Scope and Complexity elements, initial contract time (start and end dates), final contract time (actual end date), initial contract value, final contract value, name and phone number of the Owner, and name and telephone number of the Owner's project manager or other person who can verify the Bidder's experience.
3. For each category of work in this project comprising five percent (5%) or more of the bid amount, the Bidder shall identify the category of work and the Subcontractor performing it. Failure to list Subcontractors may render the bid non-responsive. Included the firm's name, address, and primary point of contact, phone number and email address.

Qualification information shall be submitted with the proposal in a clear, comprehensive and concise manner. Submit one copy by email with bidding documents. The cover sheet shall include this Contract Title, Bidder's name, mailing address, contact person, email address, telephone, and fax number.

The Bidder must have a clean record, including zero violations within the past three years with the Washington State Department of Natural Resources, and all other related regulatory agencies.

1-02.2 Plans and Specifications

(June 27, 2011 APWA GSP) *Replacement*

Information as to where Bid Documents can be obtained or reviewed can be found in the Call for Bids (Advertisement for Bids) for the work.

After award of the contract, plans and specifications will be issued to the Contractor at no cost as detailed below:

To Prime Contractor	No. of Sets	Basis of Distribution
Reduced plans (11" x 17")	1	Furnished automatically upon award.
Contract Provisions	1	Furnished automatically upon award.

Additional plans and Contract Provisions may be obtained by the Contractor from the source stated in the Call for Bids, at the Contractor's own expense.

1-02.3 Estimated Quantities *Supplement*

The bid basis is as defined in the bid schedule and in these special provisions.

1-02.4 Examination of Plans, Specifications and Site of Work

1-02.4(1) General *Supplement*

Minor variations and miscellaneous items may not be shown in the Plans. In accordance with the Standard Specifications, it shall be the Contractor's responsibility to examine the site, become familiar with all attendant conditions and determine the difficulties and work involved, and to accept the site in its existing condition at the time of the award of contract.

1-02.5 Proposal Forms

(June 27, 2011 APWA GSP) *Replacement*

The Proposal Form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and the materials to be furnished at the unit bid prices. The bidder shall complete spaces on the proposal form that call for, but are not limited to, unit prices; extensions; summations; the total bid amount; signatures; date; and, and acknowledgment of addenda; the bidder's name, address, telephone number, and signature, if applicable; a State of Washington Contractor's Registration Number; and a Business License Number, if applicable. Bids shall be completed by typing or shall be printed in ink by hand, preferably in black ink. The required certifications are included as part of the Proposal Form.

The Contracting Agency reserves the right to arrange the proposal forms with alternates and additives, if such be to the advantage of the Property Owner and/or Contracting Agency. The bidder shall bid on all alternates and additives set forth in the Proposal Form unless otherwise specified.

1-02.6 Preparation of Proposal

(June 27, 2011 APWA GSP) *Supplement*

Supplement the second paragraph with the following:

1. If a minimum bid amount has been established for any item, the unit or lump sum price must equal or exceed the minimum amount stated. If the Contractor's bid is less than the minimum specified amount, the Contracting Agency will unilaterally revise the bid amount to the minimum specified amount and recalculate the Contractor's total bid amount. The corrected total bid amount will be used by the Contracting Agency for award purposes and to fix the amount of the contract bond
2. Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the signer of the bid.

Delete the last paragraph, and replace it with the following:

The Bidder shall make no stipulation on the Bid Form, nor qualify the bid in any manner.

A bid by a corporation shall be executed in the corporate name, by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign).

A bid by a partnership shall be executed in the partnership name, and signed by a partner.

A bid by a joint venture shall be executed in the joint venture name and signed by a member of the joint venture.

1-02.7 Bid Deposit

(March 8, 2013 APWA GSP) *Supplement*

Cash will not be accepted for a bid deposit.

1-02.9 Delivery of Proposal

(August 3, 2015 APWA GSP, Option A) *Replacement*

Each proposal shall be submitted by email to the Northwest Straits Foundation (NWSF), at bids@nwstraitsfoundation.org with the Project Name as stated in the Call for Bids noted in the subject line.

The Contracting Agency will not open or consider any Bid Proposal that is received after the time specified in the Call for Bids for receipt of Bid Proposals, or received in a location other than that specified in the Call for Bids.

1-02.13 Irregular Proposals

(August 3, 2015 APWA GSP) *Modification*

Revise item 1 to read:

1. A proposal will be considered irregular and will be rejected if:
   a. The Bidder is not prequalified when so required;
   b. The authorized proposal form furnished by the Contracting Agency is not used or is altered;
   c. The completed proposal form contains any unauthorized additions, deletions, alternate Bids, or conditions;
   d. The Bidder adds provisions reserving the right to reject or accept the award, or enter into the Contract;
   e. A price per unit cannot be determined from the Bid Proposal;
   f. The Proposal form is not properly executed;
   j The Bidder fails to submit DBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award was made;
   k. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation; or
   l. More than one proposal is submitted for the same project from a Bidder under the same or different names.

1-02.14 Disqualification of Bidders *Replacement*

Delete this Section and replace it with the following:

A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended; or does not meet the following Supplemental Criteria:

1. Delinquent State Taxes

   A Criterion: The Bidder shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.

   B. Documentation: The Bidder shall not be listed on the Washington State Department of Revenue's "Delinquent Taxpayer List" website: http://dor.wa.gov/content/fileandpaytaxes/latefiling/dtlwest.aspx , or if they are so listed, they must submit a written payment plan approved by the Department of Revenue, to the Contracting Agency by the deadline listed below.

2. Federal Debarment

   A Criterion: The Bidder shall not currently be debarred or suspended by the Federal government.

   B. Documentation: The Bidder shall not be listed as having an "active exclusion" on the U.S. government's "System for Award Management" database (www.sam.gov).

3. Prevailing Wages

   A Criterion: The Bidder shall not have a record of prevailing wage violations as determined by WA Labor & Industries in the five years prior to the bid submittal date, that demonstrates a pattern of failing to pay workers prevailing wages, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Contracting Agency.

   B. Documentation: The Bidder, if and when required as detailed below, shall submit a list of all prevailing wage violations in the five years prior to the bid submittal date, along with an explanation of each violation and how it was resolved. The Contracting Agency will evaluate these explanations and the resolution of each complaint to determine whether the violation demonstrate a pattern of failing to pay its workers prevailing wages as required.

4. Claims Against Retainage and Bonds

   A Criterion: The Bidder shall not have a record of excessive claims filed against the retainage or payment bonds for public works projects in the three years prior to the bid submittal date, that demonstrate a lack of effective management by the Bidder of making timely and appropriate payments to its subcontractors, suppliers, and workers, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Contracting Agency.

   B. Documentation: The Bidder, if and when required as detailed below, shall submit a list of the public works projects completed in the three years prior to the bid submittal date that have had claims against retainage and bonds and include for each project the following information:

   - Name of project
   - The Contracting Agency and contact information for the Contracting Agency;
   - A list of claims filed against the retainage and/or payment bond for any of the projects listed;
   - A written explanation of the circumstances surrounding each claim and the

ultimate resolution of the claim.

5. Public Bidding Crime

A Criterion: The Bidder and/or its owners shall not have been convicted of a crime involving bidding on a public works contract in the five years prior to the bid submittal date.

B. Documentation: The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Contracting Agency) that the Bidder and/or its owners have not been convicted of a crime involving bidding on a public works contract.

6. Termination for Cause / Termination for Default

A Criterion: The Bidder shall not have had any public works contract terminated for cause or terminated for default by a government agency in the five years prior to the bid submittal date, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Contracting Agency.

B. Documentation: The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Contracting Agency) that the Bidder has not had any public works contract terminated for cause or terminated for default by a government agency in the five years prior to the bid submittal date; or if Bidder was terminated, describe the circumstances.

7. Lawsuits

A Criterion: The Bidder shall not have lawsuits with judgments entered against the Bidder in the five years prior to the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Contracting Agency

B. Documentation: The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Contracting Agency) that the Bidder has not had any lawsuits with judgments entered against the Bidder in the five years prior to the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, or shall submit a list of all lawsuits with judgments entered against the Bidder in the five years prior to the bid submittal date, along with a written explanation of the circumstances surrounding each such lawsuit. The Contracting Agency shall evaluate these explanations to determine whether the lawsuits demonstrate a pattern of failing to meet of terms of construction related contracts.

The Contracting Agency reserves the right to request further documentation as needed to assess Bidder responsibility. The Contracting Agency also reserves the right to obtain information from third-parties and independent sources of information concerning a Bidder's compliance with the mandatory and supplemental criteria, and to use that information in their evaluation. The Contracting Agency may (but is not required to) consider mitigating factors in determining whether the Bidder complies with the requirements of the supplemental criteria.

The basis for evaluation of Bidder compliance with these mandatory and supplemental criteria shall include any documents or facts obtained by Contracting Agency (whether from the Bidder or third parties) including but not limited to: (i) financial, historical, or operational data from the Bidder; (ii) information obtained directly by the Contracting Agency from others for whom the Bidder has worked, or other public agencies or private enterprises; and (iii) any additional information obtained by the Contracting Agency which is believed to be relevant to the matter.

If the Contracting Agency determines the Bidder does not meet the bidder responsibility criteria above and is therefore not a responsible Bidder, the Contracting Agency shall notify the Bidder in writing, with the reasons for its determination. If the Bidder disagrees with this determination, it may appeal the determination within two (2) working days of the Contracting Agency's determination by presenting its appeal and any additional information to the Contracting Agency. The Contracting Agency will consider the appeal and any additional information before issuing its final determination. If the final determination affirms that the Bidder is not responsible, the Contracting Agency will not execute a contract with any other Bidder until at least two working days after the Bidder determined to be not responsible has received the Contracting Agency's final determination.

<u>Request to Change Supplemental Bidder Responsibility Criteria Prior to Bid</u>: Bidders with concerns about the relevancy or restrictiveness of the Supplemental Bidder Responsibility Criteria may make or submit requests to the Contracting Agency to modify the criteria. Such requests shall be in writing, describe the nature of the concerns, and propose specific modifications to the criteria. Bidders shall submit such requests to the Contracting Agency no later than five (5) working days prior to the bid submittal deadline and address the request to the Project Engineer or such other person designated by the Contracting Agency in the Bid Documents.

1-02.15 Pre-Award Information

(August 14, 2013 APWA GSP) *Modification*

Revise this section to read:

Before awarding any contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible bidder:

1. A complete statement of the origin, composition, and manufacture of any or all materials to be used,
2. Samples of these materials for quality and fitness tests,
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the work,
4. A breakdown of costs assigned to any bid item,
5. Attendance at a conference with the Engineer or representatives of the Engineer,
6. <u>Obtain, and furnish a copy of, a business license to do business in the city or county where the work is located.</u>
7. Any other information or action taken that is deemed necessary to ensure that the bidder is the lowest responsible bidder.

1-03 AWARD AND EXECUTION OF CONTRACT

1-03.1 Consideration of Bids

(January 23, 2006 APWA GSP) *Modification*

Revise the first paragraph to read:

After opening and reading proposals, the Contracting Agency will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. If a minimum bid amount has been established for any item and the bidder's unit or lump sum price is less than the minimum specified amount, the Contracting Agency will unilaterally revise the unit or lump sum price, to the minimum specified amount and recalculate the extension. The total of extensions, corrected where necessary, including sales taxes where applicable and such additives and/or alternates as selected by the Contracting Agency, will be used by the Contracting Agency for award purposes and to fix the Awarded Contract Price amount and the amount of the contract bond.

1-03.3 Execution of Contract

(January 5, 2015 APWA GSP) *Modification*

The bidder will return to the Contracting Agency the signed Contract, insurance certificate(s) and bonds within ten (10) days after receipt of Contract. If the apparent successful bidder fails to properly execute the Contract or provide all of the foregoing documentation within ten (10) days after receipt of the contract, the Contracting Agency may at its sole discretion terminate the Award of the contract.

Until the Contracting Agency executes a Contract, no Proposal shall bind the Contracting Agency nor shall any Work begin within the project limits or within Contracting Agency- furnished sites. The Contractor shall bear all risk for any Work begun outside such areas and for any materials ordered before the Contract is executed by the Contracting Agency.

1-03.4 Contract Bond
(January 5, 2015 APWA GSP) *Modification*

Revise the first paragraph to read:

The successful bidder shall provide an executed contract bond for the full contract amount. This contract bond shall:

1. Be on bonding agency provided form;
2. Be signed by an approved surety (or sureties) that:
   a. Is registered with the Washington State Insurance Commissioner, and
   b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Be conditioned upon the faithful performance of the contract by the Contractor within the prescribed time;
4. Guarantee that the surety shall indemnify, defend, and protect the Contracting Agency against any claim of direct or indirect loss resulting from the failure:
   a. Of the Contractor (or any of the employees, subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform the contract, or
   b. Of the Contractor (or the subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work;
5. Be accompanied by a power of attorney for the Surety's officer empowered to sign the bond; and
6. Be signed by an officer of the Contractor empowered to sign official statements (sole proprietor or partner). If the Contractor is a corporation, the bond must be signed by the president or vice-president, unless accompanied by written proof of the authority of the individual signing the bond to bind the corporation (i.e., corporate resolution, power of attorney or a letter to such effect by the president or vice-president).
7. As indicated in the performance bond form and construction contract included in these contract documents, all work shall be warranted for materials and workmanship for a period of one year after acceptance of the project. Formal construction acceptance by the Contracting Agency will be considered as the date of commencement of the one-year period.

1-03.4(1) Retainage in Lieu of Contract Bond
(October 10, 2008 APWA GSP)

For contracts of $35,000 or less, the Contractor may, at the Contractor's option, authorize the Contracting Agency to retain fifty percent (50%) of the contract amount in lieu of furnishing a performance and/or payment bond. If the Contractor elects this option, the retainage shall be held for a period of thirty (30) days after the date of final acceptance, or until receipt of all necessary releases from the Departments of Revenue and of Labor and Industries and settlement of any liens filed under RCW 60.28, whichever is later. The Contractor must advise the Contracting Agency in writing of the Contractor's election to authorize retainage in lieu of a bond, at the time of execution of the Contract.

In choosing this option, the Contractor agrees that if the Contractor, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of such contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, and shall pay all laborers, mechanics, subcontractors, and material suppliers, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, on his or her part, and shall indemnify and save harmless the Contracting Agency, its officers and agents from any claim for such payment, then the funds retained in lieu of a performance bond shall be released at the time provided above; otherwise, the funds shall be retained until the Contractor fulfills the said obligations.

1-04 SCOPE OF WORK

1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda

(October 1, 2005 APWA GSP) *Modification*

The term "Engineer" as used in this section shall mean "Engineer or Contracting Agency". Revise

the second paragraph to read***:***

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions, including APWA General Special Provisions, if they are included,
4. Contract Plans,
5. Amendments to the Standard Specifications,
6. WSDOT/APWA Standard Specifications for Road, Bridge and Municipal Construction,
7. Contracting Agency's Standard Plans (if any), and
8. WSDOT/APWA Standard Plans for Road, Bridge, and Municipal Construction.

1-04.4 Changes

This Section is supplemented with the following:

All changes in the Work shall be performed in accordance with the Contract Documents.

Upon receipt of a request for a Change Order proposal, the Contractor shall proceed as follows:

1. Due to the short and critical duration of this Project, Contractor shall submit a Change Order proposal within 24 hours of the request from Contracting Agency, or within such other period as mutually agreed.

2. Contractor's Change Order proposal shall be full compensation for implementing the proposed change in the Work. The Change Order proposal shall be presumed to identify any and all adjustments in the Contract Sum or Contract Time, including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in Work, except to the extent such compensation is disallowed by these Standard Specifications.

3. Upon receipt of the Change Order proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, Contracting Agency may accept or reject the proposal, request further documentation, or negotiate acceptable terms with the Contractor.

4. Pending agreement on the terms of the Change Order, Contracting Agency may direct Contractor to proceed immediately with the Change Order Work. Except as otherwise required by this Section 1-04 of the Standard Specifications, Contractor shall not, prior to receipt of the Contracting Agency's written approval, proceed with any change in the Work for which the Contractor seeks additional compensation.

1-04.6 Variation in Estimated Quantities *Supplement*

The quantities for the following items have been entered into the Proposal only to provide a common proposal for bidders. Actual quantities shall be determined by the contractor in the field as the work progresses and will be paid at the original bid unit price, regardless of final quantity. These bid items shall not be subject to the provisions of 1-04.6 of the Standard Specifications.

- Beach Nourishment
- Erosion Control Blanket
- Topsoil
- Wood Strand Mulch

1-04.7 Differing Site Conditions (Changed Conditions) *Supplement*

If the Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify the Contracting Agency and begin to keep and maintain complete, accurate and specific daily records documenting extra costs and time incurred. Contractor shall give the Contracting Agency access to any such records and, if requested, shall promptly furnish copies of such records to Contracting Agency. As used herein, "promptly notify" means written notice within twenty-four (24) hours of the occurrence of the event or discovery of the condition giving rise to the request. For purposes of this part, “occurrence” means when the Contractor knew, or in its diligent prosecution of the Work should have known of the event giving rise to the request for Contract adjustment.

Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than twenty-four (24) hours before Contractor’s written notice to the Contracting Agency. The written notice shall set forth, at a minimum, a description of:

1. The event giving rise to the request for an equitable adjustment in the Contract Sum;
2. The nature of the impacts to Contractor and Subcontractors, if any; and,
3. To the extent possible, the amount of the adjustment in Contract Sum requested.

Failure to properly give the written notice required by this Section 1-04.7 shall, to the extent Contracting Agency’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.

In the event of delay in the Work resulting from conduct or lack of conduct by the Engineer or Contracting Agency or delay by the Contracting Agency in making the site available, or in furnishing any items required by the Contract Documents to be furnished to the Contractor by Contracting Agency or other delay beyond the reasonable control of Contractor, the Contractor shall be entitled to a reasonable extension of time for the amount of time the Contractor is actually delayed in the performance of the Work, provided notice of the delay is given within
________________ (24 hours if not filled in) after commencement of the delay. Contractor shall not be entitled to any extension of time unless it notifies Contracting Agency of the delay in writing within the time referenced in the foregoing sentence as to each delay.

No extension of time or adjustment of Contract Sum or other compensation will be required unless the Contractor demonstrates the delay in completion of the Work was caused specifically by a delay in a portion of the Work that was on the critical path of the construction schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event:

a. Had specific impact on the critical path and, except in case of concurrent delay, was the sole cause of such impact; and
b. Could not have been avoided by re-sequencing of the Work or other reasonable alternatives.

1-05 CONTROL OF WORK

1-05.1 Authority of the Engineer *Supplement*

1-05.1(1) Oral Orders
(October 1, 2005 AWPA GSP *Replacement*

No oral agreement or conversation with any officer, agent, or employee of the Contracting Agency, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Such oral agreement or conversation shall be considered as unofficial information and in no way binding upon the Contracting Agency, unless subsequently put in writing and signed by the Contracting Agency.

1-05.3 Working Drawings *Replacement*

The Contractor shall keep a hard copy of the Contract Plans and Specifications on site at all times. These documents shall be provided to the Engineer on site at their request by the Contractor. These drawings should clearly note any deviations from the Contract Plans, that have been approved by the Engineer.

1-05.4 Conformity with and Deviations from Plans and Stakes *Replacement*

The Contractor shall be responsible for setting, maintaining, and resetting all stakes, marks, and lines necessary for the Work based on job requirements set forth in subsequent sections.

The Contractor shall refer to the primary monuments shown on Sheet 1 (MON# 1) and set up additional control points as needed for measuring and stake setting.

The Contractor shall have Self-Leveling Laser Tripod or total station properly set up on site during the construction for checking and verifying elevations of excavation and fill grades/subgrades, and for rock wall elevation/height control.

Stake setting or marking shall include but not be limited to the following:
- Construction access and staging, stockpiling areas.
- Crossing of at least three cross sections, with marked excavation/fill grades.
- Excavation limits and new rock wall alignments.
- Beach nourishment grades and boundaries.

Stake setup shall be inspected and approved by the Engineer on site.
Confirmation of final finish beach grade and crest line elevation at project close-out.

The Contracting Agency may spot-check the Contractor's surveying. These spot-checks shall not change the requirements for accuracy by the Contractor.

If errors are found, or the Engineer determines that the survey Work is insufficient for the project, the Contractor shall correct the errors and/or resolve insufficiencies, which may include removal and replacement of incorrectly installed improvements. All costs incurred to correct or complete the Work shall be at the Contractor's expense, in accordance with Section 1-05.7.

1-05.7 Removal of Defective and Unauthorized Work

(October 1, 2005 APWA GSP) *Supplement*

If the Contractor fails to remedy defective or unauthorized work within the time specified in a written notice from the Engineer, or fails to perform any part of the work required by the Contract Documents, the Engineer may correct and remedy such work as may be identified in the written notice, with Contracting Agency forces or by such other means as the Contracting Agency may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Engineer determines to be an emergency situation, the Engineer may have the defective and unauthorized work corrected immediately, have the rejected work removed and replaced, or have work the Contractor refuses to perform completed by using Contracting Agency or other forces. An emergency situation is any situation when, in the opinion of the Engineer, a delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the Contracting Agency attributable to correcting and remedying defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Engineer from monies due, or to become due, the Contractor. Such direct and indirect costs shall include in particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's unauthorized work.

No adjustment in contract time or compensation will be allowed because of the delay in the performance of the work attributable to the exercise of the Contracting Agency's rights provided by this Section.

The rights exercised under the provisions of this section shall not diminish the Contracting Agency's right to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required.

1-05.4 Conformity With and Deviations From Plans and Stakes (Progress Survey)

Supplement

General Description

Contractor shall be responsible for performing progress surveying for use in approval of work within tolerances and measurement and payment of Bid Items 7 and 8. The following monitoring and as-built surveys shall be performed during construction.

1. Pre-Excavation Survey
2. Post-Excavation Survey
3. As-built survey following completion of Beach Nourishment.

In addition to project staking, a post-construction topographic survey consisting of survey transects shall be conducted along the full width of the Work construction area. Transects shall be taken across the beach at approximately 25-foot spacing and shall include as a minimum an elevation on the beach 20-25 ft seaward of the new shoreline, and along the Beach Nourishment. Transects shall be taken across the beach nourishment area at approximately 25-foot spacing the existing beach level and any breaks in slope. Post-construction surveys shall be collected using electronic survey instruments and the results of the survey shall be submitted to the Contracting Agency/Engineer in electronic ASCII or TXT file format (x,y,z).

Prior to the start of Work and in accordance with the Contract Documents, The Contracting Agency shall provide engineering survey information and reference points for vertical and horizontal control which in its judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of the Contracting Agency.

Measurement
Construction Surveying shall not be measured.

Payment
The Contract Price per lump sum for Bid Item No. 2, **Construction Surveying, Marking and Staking** shall be full compensation for all labor, material, tools, equipment, and incidentals necessary to satisfactorily complete the work as defined in Division 1 of these Special Provisions and the Standard Specification.

1-05.8 Contractor Work Plan *Replacement*

Not later than fifteen (15) working days prior to the scheduled start of construction, the Contractor shall submit a written Construction Work Plan to the Contracting Agency. The Contracting Agency shall provide comments on the Construction Work Plan to the Contractor within 5 working days of receipt. No physical work is to be performed at the site until the Construction Work Plan is reviewed and accepted by the Contracting Agency and Property Owner. The Construction Work Plan shall include:

1. A list of construction personnel and the supervisory chain of responsibility.
2. Demolition Plan with description of approach for equipment, access and repair of existing road access, materials and safety requirements for conducting all of the removal of structures work. The submittal shall include a TESC Plan and SPCC Plan. The Demolition Plan shall demonstrate that the methods and equipment to be used are adequate for the intended purpose and will provide satisfactory results. It shall provide for debris containment, and containment and immediate retrieval of deleterious material that may inadvertently fall onto the beach.
3. Procedures for completing excavation and placement of Beach Nourishment material, including description of methods to control work and conduct progress surveying. improvements and stockpiling materials, and water management.
4. Disposal site.

Work will not begin until the Contractor Work Plan is accepted by the Contracting Agency and the Owner.

1-05.11 Final Inspection
(October 1, 2005 APWA GSP) *Replacement*

1-05.11(1) Substantial Completion Date

When the Contractor considers the work to be substantially complete, the Contractor shall so notify the Engineer and request the Engineer establish the Substantial Completion Date. The Contractor's request shall list the specific items of work that remain to be completed in order to reach physical completion. The Engineer will schedule an inspection of the work with the Contractor to determine the status of completion. The Engineer may also establish the Substantial Completion Date unilaterally.

If, after this inspection, the Engineer concurs with the Contractor that the work is substantially complete and ready for its intended use, the Engineer, by written notice to the Contractor, will set the Substantial Completion Date. If, after this inspection the Engineer does not consider the work substantially complete and ready for its intended use, the Engineer will, by written notice, so notify the Contractor giving the reasons therefor.

Upon receipt of written notice concurring in or denying substantial completion, whichever is applicable, the Contractor shall pursue vigorously, diligently and without unauthorized interruption, the work necessary to reach Substantial and Physical Completion. The Contractor shall provide the Engineer with a revised schedule indicating when the Contractor expects to reach substantial and physical completion of the work.

The above process shall be repeated until the Engineer establishes the Substantial Completion Date and the Contractor considers the work physically complete and ready for final inspection.

1-05.11(2) Final Inspection and Physical Completion Date

When the Contractor considers the work physically complete and ready for final inspection, the Contractor by **written notice**, shall request the Engineer to schedule a final inspection. The Engineer will set a date for final inspection. The Engineer and the Contractor will then make a final inspection and the Engineer will notify the Contractor in writing of all particulars in which the final inspection reveals the work incomplete or unacceptable. The Contractor shall immediately take such corrective measures as are necessary to remedy the listed deficiencies.
Corrective work shall be pursued vigorously, diligently, and without interruption until physical completion of the listed deficiencies. This process will continue until the Engineer is satisfied the listed deficiencies have been corrected.

If action to correct the listed deficiencies is not initiated within 7 days after receipt of the written notice listing the deficiencies, the Engineer may, upon written notice to the Contractor, take whatever steps are necessary to correct those deficiencies pursuant to Section 1-05.7.

The Contractor will not be allowed an extension of contract time because of a delay in the performance of the work attributable to the exercise of the Engineer's right hereunder.

Upon correction of all deficiencies, the Engineer will notify the Contractor and the Contracting Agency, in writing, of the date upon which the work was considered physically complete. That date shall constitute the Physical Completion Date of the contract but shall not imply acceptance of the work or that all the obligations of the Contractor under the contract have been fulfilled.

1-06 CONTROL OF MATERIALS

1-06.1 Approval of Materials Prior to Use

Supplement

General Requirements
All imported soil and aggregate material must be approved by Contracting Agency.

The Contractor shall assemble and submit to the Contracting Agency, project data and samples as specified herein. The project data and samples shall be submitted to the Engineer for review and checking to determine conformance with the intent of the plans and specifications. The review and checking by the Engineer will be specifically limited to the project data and samples specified in this section.

Project data and samples shall be approved by the Contracting Agency prior to delivery of material to the Project Site. Equipment and materials which are constructed, installed or incorporated prior to submittal for review and approval by the Contracting Agency, may not be accepted by the Contracting Agency and shall be removed by the Contractor.

The review by the Engineer or product data or other submittals is only for conformance with the general design concept of the project and does not extend to consideration of structural integrity, safety, detailed compliance with contract requirements of any other obligation of the Contractor. Any review action taken is further subject to the requirements of the plans and specifications.

The Contractor is responsible for preparation and review of all shop drawings confirming and correlating all dimensions; fabricating and construction techniques; coordinating their work with that of all other trades; and the satisfactory performance of their entire work in strict accordance with the contract documents. The review of project data by the Engineer shall not relieve the Contractor from their obligation fully to perform all contract requirements, nor shall such review give rise to any right of action or suit in favor of the Contractor or third persons, against the Engineer or the Contracting Agency.

Specific Requirements

All forms, material submittals and project data shall be submitted electronically to the Engineer in pdf format no later than 15 Working Days prior to start of work. Alternate electronic formats may be approved by the Engineer but pdf is the preferred format. The project data shall be submitted utilizing the transmittal forms which will be provided by the Engineer. Required material samples submitted to the engineer shall be include a hardcopy of the approved submittal form. The project data must be submitted in accordance with the instructions on the form or the submittal will be returned without review. The Engineer will, upon completion of the review, return one copy of the transmittal form and the project data and samples to the Contractor. The copy returned to the Contractor will be marked by the Engineer to indicate that the submittal is approved or rejected. If rejected, the Engineer will indicate the specific reason for rejection.

Project data shall be submitted by the Contractor for the following specific items:

- Sieve analysis report for Beach Nourishment Material and Rock indicating specification reference, specified gradation, and measured gradation.
- Chemical testing information for Beach Nourishment Material as outlined in these Special Provisions.
- Catalog data and any and all other information and data from the manufacturers of all geotextile fabric documenting conformance with all appropriate standards and these specifications.

- Source and material specifications for Topsoil and Mulch
- Name of construction debris disposal site and copies of site permits.

Limitation of Submittals and Reviews

The Contractor shall submit project data and samples for equipment and materials which meet or exceed the requirements of the specifications. Accordingly, it is considered reasonable that the Contractor provide project data and samples which are complete and acceptable, in the judgment of the Engineer, by the second submission of specific project data and samples. The Contracting Agency reserves the right to and will withhold such amount from payments due to the Contractor to cover the cost of review by the Engineer of third and subsequent submissions of specific project data and samples.

The Contractor's progress schedule per Section 1-08.3 shall include time for the submittal of project data and samples and for the resubmittal of project data and samples rejected by the Engineer.

1-06.4 Handling and Storing Materials *Supplement*

The Contractor shall only store materials, equipment, excavated material, or demolition debris within the work areas shown on the Contract Plans. The Contractor may store equipment in other areas of the project site with approval of the Contracting Agency and Owner.

Private properties shall be used by the Contractor only if he makes their own arrangements with the legal owner or owners of each property. Use and restoration of such property shall be in accordance with the stipulations of the agreement between the Contractor and the legal owner or owners of the property. Before using any private property, the Contractor shall file with the Contracting Agency a written permission of the property owner, and upon vacating the premises, the Contractor shall furnish the Contracting Agency with a release from all damages, properly executed by the property owner. The Contractor shall save the Contracting Agency harmless from all suites and actions of every kind and description that might result from use of private property.

1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 Laws to be Observed

(August 3, 2015 APWA GSP) *Supplement*

In cases of conflict between different safety regulations, the more stringent regulation shall apply.

The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).

The Contractor shall maintain at the project site office, or other well-known place at the project site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish, and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the project site. Employees should not be permitted to work on the project site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

The Contractor shall have sole responsibility for the safety, efficiency, and adequacy of the Contractor's plant, appliances, and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the project site, including safety for all persons and property in the performance of the work. This requirement shall apply continuously, and not be limited to normal working hours. The required or implied duty of the Engineer to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the project site.

1-07.2 State Taxes

Delete this section, including its sub-sections, in its entirety and replace it with the following:

1-07.2 State Sales Tax

(August 3, 2015 APWA GSP) *Replacement*

The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage (or release the Contract Bond if a FHWA-funded Project) only if the Contractor has obtained from the Washington State Department of Revenue a certificate showing that all contract-related taxes have been paid (RCW 60.28.051). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the Washington State Department of Revenue, whether the amount owed relates to this contract or not. Any amount so deducted will be paid into the proper State fund.

1-07.2(1) State Sales Tax — Rule 171

WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used primarily for foot or vehicular traffic. This includes storm or combined sewer systems within and included as a part of the street or road drainage system and power lines when such are part of the roadway lighting system. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work.

1-07.2(2) State Sales Tax — Rule 170

WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or existing buildings, or other structures, upon real property. This includes, but is not limited to, the construction of streets, roads, highways, etc., owned by the state of Washington; water mains and their appurtenances; sanitary sewers and sewage disposal systems unless such sewers and disposal systems are within, and a part of, a street or road drainage system; telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system; and installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation.

Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

For work performed in such cases, the Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule 170, with the following exception.

1-07.2(3) Services *Modification*

The Contractor shall not collect retail sales tax from the Contracting Agency on any contract wholly for professional or other services (as defined in Washington State Department of Revenue Rules 138 and 244).

1-07.4 Sanitation

1-07.4(2) Health Hazards *Supplement*

The Contractor shall be solely responsible for safety at the project. Upon discovery of hazardous materials, Contractor shall immediately stop work in all affected or potentially affected areas, advise the Engineer and Contracting Agency of the discovery of hazardous materials, and await further direction.

1-07.5 Environmental Regulations

1-07.5(1) General *Supplement*

The Contractor shall be familiar with all Project permits (see Appendix C) and shall adhere to all provisions and conditions of these permits.

Additional requirements for protection of fish life, water quality, etc., may be shown on The Contract Plans and the Contractor will be responsible for adhering to all applicable environmental laws and local, state and federal regulations.

All equipment that has prior contact with surface waters shall be cleaned before entering the site, to remove invasive species, per Bureau of Reclamation 2012 Manual.

1-07.6 Permits and Licenses *Supplement*

The Contractor shall assure that all necessary permits are obtained and is responsible for reviewing all permits to become familiar with their requirements. All specific permits, licenses, inspections, etc. which may be required, if not already obtained or applied for by the Contracting Agency, shall be obtained and paid for by the Contractor, including but not limited to a County business license.

The following permits have been obtained and are included in Appendix A

- Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW) (Pending)
- Nationwide Permit 13 from the U.S. Army Corps of Engineers ((NWS-2023-27)
- Nationwide Permit 27 from the U. S. Army Corps of Engineers (NWS-2023-27)
- San Juan County Permits (Pending)
- Archeological Monitoring and Inadvertent Discovery Plan: DAHP Project #2021-04-02070

Due to the nature of the Project and its proximity to sensitive ecosystems, these permitting requirements must be strictly followed. The Contractor is responsible for reading and adhering to the requirements described in the permit responses in their entirety. The Contractor is responsible for providing submittals for all items required in these permits.

The Contractor is cautioned to review all permits and other Contract Documents and schedule the work activities appropriately to complete the work within the number of days stated in the Special Provisions. No additional compensation or extensions to time will be granted to the Contractor due to the time constraints imposed by such documents. The Contractor shall assume all responsibility for meeting all requirements of all permits unless otherwise documented in writing by an agency.

Any fines or penalties incurred by Contracting Agency for not meeting state water quality standards and/or lack of stormwater pollution prevention on this Project shall be deducted from monies otherwise due to Contractor. Any fines assessed directly to Contractor shall be paid directly to the fining authority, at the Contractor's own cost.

1-07.13 Contractor's Responsibility for Work *Supplement*

1-07.13(4) Repair of Damage *Supplement*

Notwithstanding anything to the contrary herein, the Contractor shall be solely responsible for the cost of repairing damage attributable to the Contractor's (including its employees, agents, subcontractors or assigns) Work.

1-07.14 Responsibility for Damage *Modification*

The third paragraph is revised as follows:

Subject to the limitations in this section, the Contractor shall indemnify, defend and save harmless the Contracting Agency, Property Owner, State, Governor, Commission, Secretary, Engineer and all officers and employees of each of them (the "Indemnified Parties") from any and all claims, suits, actions or damages (including without limitation attorney's fees and costs) arising out of, relating to or caused in whole or in part by any violation of law, breach of contract, or by the active or passive negligence of the Contractor, its agents, employees, subcontractors or subconsultants. In addition to any remedy authorized by law, the Contracting Agency may retain so much of the money due the Contractor as deemed necessary by the Engineer to ensure indemnification until disposal has been made of such actions, suits or claims.

The fifth paragraph is revised as follows:

The Contractor will not be required to defend, indemnify and save harmless as set forth in the preceding paragraphs of this Section if the claim, suit, action or damage is determined to have been caused by the sole negligence of the Indemnified Parties. To the extent the claim, suit, action or damage is caused by the concurrent negligence of the Indemnified Parties, the Contractor expressly agrees to indemnify, defend and save harmless the Indemnified Parties to the extent of the Contractor's (including its agents, employees, subcontractors or subconsultants) negligence.

1-07.16 Protection and Restoration of Property *Modification*

This Work shall include installing temporary ground protection measures that may include thick rubber mats or steel plates necessary to avoid disturbing the ground surface landward of the low bank adjacent to the bulkhead to be removed, whether shown on the Plans or not, in accordance with these Special Provisions, and all federal, state, and local regulations and project permit requirements. The Contractor shall be responsible for all TESC measures during construction and until the Notice of Termination is issued to meet all federal, state, local and permit requirements. Furthermore, the Contractor shall utilize BMPs to prevent invasive species transport to and from the project site as directed by the Contracting Officer.

Measurement
Measurement for Bid Item No. 4 Ground Protection shall be per LUMP SUM and shall be full compensation for performing the work as specified. The contractor shall verify at pre-bid meeting and/or do its own estimate based on the design plans.

Payment
The Contract Price per lump sum for Bid Item No. 4 Ground Protection shall be paid per LUMP SUM.

1-07.16(4) Archaeological and Historical Objects
The last sentence of the first paragraph of this Section is revised as follows:

The Contractor shall immediately notify the Contracting Agency, Engineer and the appropriate authorities of any such finds.

1-07.16(4)(A) Inadvertent Discovery of Human Skeletal Remains

The second sentence of the first paragraph of this Section is revised as follows:

The Contractor shall immediately notify the Contracting Agency, Engineer and the appropriate authorities of any such finds, and shall cease all work adjacent or potentially adjacent to the discovery, in an area adequate to provide for the total security and protection of the integrity of the skeletal remains.

1-07.17 Utilities and Similar Facilities *Supplement*

The Contractor shall protect all private and public utilities from damage resulting from the Work. Two fiber optic cables have been located within the limits of work and have been identified on the Contract Plans. The fiber optic cables run parallel to each other along the upland side of the access road/trail, around the flat armored area and under the beach and out into the water. They will need to be protected in place during construction; this may require use of steel plates or similar options. All costs required to protect public and private utilities shall be considered incidental to the Contract.

It is the Contractor's responsibility to verify the locations and depths of the fiber optic cables shown on the Contract Plans and locate other utilities or pipelines that may cross within the Project limits.

All work by the Contractor adjacent to or in the vicinity of existing utilities shall be performed in accordance with the requirements of the utility owners. The Contractor shall pay all permit, inspection, and other fees levied by the utility owners.

The Contractor will be required to coordinate with utilities, property owners and the Contracting Agency, and should expect restrictions on timing or rescheduling of some service disruptions. The Contractor shall anticipate that the requirements of the owners of existing utility systems may hinder, delay, and complicate execution of the work. The Contractor shall not be entitled to any claim for damages because of hindrances, delays, and complications caused by or resulting from requirements imposed by the owners of the utility systems. All costs associated with coordinating this work shall be considered incidental to the Contract.

1-07.18 Public Liability and Property Damage Insurance
(January 24, 2011 APWA GSP) *Replacement*

Delete this section in its entirety, and replace it with the following:

1-07.18 Insurance
(January 24, 2011 APWA GSP) *Modification*

1-07.18 Public Liability and Property Damage Insurance

The second paragraph of subparagraph (1) is revised as follows:

The Contractor shall not terminate this insurance until the date of acceptance described in Section 1-05.12.

The fourth-to-last paragraph is revised as follows:

Prior to Contract execution, the Contractor shall file with the Contracting Agency ACORD Form Certificates of Insurance evidencing the minimum insurance coverages required under these Specifications. The Contractor shall include Northwest Straits Marine Conservation Foundation, the Engineer, and Washington State Parks and Recreation Commission as additional insureds in its commercial general liability and commercial automobile liability insurance policies.

1-07.23 Public Convenience and Safety *Supplement*

1-07.23(1) Construction Under Traffic
(August 3, 2015 APWA GSP *Supplement*

There shall be at all times access to and egress from the properties adjacent to the project. Such access shall be maintained as near as possible to that which existed prior to the commencement of construction.

The Contractor shall notify all property owners and tenants of street and alley closures, or other restrictions which may interfere with their access. Notification shall be at least twenty-four (24) hours in advance for residential property, and at least forty-eight (48) hours in advance for commercial property. When the abutting owners' access across right-of-way line is to be eliminated and replaced under the contract by other access, the existing access shall not be closed until the replacement access facility is available.

1-08 PROSECUTION AND PROGRESS

1-08.1 Subcontracting *Modification*

The last sentence of the second paragraph is revised as follows:

The Contractor shall require each Subcontractor to comply with Section 1-07.9, to furnish all certificates and statements required by the Contract, and shall bind each Subcontractor to the duties and obligations of the Contractor to the same extent the Contractor has agreed to be bound to the Contracting Agency under this Contract.

1-08.4 Prosecution of Work

Delete this section in its entirety, and replace it with the following:

1-08.4 Notice to Proceed and Prosecution of Work

(June 27, 2011 APWA GSP) *Replacement*

Notice to Proceed will be given after the contract has been executed and the contract bond and evidence of insurance have been approved and filed by the Contracting Agency. The Contractor shall not commence with the work until the Notice to Proceed has been given by the Engineer.

The Contractor shall diligently pursue the work to the physical completion date within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the Contract.

1-08.5 Time for Completion *Modification*

The first sentence of the third paragraph is revised to read:

Contract time shall begin on the first working day following the Notice to Proceed. Work shall be completed within 30 working days.

1-08.8 Extensions of Time

This Section is revised as follows:

The term “Engineer” as used in this section shall mean “Engineer or Contracting Agency”.

The entire first paragraph is revised to read:

> The Contractor shall submit any requests for extensions of time to the Engineer and Contracting Agency in writing no later than the time set forth in Standard Specification, Section 1-04.7, as

modified by these Special Conditions. The requests for time extension shall be limited to the effect on the critical path of the Contractor's approved schedule attributable to the change or event giving rise to the request. Extensions of time are constrained by the WDFW HPA permit work window and State Park facilities use window.

The subparagraph 5(e) is revised to read:

e. In Section 1-07.13 if the performance of the Work is delayed as a result of damage by others who were not retained by the Contractor and were beyond the Contractor's reasonable control.

1-08.9 Liquidated Damages

The third paragraph of this Section is revised as follows:

Replace the first three paragraphs in their entirety with the following:

NWSF and the Contractor recognize that time is of the essence and that the project will incur additional costs if the Work is not completed within the time, plus any extensions thereof, allowed in accordance with the Contract. NWSF and the Contractor also recognize the inconvenience, expense, and difficulties involved in a legal proceeding to prove the additional project cost if the Work is not completed within the time allowed in the Contract. Accordingly, NWSF and the Contractor agree that as liquidated damages for delay, and not as penalty, the **Contractor shall pay NWSF $650.00** for each working day beyond the Physical Completion Date that the Contractor achieves physical completion of the Work.

1-08.10 Termination of Contract

This Section is revised as follows:

The term "Engineer" as used in this section shall mean "Engineer or Contracting Agency".

1-09 MEASUREMENT AND PAYMENT

1-09.7 Mobilization and Demobilization *Supplement*

This section is supplemented with the following:

Mobilization and Demobilization shall include, but not be limited to, the following items: the movement of the Contractor's personnel, equipment, supplies and incidentals to the project site; the establishment of their office, buildings, and other facilities necessary for work on the project; providing sanitary facilities for the Contractor's personnel; obtaining permits or licenses required to complete the project not furnished; and other work and operations which must be performed or costs that must be incurred. The contract price shall constitute full compensation for all labor, materials, equipment, supplies and incidentals required for demobilizing labor, equipment, materials, supplies and incidentals from the project sites.

Payment will be made in accordance with Section 1-04.1 for contract price per **lump sum for Bid Item No. 1**, **Mobilization and Demobilization**, shall be full compensation for all labor, material, tools, equipment, and incidentals including hauling and disposal necessary to complete the work as specified in this contract.

1-09.9 Payments

(March 13, 2012 APWA GSP) *Modification*

Delete the first four paragraphs and replace them with the following:

The basis of payment will be the actual quantities of Work performed according to the Contract and as specified for payment. The Contractor shall submit a breakdown of the cost of lump sum bid items at the Preconstruction Conference, to enable the Project Engineer to determine the Work performed on a monthly basis. A breakdown is not required for lump sum items that include a basis for incremental payments as part of the respective Specification. Absent a lump sum breakdown, the Project Engineer will make a determination based on information available. The Project Engineer's determination of the cost of work shall be final.

Progress payments for completed work and material on hand will be based upon progress estimates prepared by the Engineer. A progress estimate cutoff date will be established at the preconstruction conference.

The initial progress estimate will be made not later than 30 days after the Contractor commences the work, and successive progress estimates will be made every month thereafter until the Completion Date. Progress estimates made during progress of the work are tentative and made only for the purpose of determining progress payments. The progress estimates are subject to change at any time prior to the calculation of the final payment.

The value of the progress estimate will be the sum of the following:

1. Unit Price Items in the Bid Form — the approximate quantity of acceptable units of work completed multiplied by the unit price.
2. Lump Sum Items in the Bid Form — based on the approved Contractor's lump sum breakdown for that item, or absent such a breakdown, based on the Engineer's determination.
3. Materials on Hand — 100 percent of invoiced cost of material delivered to Job site or other storage area approved by the Engineer.
4. Change Orders — entitlement for approved extra cost or completed extra work as determined by the Engineer.

Progress payments will be made in accordance with the progress estimate less:

1. Retainage per Section 1-09.9(1), on non FHWA-funded projects;
2. The amount of progress payments previously made; and
3. Funds withheld by the Contracting Agency for disbursement in accordance with the Contract Documents.

Progress payments for work performed shall not be evidence of acceptable performance or an admission by the Contracting Agency that any work has been satisfactorily completed. The determination of payments under the contract will be final in accordance with Section 1-05.1.

1-09.9 Payments

(March 13, 2012 APWA GSP) *Supplement*

Except for special situations deemed to be necessary by the Contracting Agency, progress payments will be mailed to the address supplied in writing by the Contractor. The making of final payment shall not constitute a waiver of any claims by Contracting Agency, including, but not limited to those arising from unsettled liens, faulty or defective Work appearing after Substantial Completion, failure of the Work to comply with the requirements of the Contract Documents and the terms of any guarantees and warranties required by the Contract Documents.

1-09.9(1) Retainage

This Section is supplemented with the following:

1. Submission by Contractor to Contracting Agency of satisfactory evidence all workers and persons employed, all firms supplying materials, labor or services and all Subcontractors upon the Project and all other indebtedness connected with the Work for which Contracting Agency or the Project might in any manner be liable have been paid in full or will be paid in full from the final payment and that there are no bills outstanding against the Project.
2. In the event that any mechanic's liens have been recorded against the Project, Contractor, at Contractor's expense, shall procure and record a mechanic's lien release bond discharging the liens. Subsequent to the recordation of such release bond, and the discharge of Contracting Agency from any lawsuit to foreclose the mechanic's lien in question, Contracting Agency shall release to Contractor any funds which have been withheld because of any such lien.

1-09.11(3) Time Limitation and Jurisdiction

This Section is revised as follows:

> The "State of Washington" shall mean the "Contracting Agency" and jurisdiction shall be in "Superior Court of Whatcom County."

1-09.13(3) Claims $250,000 or Less

(October 1, 2005 APWA GSP) *Replacement*

The Contractor and the Contracting Agency mutually agree that those claims that total $250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

1-09.13(3)A Administration of Arbitration

(October 1, 2005 APWA GSP) *Modification*

Revise the third paragraph to read:

The Contracting Agency and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of the county in which the Contracting Agency's headquarters are located. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the contract as a basis for decisions.

1-11 SAFETY PRECAUTIONS

This Section is added:

1. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work.
2. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the work and other persons who may be affected by the work; prevent damage to materials, supplies and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with chapter 296-800 WAC and all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the work may affect them.
3. Contractor shall maintain an accurate record of exposure data on all incidents relating to the work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies or equipment. Contractor shall immediately report any such incident to Contracting Agency and appropriate jurisdictions. The Contracting Agency shall, at all times, have a right of access to all records of exposure.
4. All work shall be performed with due regard for the safety of the public. Contractor shall perform the work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
5. In an emergency affecting the safety of life or the work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if authorized or instructed.
6. Nothing provided in this section shall be construed as imposing any duty upon the Contracting Agency with regard to, or as constituting any express or implied assumption of control or responsibility over, project site safety, or over any other safety conditions relation to employees or agents of the Contractor or any of its Subcontractors, or the public.

1-13 TEMPORARY UTILITIES *NEW*

Contractor shall supply and maintain all necessary and temporary electrical services and required water as needed for construction of this project. Any water required on site will be hauled by the Contractor from a safe and legal source.

END OF DIVISION 1

DIVISION 2

EARTHWORK / BEACH AREA DEMOLITION & REMOVAL

2-01 CLEARING AND GRUBBING

2-01.3 Construction Requirements

Supplement:
Clearing and Grubbing, Stockpile Logs from Work Area: Large woody debris located on site shall be stockpiled and replaced onto the beach following placement of beach nourishment material.

Onsite debris obtained during the project site clearing and grubbing shall be disposed of off the project site at Contractor provided location.

2-01.4 Measurement

Replacement:
No measurement will be made for Clearing & Grubbing.

2-01.5 Payment

Replacement:
Payment will be made in accordance with Section 1-04.1 for contract price per lump sum for **Bid Item No.4**, **Clearing and Grubbing**, shall be full compensation for all labor, material, tools, equipment, and incidentals including hauling and disposal necessary to complete the work as specified in this contract.

2-02 REMOVAL OF STRUCTURES AND OBSTRUCTIONS

2-02.1 Description

Wood Bulkhead Removal

This work shall consist of demolishing, hauling and disposing of existing wooden bulkhead and concrete debris in conformity with the Plans. Material shall be removed in full, unless cultural resources consultant instructs that posts be cut at or below grade, and shall be hauled and disposed of at approved disposal site(s). Unless otherwise determined and verified, it shall be assumed that wood materials are composed of creosote. Disposal of creosote must be at an approved upland facility.

<u>Measurement</u>
Measurement for **Bid Item No. 6 "Wooden Bulkhead Removal"** shall be per LUMP SUM and shall be full compensation for performing the work as specified. The provided wood removal estimated quantity is for references only. The contractor shall verify at pre-bid meeting and/or do its own estimate based on the design plans.

<u>Payment</u>
Payment for contract price per lump sum for **Bid Item No. 6 "Wooden Bulkhead Removal"** shall be paid per LUMP SUM.

Supplement:
The Contractor shall remove and dispose of items as shown and noted in the Contract Plans or these Special Provisions. The Contractor shall dispose of all items in accordance with current Federal, State, and local regulations and provisions, and following best management practices. This work shall consist of removal, wholly or in part, and satisfactory disposal of any obstructions, as shown on Contract Plans or as directed by the Engineer.

2-02.3 Construction Requirements

Supplement:

General Requirements

The Contractor shall protect existing structures to remain in place along access route or within limits of work, including but not limited to overhanging trees, native vegetation, bluff and bank slopes, native beach substrate, and utilities. Any damage due to the Contractor's operations to the portions of the existing facilities which are to remain in place shall be repaired by the Contractor at no cost to the Contracting Agency. All repairs shall be approved by the Contracting Agency at the time repairs are complete. All debris or deleterious material resulting from construction shall be removed from the shore area and prevented from entering the water.

Removal of Structures

- The Contractor shall remove the wooden bulkhead along the toe of the slope as indicated on the Contract Plans. No excavation of the toe of the slope shall be completed as part of this work except where indicated on the contract plans.

- The Contractor shall remove and dispose of all concrete debris as indicated on the Contract Plans as part of removal of shoreline armor. The work also includes removal of any other miscellaneous man-made debris within the designated work limits. The Contractor shall dispose of all debris and material obtained from the demolition work in accordance with Section 2.02.3 of the Standard Specifications. Reuse of materials obtained from demolition work activities will not be allowed.

- Removal of armor and debris shall be performed in the dry; and shall not be performed within areas inundated by tidal waters. Contractor shall work around the tides to work within areas shown on the Contract Plans.

Stockpiling of Material

The Contract may stockpile armor and debris in areas indicated on the Contract Plans temporarily. Stockpile area(s) shall be returned to its previous condition by the Contractor.

END OF DIVISION 2 - EARTHWORK

DIVISION 8
MISCELLANEOUS CONSTRUCTION

8-01 EROSION CONTROL AND WATER POLLUTION CONTROL

8-01.1 Description

Supplement:
This work consists of furnishing, installing, maintaining, removing and disposing of temporary water pollution and erosion control, and stormwater diversion items, in accordance with these Specifications and as specified in the project permits.

8-01.3 Construction Requirements

Supplement:
Submittals
The Contractor shall prepare a Temporary Erosion and Sediment Control (TESC) Plan and submit as part of the Contractor Work Plan. The TESC Plan shall outline temporary BMPs selected for preventing erosion and trapping sediment. The Plan shall include a description of construction access, sediment/erosion control devices and maintenance Contract Plans during construction, and Contract Plans to control pollutants, protect slope or new excavation cuts, and minimize excess runoff, erosion and turbidity during construction activities.

Erosion/Water Pollution Control
This Work shall include installing Temporary Erosion and Sediment Control (TESC) Measures that include Best Management Practices (BMPs) necessary to control sediment, whether shown on the Plans or not, in accordance with these Special Provisions, and all federal, state, and local regulations and project permit requirements. The Contractor shall be responsible for all TESC measures during construction and until the Notice of Termination is issued to meet all federal, state, local and permit requirements. Furthermore, the Contractor shall utilize BMPs to prevent invasive species transport to and from the project site as directed by the Contracting Officer.

Temporary erosion and water pollution control measures shall be utilized throughout the duration of the work in accordance with best management practices described in Washington State Department of Ecology Stormwater Management Manual for Western Washington, Volume II Construction Stormwater Pollution Prevention (July 2024). At a minimum, the BMP’s outlined on the Contract Plans will need to be implemented and then supplemented with additional measures as needed for compliance with Ecology and County standards.

No sediment shall be tracked onto paved streets or roadways. Sediment shall be removed from trucks and equipment before leaving the construction site. In the event of sediment being tracked onto pavement, the Contractor shall implement measures immediately to correct the situation and will employ emergency measures to remove sediment from paved streets as needed throughout the project. Unless otherwise directed by Contracting Agency, Contractor shall perform street cleaning Weeks Point Way at the completion of the project.

Any areas located above OHW that have exposed soils for two days or more shall be immediately protected with plastic sheeting (typical minimum thickness is 6 mils).

Contractor shall protect soil/sediment/ stockpile areas from release of sediment. Stockpiles shall be covered with plastic sheeting at all times when not in use to keep the stored material dry.

Clean stormwater runoff from the plastic covering shall be directed away from bare soil using pipes, sandbags, or other temporary diversion devices.

Silt fencing, straw bales, or straw wattles shall be installed where required to protect water quality of surface waters and prevent erosion as required per County and State BMPs.

The Contractor is responsible for taking the appropriate preventative erosion control measures and water quality protection systems to ensure compliance with the project regulatory permits and approvals.

No petroleum products or other deleterious materials shall enter surface waters.

Equipment used shall be free of external petroleum-based products while working around the water.

Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its working below the OHW. Equipment shall be checked daily for leaks and any necessary repairs shall be completed prior to commencing work activities near the water.

8-01.4 Measurement
Delete this section and replace as follows:

Measurement for Bid Item No. 3, Temporary Erosion Control shall be per LUMP SUM and shall be full compensation for performing the work as specified. The contractor shall verify at pre-bid meeting and/or do its own estimate based on the design plans.

8-01.5 Payment *Replacement*
The Contract Price for Bid Item No. 3, Temporary Erosion Control is per LUMP SUM**,** and shall be full compensation for all labor, materials, tools, and equipment necessary to complete the work as specified in this contract for all items specified in this special provision.

8-02 ROADSIDE RESTORATION

8-02.1 Description

Supplement

This work shall include:

1. Placing tree protection fencing and protection of trees to remain on site
2. Placing of imported Topsoil Type A
3. Placing imported Wood Chip Mulch

8-02.3 Construction Requirements

8-02.3(5)C Planting Area Preparation *Supplement*

This section covers special provisions for Bid Item 10, which consist of placing topsoil and mulch in planting areas indicated on the plans. Topsoil and mulch material bid items are specified in Bid Items 16 and 17 in Division 9.

Topsoil

Refer to Item 16 Topsoil Type A for material specification. Topsoil is to be placed in designated portions of the planting areas at 12” (inches) depth tapering to meet grade at the edges of the planting areas.

Furnish all labor, material and equipment required for placement and establishment of finish grade of topsoil for areas to receive plants as shown on the Drawings and as specified herein.

Coordinate topsoil placement with installation of other site work including earthwork, and planting.

Site Conditions:

A. Topsoil placement shall not take place during periods where saturated soil or surface water is present in work areas.
B. Work shall not take place when temperature is less than 32 degrees Fahrenheit, or when frozen soil exists on site.

Coordination

Coordinate soil placement with timing and procedures for installation of related site work, as well as site cleanup and demobilization of equipment.

Examination Of Site Conditions

A. Examine for site conditions that will adversely affect execution, permanence, quality of work, and survival of plant material.
B. Verify that planting areas are acceptable to Owner’s Representative prior to commencing work of this Section.
C. Should the Contractor find any discrepancies between the Drawings and the physical conditions, inform the Owner’s Representative immediately for clarification.
D. Begin work required under this Section only after conditions are satisfactory.

Preparation

A. Protect from surface penetration all soil surfaces within project limits that are not being disturbed by authorized work shown on plans unless approved by Owner’s Representative.
B. Place 12” (inches) of Topsoil A over areas to be planted with trees and shrubs as shown on plans. Water lightly and allow soil to settle. Add additional Topsoil A as needed to bring soil level to grades shown on the Drawings with allowance at edges for mulch placement.
C. Leave in neat and tidy condition daily.

Wood Chip Mulch

Refer to Item 17 Wood Chip Mulch for material specification. Mulch is to be placed 3” (inches) deep in all upland planting areas over topsoil in designated areas where trees and shrubs are to be planted.

Disposal

Remove surplus soil and waste material, including excess subsoil, unsuitable soil, trash, and debris, and legally dispose of them off Owner’s property.

8-02.3(14) Plant Replacement: Vegetation Salvage and Replanting *Replacement*
This section covers special provisions for Salvage designated native vegetation (pickleweed) prior to earthwork. This is limited to a small number of vegetation clumps on the upper beach. Careful salvage by machine is allowed.

Protect salvaged vegetation from desiccation and mechanical damage. Watering will be required daily.

Transplant salvaged vegetation to the same elevation it was removed from per Engineer's or Owner's Representative's direction following nourishment placement within two days.

8-02.4 Measurement *Supplement*
Supplement with the following:
Measurement for Bid Item 10 "Placement of Topsoil and Mulch" shall be for all items found on the Plans and on the Bid Form and shall be the full compensation for furnishing all labor and equipment necessary to complete the work in place as indicated on the plans and in this section for the placement of topsoil and mulch.

Measurement for Bid Item 9 "Vegetation Salvage and Replanting" shall be per LUMP SUM and shall be full compensation for performing the work as specified. The provided approximate square footage is for references only.

8-02.5 Payment *Supplement*
Supplement with the following:
Payment for Bid Item 10 "Placement of Topsoil and Mulch" as listed on the Bid Form shall be per LUMP SUM. Works consist of placement of topsoil and mulch per project plans and specifications.

Payment for Bid Item 9 "Vegetation Salvage and Replanting" shall be per LUMP SUM.

8-15 RIPRAP (ROCKERY WALL CONSTRUCTION) *Modified*

8-15.1 Description
This work shall consist of constructing the rock wall structure per Plans and following engineer's direction on site, using imported materials.

8-15.3 Construction Requirements

Execution

A. Bank cut slope shown on section 1 (Sheet 5) is illustrative. Ensure bank stability during and after excavating the bank.
B. Bank excavation shall minimize soil disturbance. Install proper and necessary temporary slope stabilization and / or erosion control measures as necessary.
C. Excavate a keyway (trench) to the grade indicated on rock wall section sheets, with enough width for base rock installation. Avoid over excavation below required grade or beyond the extent necessary.
D. Avoid unnecessary earth disturbance in the surroundings.
E. The subgrade below base rock should slope approximately 2-5% landward.
F. If bedrock is encountered during excavation, Engineer shall be notified and additional guidelines will be provided to work around or on top of the bedrock depending on the site conditions.

G. Before placing geotextile the subgrade and cut bank shall be well prepared, graded and tamped to be smooth and flat at the design grade and slope.
H. Geotextile shall be laid from top down and anchored using manufacturer recommended anchor pins or 6-inch garden staples. Provide at least 2 FT of overlap at all seams.
I. After armor rock installation, fold the geotextile over the quarry spalls and anchor the ends of geotextile approximately 6 inches beneath the quarry spalls upper surface.
J. Placement of quarry spalls as base filter or as rock wall backfill shall be in conformity with the Contract Plans or as established by the Engineer. The placed quarry spall bedding or backfill shall be tamped with the excavator bucket until non-yielding surface is achieved. A minimum of 1 FT thickness is required.
K. Base rock shall be tamped into quarry spall filter layer to achieve full contact with minimal voids.
L. Rock wall shall be constructed with a front face batter of approximately 1:6 (horizontal: vertical) per Plans, a relatively smooth wall face and a uniform crest elevation.
M. Rocks shall be placed against one other as tightly as possible, to minimize gaps and holes. A minimum of 3-point contact and good interlock are required.
N. For wall stability, the upper courserock shall be stacked on a slightly sloped surface of the lower course rock, at 2%-10% landward. This slope is most critical for the cap rock (top course) stability, where a small slope should be achieved with no exceptions.
O. Each rock shall have sufficient width to achieve the design wall thickness with a tolerance of up to 6 inches only at limited locations.
P. Rock that is narrower than the design thickness of the wall shall bear on at least two rocks below. Front bearing points should be no further than 6 inches behind the adjacent rock face.
Q. Undersized rocks shall only be used occasionally and evenly distributed over the wall face. No more than two small rocks shall be allowed placed together.
R. Due to imported rock irregularities, some void spaces are inevitable despite reasonable construction efforts. Voids greater than 6 inches in any linear dimension shall not be permitted on the face of the wall. Where such voids cannot reasonably be avoided by rock selection or careful placement, these voids may be filled with "chinking" rocks consisting of large quarry spalls in a limited number of occurrences as approved by Engineer or Owner’s Representative.
S. The chinking rock should be immovable by hand before the rock course above has been installed, and Engineer or Owner’s Representative shall verify that chinking suitably restrains the wall backfill.
T. All chinking and filling shall be carried out from or at close to the rear face of the wall. All small rock pieces shall be secured in position by the weight of the rock on top and by the compacted backfill.
U. Properly secure and protect exposed bank and wall construction in progress (including backfill materials) from wave impact and wave erosion at the end of each workday or prior to each rising tide.
V. Backfill shall follow the completion of no more than two courses of rock wall stacking until the finished grade shown in drawings is achieved. Engineer or Owner’s Representative shall inspect the rock stacking to satisfaction before backfilling the wall.
W. At each lift always fill the back space immediately behind the rock wall first. Inspect and manually place large spall rock behind large wall holes or voids as necessary to prevent backfill rock from escaping the wall holes. Compact each lift thoroughly with excavator bucket before placing the next lift. Continue this backfill process as rock wall is stacked higher until the design crest elevation is reached.
X. Fill the keyway (trench) in front of wall with excavated sediments and consolidate it to the existing beach grade before placing beach nourishment materials.

Measurement for Bid Item 8, "Rockery Wall Construction". The unit price per LUMP SUM shall be full compensation for all costs incurred to complete the rockery wall construction as per plan.

Payment for Bid Item 8, "Rockery Wall Construction" shall be per LUMP SUM. Payment shall be contingent on approval of construction by the Engineer.

8-27 BEACH NOURISHMENT *New*

8-27.1 Description

This work consists of placing and grading Beach Nourishment materials, including beach gravel and gravel-sand in conformity with the Plans with approval of grading by the Engineer required. Beach Nourishment material shall meet requirements of Section 9-03.1, **Beach Nourishment Material**.

8-27.3 Construction Requirements

The Beach Nourishment materials shall be placed in the prepared area in accordance with the lines and grades shown on the Contract Plans (within tolerances provided in these Special Provisions) and as directed by the Engineer where indicated on the Contract Plans.

Beach Gravel shall not be placed atop debris or organic material. Debris and organic material shall be removed before placing Beach Gravel. Cost for this work is incidental to this bid item. Beach Gravel shall be placed and graded in the dry when tidal waters are at a lower elevation.

Beach Gravel placement shall be inspected and approved before the placement of Beach Gravel-Sand in the beach area.

No in-water Beach Nourishment material placement is to be performed. Contractor shall work around the tides to place Beach Nourishment within the specified areas when not inundated with tidal waters. The Contractor shall minimize the waterward placement of materials by placing the materials to the maximum allowed elevation to the extent practicable on the landward side of the required placement area and then continuing to place material waterward. Placing of materials shall be suspended when adverse wave, weather, and tidal conditions will not allow proper placement.

8-27.4 Measurement

The unit price per TON for "Beach Nourishment Placement" Bid Item No. 7, with total quantity matching the material import quantities, shall be full compensation for all costs incurred for labor, tools, equipment, and incidentals required to place and grade as per Plans.

8-27.5 Payment

Payment for "Beach Nourishment Placement" Bid Item No.7 shall be per TON based on truck tickets of material import quantity from certified scales. Payment shall be contingent on approval of placement by the Engineer. Payment will not be made for any materials that are placed outside of the specified lines and grades.

END OF DIVISION 8 – MISCELLANEOUS CONSTRUCTION

DIVISION 9
MATERIALS

9-03 AGGREGATES

New Section:
9-03.1(3) BEACH NOURISHMENT MATERIAL

9-03.1(3)A Description
This bid item consists of furnishing, mixing and hauling Beach Gravel and Beach Gravel-Sand to the site.

9-03.1(3)B Materials

1. **Beach Gravel** shall be free from dirt, clay, sand, rock fines, fractured rock, and other materials not meeting the requirements of this section. Beach Gravel shall be naturally occurring, rounded rock. Beach Gravel shall be free of thin, flat and elongated pieces. Beach Gravel shall not contain organic matter considered objectionable by the Engineer. Beach Gravel must be washed and shall be sound durable rock with less than 20% having any cleavage or fractures. Aggregates from rock quarries, ledge rock, and talus slopes are not acceptable as Beach Gravel.

   Beach Gravel shall conform to the following gradation:
   - 60% by weight WSDOT 9-03.12(5) Gravel Backfill for Drywells (Table 4)
   - 40% by weight WSDOT 9-03.12(4) Gravel Backfill for Drain (Table 5)

Table 4. Gravel gradation, WSDOT 9-03.12(5) (all percentages are by weight)

Sieve Size/Number	Percent Passing
1½″	99-100
1″	50-100
¾″	0-20
3/8″	0-2
No. 100	0-1.5

Table 5. Gravel gradation, WSDOT 9-03.12(4) (all percentages are by weight)

Sieve Size/Number	Percent Passing
1″	99-100
¾″	80-100
3/8″	0-40
No. 4	0-4
No. 200	0-2

Beach Gravel shall be either as well-mixed product or pre-mixed. If pre-mixed, each aggregate shall be

inspected and approved prior to the mixing process or shipment to the site. The exact point of acceptance will be determined by the Engineer. The Engineer will review aesthetic quality and shall be sole judge of whether products are suitable for park setting.
The approved aggregates may be mixed before shipment or on site at the temporary stockpile site after shipment. The well-mixed product shall be inspected and approved by the Engineer before it can be placed on the beach.

Measurement

The unit price per TON for "Beach Gravel" Bid Item No. 11 shall be full compensation for all costs incurred for all material, labor, tools, equipment, and incidentals required to import the material as specified to the site.

Payment

Payment for "Beach Gravel" Bid Item No. 11 shall be per TON based on truck tickets from certified scales. No change in unit price will be given for quantity overruns or underruns.

2. **Beach Gravel-Sand**

Beach Gravel-Sand shall be free from dirt, clay, sand, rock fines, fractured rock, and other materials not meeting the requirements of this section. Beach Gravel shall be naturally occurring, rounded rock. Beach Gravel-Sand shall be free of thin, flat and elongated pieces. Beach Gravel-Sand shall not contain organic matter considered objectionable by the Engineer. Beach Gravel-Sand must be washed and shall be sound durable rock with less than 20% having any cleavage or fractures. Aggregates from rock quarries, ledge rock, and talus slopes are not acceptable.

Beach Gravel-Sand shall meet the gradation requirements as shown in Table 6, either as well-mixed product or pre-mixed. If pre-mixed, each aggregate shall be inspected and approved prior to the mixing process or shipment to the site. The exact point of acceptance will be determined by the Engineer. The Engineer will review aesthetic quality and shall be sole judge of whether products are suitable for the project.

Table 6. Grain size and gradation of Beach Gravel-Sand.

Sieve Size/Number	Percent Passing
2.5"	90-100
0.5"	70-90
0.25"	50-70
#10	15-30
#40	0-10
#200	0-3

The approved aggregates may be mixed before shipment or on site at the temporary stockpile site after shipment. The well-mixed product shall be inspected and approved by the Engineer before it can be placed on the beach.

Measurement

The unit price per TON for "Beach Gravel-Sand" Bid Item No. 12 shall be full compensation for all costs incurred for all material, labor, tools, equipment, and incidentals required to import the material as specified to the site.

Payment

Payment for "Beach Gravel-Sand" Bid Item No. 12 shall be per TON based on truck tickets from certified scales. Payment shall be contingent on approval of placement by the Engineer. No change in unit price will be given for quantity overruns or underruns.

9-13 RIPRAP, QUARRY SPALLS for EROSION PROTECTION and SCOUR PROTECTION and ROCK WALLS

9.13.1 Riprap and Quarry Spalls

9.13.1(1) Armor Rock *Replacement*

This bid item consists of importing needed quantity of quarry stone that will be used to complete all the rock wall work for this project. Rock specification sheets, test data sheets, samples or photos of rocks and rock piles shall be submitted for review and approval prior to rock purchase and shipment.

All rock materials for the rock wall shall be hard, rough, and durable quarry stones, free of organic material, infilled joints, seams or other defects. All armor stones must be highly angular and without rounded faces. Imported armor stones shall be from a pre-approved quarry site. Rock quality shall meet WSDOT Standards testing requirements as stated in WSDOT 9-13.1(1), and as shown in Table 1.

Table 1. Rock testing requirements, WSDOT 9-13.1(1)

Test	Test Method	Requirements
Specific Gravity, SSD	AASHTO T 85	2.55 min.
LA Wear	AASHTO T 96	50% max.
Degradation	WSDOT T 113	15 min.

The imported armor rock shall consist of mainly mixed 3-4 man (Type 3 and Type 4) sizes of rock and be placed in conformity with the plans.

Approximately 50% of 3-man rock and 50% of 4-man rock or greater are required. The size ratio for imported rock may vary or be adjusted at the direction of the Engineer to meet the actual material need on site following the project progress. Refer to Table 2 for rock weight and dimension conversions.

Table 2. Rock size per WSDOT 9-13.7(1)

ROCK SIZE	ROCK WEIGHT (lbs)	AVERAGE DIMENSION (in)*
1-MAN ROCK	50 to 200	12 to 18
2-MAN ROCK	200 to 700	18 to 28
3-MAN ROCK	700 to 2,000	28 to 36
4-MAN ROCK	2,000 to 4,000	36 to 48
5-MAN ROCK	4,000 to 6,000	48 to 54
6-MAN ROCK	6,000 to 8,000	54 to 60

* AVERAGE DIMENSION = (LENGTH+WIDTH+HEIGHT)/3

9.13.1(5) QUARRY SPALLS (Size 4"-8")
This bid item consists of furnishing and hauling quarry spall material to the site.

The 4" - 8" quarry spalls shall be from approved quarry site, and shall meet all general requirements for the armor stone rock as specified in Item 13. Spall samples or photos shall be submitted for review and approval prior to shipment.

The 4" - 8" quarry spalls shall meet the gradation requirements as shown in Table 3.

Table 3. Gradation of 4 - 8 inch quarry spalls.

Sieve Size/Number	Percent Passing
8"	100%
4"	40% max
2"	10% max

All percentages are by weight.

9.13.2 MEASUREMENT
The unit price per TON for "Armor Rock" Bid Item No. 13 shall be full compensation for all costs incurred for the material, labor, tools, equipment, and incidentals required to import the required rock to the project site**.**

The unit price per TON for "Quarry Spalls" Bid Item No. 14 shall be full compensation for all costs incurred for all material, labor, tools, equipment, incidentals required to acquire and import the material to the project site.

9.13.3 PAYMENT
Payment for "Armor Rock" **Bid Item No. 13** shall be per TON based on truck tickets from certified scales or quarry site receipts. Rocks failing to meet specifications and unused imported rocks shall be returned to the quarry site, and shall be excluded for payment from the Owner. No change in unit price will be given for quantity overruns or underruns.

Payment for "Quarry Spalls" **Bid Item No. 14** shall be per TON based on truck tickets from certified scales or quarry site receipts. Payment shall be contingent on approval of placement by the Engineer.

9-14 EROSION CONTROL AND ROADSIDE PLANTING
9-14.2 Topsoil
9-14.2(1) Topsoil Type A *Supplement*
Furnish material to project site required for placement and establishment of finish grade of topsoil for areas to receive plants as shown on the Drawings and as specified herein.

Coordinate delivery with installation of other site work including earthwork, and planting.

Topsoil Type A
A. Topsoil A: Import topsoil from off-site sources. Import topsoil is subject to approval and shall consist of 2/3

Sandy Loam conforming to USDA soil texture class “Sandy Loam” certification and 1/3 composted organic material.

1. Sandy loam shall consist largely of sand, but with enough silt and clay present to give it a small amount of stability. Individual sand grains shall be of sufficient size to be seen and felt readily. Upon squeezing in the hand when dry, it shall form a cast that not only holds its shape when the pressure is released but withstands careful handling without breaking.

2. The mixed soil shall meet the following gradation:

Table 7. Soil gradation.

Sieve Size	Percent Passing (by weight)
3/8 inch	100%
#4	95%
#10	85%
#30	70%
#60	50%
#100	30%
#270	15%

3. The mixed soil shall have a pH range of 5.0 to 6.5, with dolomite lime added as necessary to attain this range.

4. Compost for Topsoil Type A shall conform to the material specifications outlined for “Fine Compost” in Section 9-14.4(8) of the Standard Specifications.

Required Submittals

A. Samples for Verification for the following at least 1 day prior to delivery:

1 gallon bag of imported Topsoil Type A

B. Product Certificates: For each type of manufactured product, signed by product manufacturer, and complying with the following:

1. Manufacturer’s certified analysis for standard products.

2. Analysis of other materials by a recognized laboratory made according to methods established by the Association of Official Analytical Chemists, where applicable.

C. Material Test Reports: Date of testing on all reports shall be a maximum of 30 days prior to the date of submittal for review.

1. Soil Fertility and Agricultural Suitability Analyses and Recommendations Reports for the following:

a. Imported topsoil: Minimum 30 days prior to beginning soil preparation work.

D. Delivery Slips: Provide delivery slips as proof of shipment of specified materials.

Quality Assurance

A. Soil Fertility and Agricultural Suitability-Testing Laboratory Qualifications: An independent laboratory, recognized by the State Department of Agriculture, with the experience and capability to conduct the testing indicated and that specializes in types of tests to be performed.

B. Acceptable Soil Testing Laboratories are:

1. Soil and Plant Laboratory, Inc., (425) 746-6665.

2. Spectra Laboratories, (360) 697-0153.

3. Western Laboratories, Inc., (800) 658-3858.

4. A & L Western Agricultural Laboratories, (503) 968-9225.

C. Soil Analyses: Furnish soil analyses by a qualified soil-testing laboratory stating:

1. Soil Composition: USDA particle size analysis indicating percentages of sand, silt and clay, and percent organic matter.

2. Macro and micronutrient fertility tests as determined by pH, salinity, nitrate nitrogen, ammonium nitrogen, phosphate phosphorous potassium, calcium, magnesium, soluble copper, zinc, manganese, iron, saturation extract boron and sodium analyses.

3. Sodium Absorption Ratio (SAR).

4. Recommendations by the soil testing lab for fertilizer and soil amendments in pounds per 1,000 square feet, as necessary to correct soil deficiencies.

D. Compost Testing Laboratory Qualifications: An independent laboratory, with the experience and capability to conduct the testing indicated following U.S. Composting Council Seal of Testing Assurance (STA) procedures, or equivalent.

1. Acceptable Compost Testing Laboratories are:

a. A & L Western Agricultural Laboratories, (503) 968-9225.

b. Soil Test Farm Consultants, (509) 765-1622.

c. Control Laboratories, (831) 724-5422.

E. Compost Analysis: Provide documentation from supplier that compost has reached a monitored temperature of 140 degrees Fahrenheit for at least one week. Engage an independent soil testing laboratory to test representative sample(s) of compost and furnish compost analysis report for the following parameters:

1. Percent organic matter, percent moisture, percent inerts (foreign matter), pH, soluble salts, and particle size.

2. Nutrient content, including Nitrogen (N), Phosphorus (P), Potassium (K), Calcium (Ca), and Magnesium (Mg) and Sulfur (S).

3. Trace Metals, including: Arsenic (As), Cadmium (Cd), Chromium (Cr), Copper (Cu), Lead (Pb), Mercury (Hg), Nickel (Ni), and Zinc (Zn).

4. Maturity Indicator: Provide bio-assay results. Provide Carbon-Nitrogen ratio.

5. Stability Indicator: Provide respiration test results.

<u>Delivery, Storage And Handling</u>

A. Store stockpiled topsoil in area designated by the Engineer. Provide erosion control measures for stockpiled topsoil on site as needed.

<u>Measurement</u>

Measurement for "Topsoil Type A" Bid Item No. 16 shall consist of supplying imported topsoil to the project site per CUBIC YARD per this Specification.

<u>Payment</u>

Payment for "Topsoil Type A" Bid Item No. 16 shall be per CUBIC YARD, delivered.

9-14.3 Mulch and Amendments

9-14.5(3) Wood Chip Mulch

Furnish material to project site required for placement of wood chip mulch in areas to receive plants as shown on the Drawings and as specified herein.

<u>Material</u>

A. Wood chip mulch shall be coarse ground waste by-product wood chips or shreds (approximately ½" – 6" along the longest dimension) derived from the mechanical grinding or shredding of whole trees or portions of trees. This material is also referred to as "Arborist Wood Chip Mulch". Composted product or bark may not be substituted.

B. Tree species shall be mixed hardwood and softwood species such as hemlock and alder. Wood chip mulch may contain ground or shredded bark incidental to the grinding or shredding of tree branches but may not be added. Mulch may also contain wood fiber, roots, rootwads, branches, leaves, etc.

C. Wood chip mulch shall be free from weeds, weed seed, deleterious materials, and foreign materials, resin, tannin, or other compounds detrimental to plant life. Mulch containing any amount of cedar wood is unacceptable. No construction waste may be included.

Required Submittals

A. Product data.

B. Sample for Verification for the following at least 1 day prior to delivery:
1 gallon bag or larger of imported Wood Chip Mulch.

Measurement

Measurement for "Wood Chip Mulch" Bid Item No. 17 shall consist of supplying imported wood chip mulch to the project site per CUBIC YARD per this Specification.

Payment

Payment for "Wood Chip Mulch" Bid Item No. 17 shall be per CUBIC YARD, delivered.

This product shall not be harmful to plants, animals, and aquatic life.

9-33 GEOTEXTILE FABRIC

9-33.2 Materials

This bid item consists of furnishing and hauling the geotextile to the site. Geotextile is to be used as the separation liner between subgrade soil and the rock structures.

The geotextile for rock base shall be non-woven with minimum grab tensile strength 250 lb. The recommended geotextile grade for this project is Mirafi™ 1100N or equivalent approved by engineer.

Measurement

The unit price for "Geotextile" Bid Item 15 is per SQUARE YARDS shall be full compensation for all costs incurred for material and import.

Payment

Payment for "Geotextile" Bid Item 15 shall be per SQUARE YARDS of material used.

END OF DIVISION 9 – MATERIALS

WEEKS POINT SHORELINE - SAN JUAN COUNTY

BULKHEAD REMOVAL AND BEACH RESTORATION

MAPPING NOTES:

Horizontal Datum: NAD83 (2011) Washington State Plane, North Zone, US Foot.

Vertical Datum: Local MLLW

Topography and Feature Mapping: Based on topographic survey performed by Holman Land Surveying, Inc. 2/26/2021, job# 21-020 and augmented by Coastal Geologic Services Inc. 5/27/2021 with Leica TCR-1105 Total Station with direct rod measurements in reference to monument "PL1" with horizontal and vertical control provided by Holman.

High Tide Line (HTL): 9.7 FT based on HAT values at NOAA tide station Friday Harbor.

Additional Mapping and Aerial Imagery: Aerial imagery provided by San Juan County GIS and is dated 2019. Parcel lines shown are approximate and for reference only. No boundary survey was completed as part of this work. Boundaries obtained from the 2021 Holman Topographic Survey, and used as-is here.

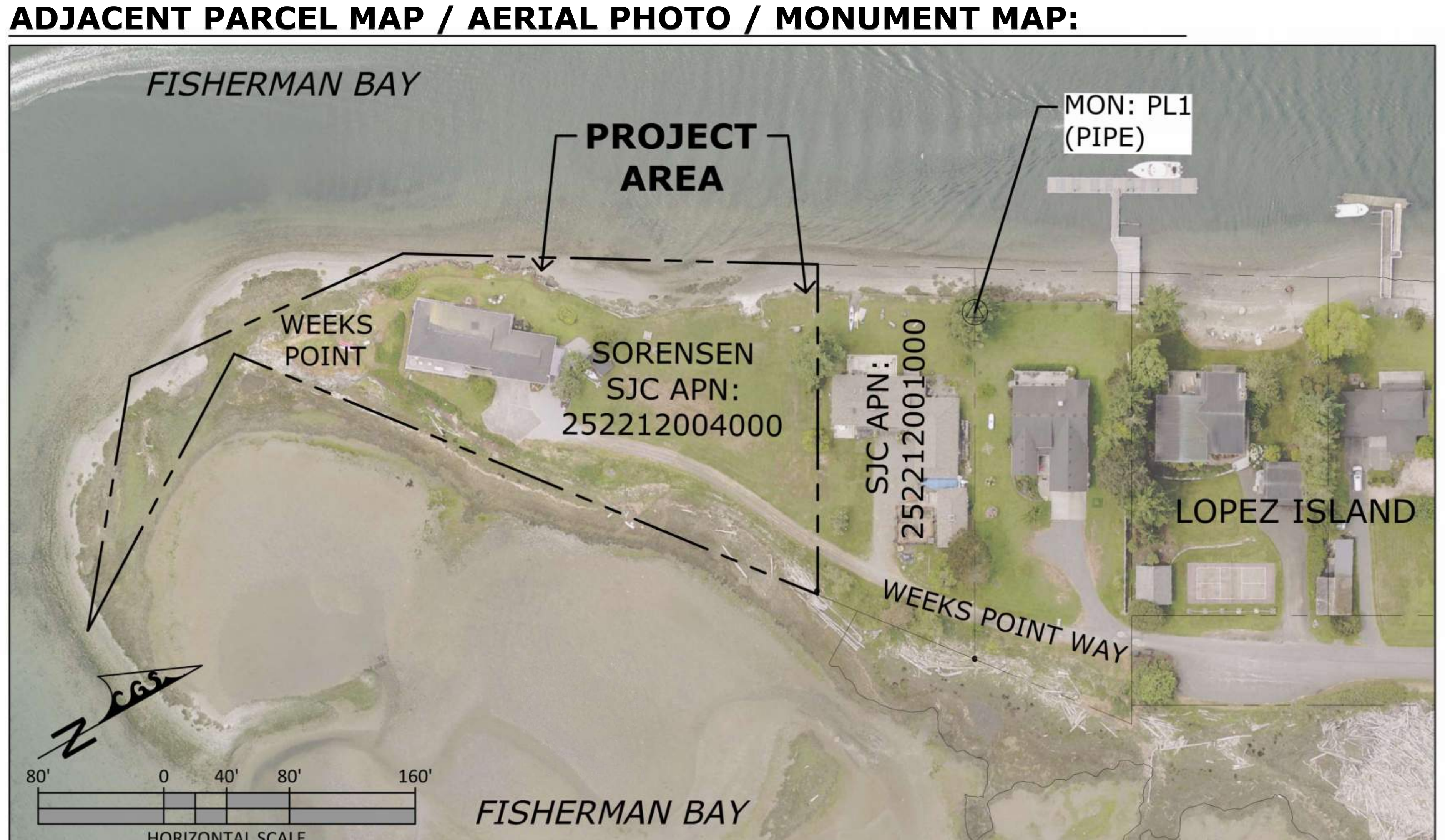
SURVEYOR'S NOTES (HOLMAN LAND SURVEYING INC):

1. Data collected this survey: Acquired through field traverse using Carlson CR2+ Total Station, Carlson BRS6+ GPS and computerized data collection.
2. This topographic survey conforms to the requirements of WAC 332-130-090.
3. This topographic survey located existing monuments and site features. Boundary markers were not set as a part of this survey. This is not a boundary survey and is exempt from the requirements for recording under the Washington State Survey Recording Act per RCW 58.09.090 (1) (D).
4. For more boundary information see Auditor's File Number 2003-0806016, records of San Juan County, Washington.
5. The Basis of Bearing for this survey is the Washington State Plane Coordinate System, North Zone. Bearings per Volume 1, Page 32B have been rotated 01°14'54" clockwise this survey.
6. The elevations shown heron are based on a static GPS observation of Friday Harbor Tidal Benchmark #10 NAVD88 elevations have been adjusted to MLLW=0.00' this survey. Per NOAA Friday Harbor Tidal Benchmark sheet dated 10/30/2003 the elevation of Mean High Water is 7.11 feet and the elevation of Mean Higher High Water is 7.76 feet Ordinary High Tide and Mean High Water are the same elevation and are interchangeable hereon.

MONUMENT LIST:

#	NAME	EASTING	NORTHING	ELEV.
1	PL1(PIPE)	1135428.9378'	561600.6480'	11.95'

ADJACENT PARCEL MAP / AERIAL PHOTO / MONUMENT MAP:



ADJACENT PROPERTY OWNERS

PARCEL #	NAME	ADDRESS
252212001000	Richard C & Tracey B Locke	6522 Park Point Way NE Seattle, WA 98115-7855

LOCATION AND VICINITY MAP:

SITE ADDRESS:

312 Weeks Point Way, Lopez Island, WA 98250

SAN JUAN COUNTY ASSESSOR PARCEL:

252212004000

OWNER:

Lyn & Katherine Sorensen
580 NW Everwood Drive
Issaquah, WA 98027-2654

DRIVING DIRECTIONS:

From the Lopez Island Ferry Terminal head southwest on Ferry Road. Continue straight (west) onto Fisherman Bay Road. Turn right (west) onto Lopez Road. Turn left (south) onto Weeks Point Way. Project site will be just before the last house on the right.

LEGEND:

FEATURE	EXISTING	PROPOSED
CONTOURS, MAJOR	#	#
CONTOURS, MINOR	#	#
PROPERTY LINE/ROW		
MEAN HIGHER HIGH WATER	MHHW	
ORDINARY HIGH WATER MARK	OHWM	
HIGH TIDE LINE/HAT	HTL	
MEAN HIGH WATER	MHW	
FENCES/GATES	x	
WOOD BULKHEAD		
BEDROCK		
ROCKERY WALLS		
GRAVEL BEACH NOURISHMENT		
GRAVEL-SAND BEACH NOURISHMENT		

GENERAL NOTES:

1. The work consists of furnishing all construction, labor, equipment, and materials, and performing all operations in connection with the construction related to beach enhancement detailed in the final design drawing sheets.
2. Project activities shall not occur when the work area is inundated by tidal waters. The contractor shall have on the job site a current tide chart for the duration of the project activities.
3. Work during holidays, weekends, and outside the normal work hours requires prior arrangements and approval.
4. Contractor must obtain appropriate permissions to encroach and work within any rights-of-way.
5. Location of utilities was not determined prior to project design. The contractor shall contact utility location service 48 hours prior to starting construction at 1-800-424-5555 or 811.
6. The contractor shall restore all private and public property disturbed by the project immediately after construction.
7. Contractor shall sweep and remove all debris tracked onto existing paved roads during all phases of construction.
8. All imported material aggregates and sources for to be used shall be pre-approved by the engineering geologist prior to import and construction. Sample material and specification documentation shall be inspected and reviewed prior to large quantity shipment to the project site.
9. Any discrepancies in the plans with field conditions shall be brought to the immediate attention of the engineer.
10. A copy of the approved plans, specifications and permits must be on the job site whenever construction is in process. All work and work timing will be in compliance with provisions in the approved USACE Permit, Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife and San Juan County permits.
11. The contractor shall ensure that all pre-construction meetings and inspections are scheduled and attended as required by the project permits.
12. All construction materials shall be staged landward of OHWM
13. Disturbed areas shall be revegetated as soon as possible after completion of construction.
14. All construction equipment shall be inspected daily for leaks and any required repairs will be completed before using the equipment near the water.
15. All refueling and maintenance of equipment shall take place a minimum of 100 feet landward from marine waters and landward wetlands.
16. An emergency spill containment kit shall be located onsite during construction.
17. All waste and debris generated by the project shall be collected and removed to a legally permitted waste disposal site.

SHEET INDEX:

FINAL DESIGN

Proposed: Bulkhead Removal and Beach Restoration
USACE Ref. #: NWS-2023-27
In: Fisherman Bay, Lopez Island
County: San Juan State: WA
Lat: 48.5203 North Long: -122.9177 West
Application By: Lyn and Katherine Sorensen
Assessors Parcel Number: 252212004000

Natural Systems Design + Coastal Geologic Services

REVISIONS

DRAWN BY: ADT
DESIGNED BY: JWJ
CHECKED BY: WC
DATE SURVEYED: 5/27/2021 & 2/26/2021
MAPPED BY: ADT & JWJ / HOLMAN

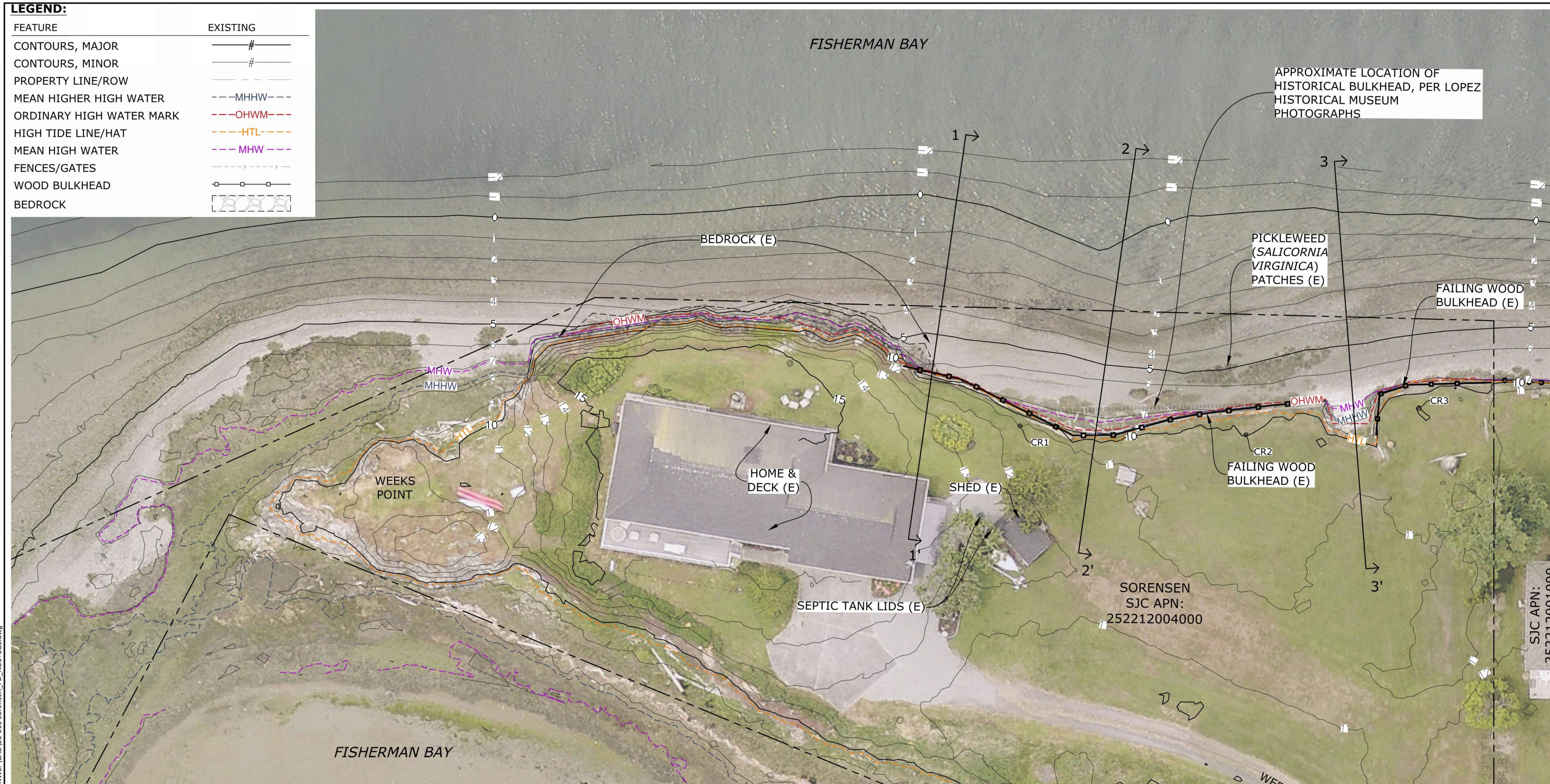
WEEKS POINT BEACH RESTORATION
COVER SHEET
VICINITY MAP - NOTES
LYN AND KATHERINE SORENSEN

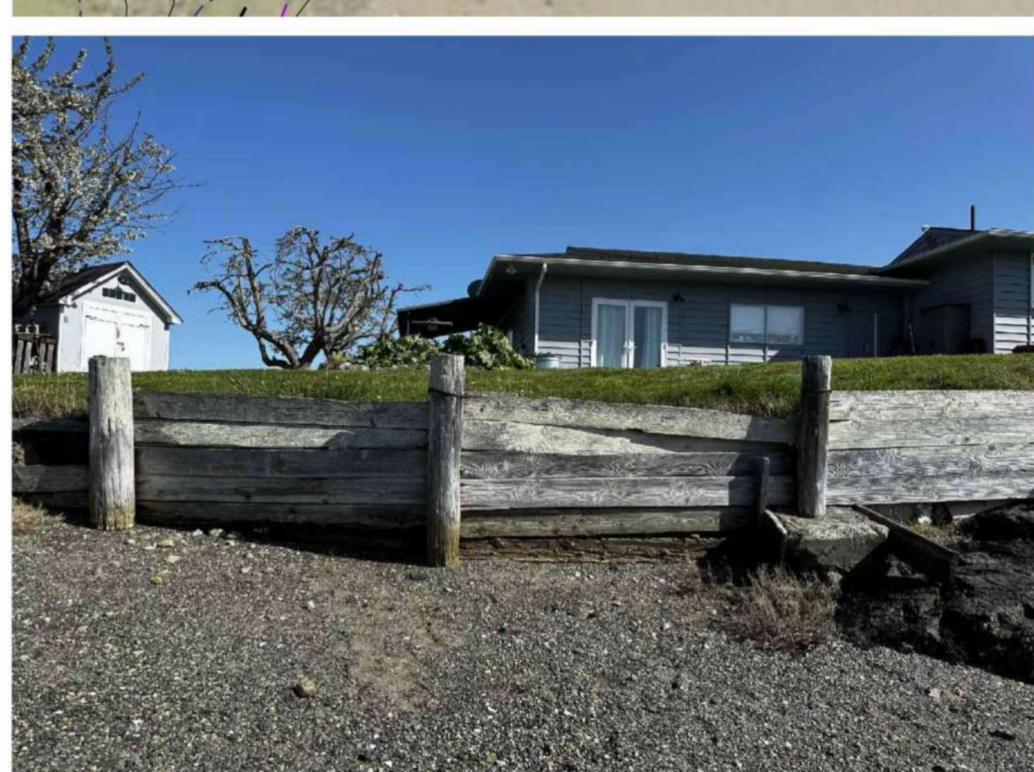
State of Washington
Weeks Pt
2026.02.26 13:45:27-08'00'
Engineering Geologist
353
Licensed Geologist
James W. Johannessen

DATUM
MLLW
ELEV. MHW: 7.11 FT
ELEV. MHHW: 7.76 FT
ELEV. HTL: 9.7 FT

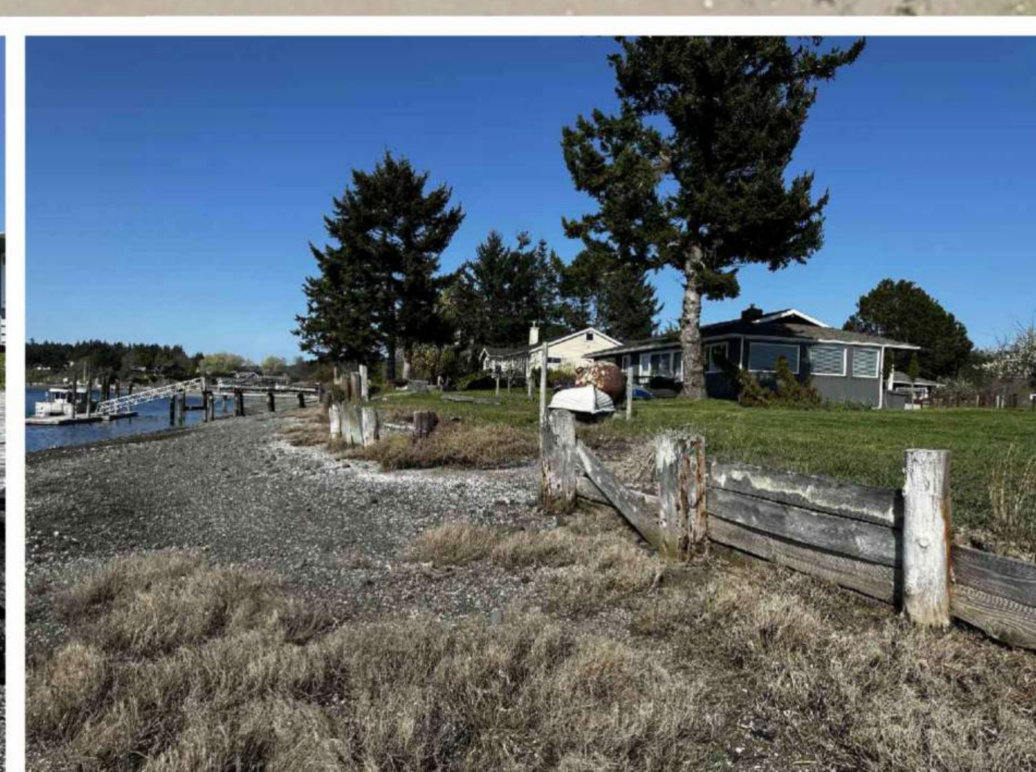
SCALE: AS SHOWN
DATE: 2/26/2026
SHEET: 1
OF: 5

P:\N_P\NWSF\23027 NWSF Shore Friendly 2023-2025\23-027-T4-1b Sorenson-Weeks-Pt-NWSF\CAD\21-016 Sorensen_FD_NDS+CGS.dwg

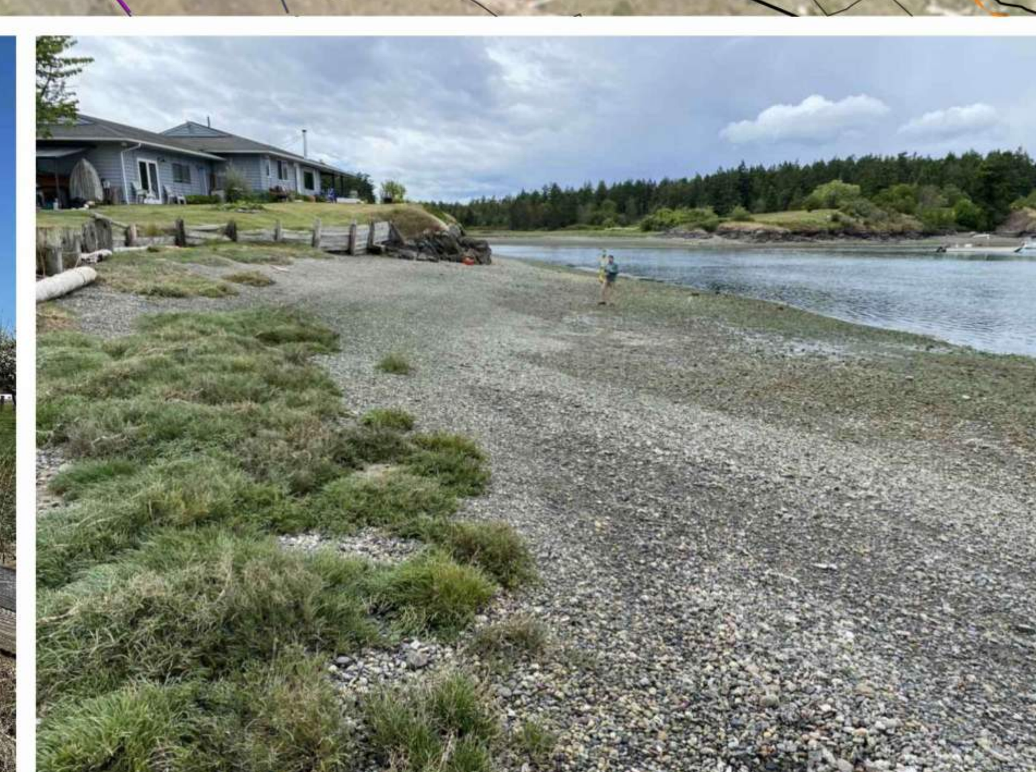




Site photo, looking southeast at beach and existing failing bulkhead, 4/27/2023.



Site photo, looking northeast at beach with pickleweed and existing failing bulkhead, 4/27/2023.



Site photo, looking south at beach with pickleweed and existing failing bulkhead, 5/27/2021.

15' 0 7.5' 15' 30'
HORIZONTAL SCALE

FINAL DESIGN

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Natural Systems Design + Coastal Geologic Services

REVISIONS

DRAWN BY: ADT
DESIGNED BY: JWJ
CHECKED BY: WC
DATE SURVEYED: 5/27/2021 & 2/26/2021
MAPPED BY: ADT & JWJ / HOLMAN

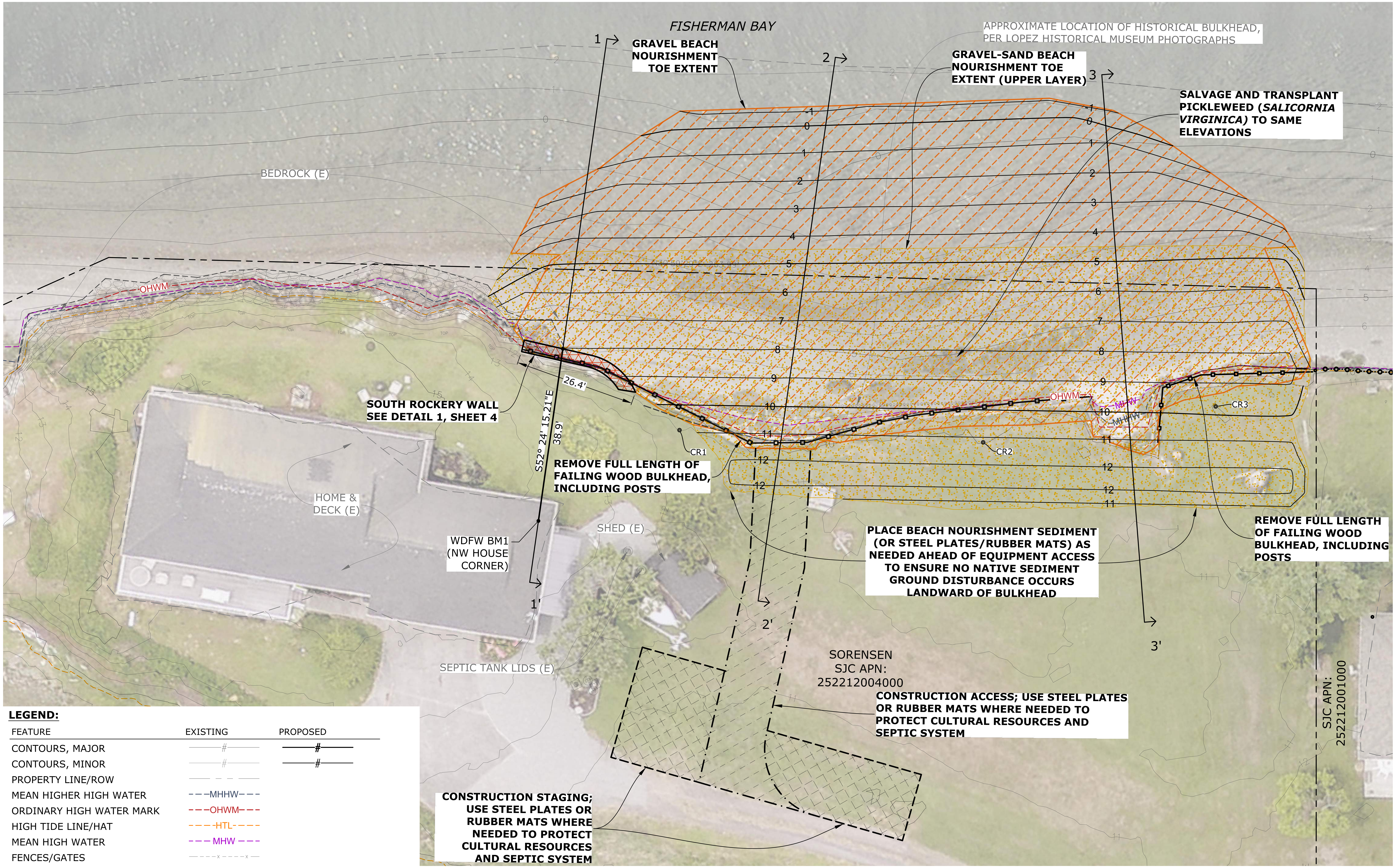
WEEKS POINT BEACH RESTORATION
EXISTING CONDITIONS
SITE PLAN
LYN AND KATHERINE SORENSEN

State of Washington Licensed Geologist — Engineering Geologist 353 — James W. Johannessen

MLLW
ELEV. MHW: 7.11 FT
ELEV. MHHW: 7.76 FT
ELEV. HTL: 9.7 FT

SCALE: AS SHOWN
DATE: 2/26/2026
SHEET: 2
OF: 5

P:\N_P\NWSF\2027 NWSF Shore Friendly 2023-2025\23-027-T4-1b Sorenson-Weeks-Pt-NWSF\CAD\21-016 Sorensen_FD_NDS+CGS.dwg



LEGEND:

FEATURE	EXISTING	PROPOSED
CONTOURS, MAJOR	#	#
CONTOURS, MINOR	#	#
PROPERTY LINE/ROW		
MEAN HIGHER HIGH WATER	MHHW	
ORDINARY HIGH WATER MARK	OHWM	
HIGH TIDE LINE/HAT	HTL	
MEAN HIGH WATER	MHW	
FENCES/GATES	x	
WOOD BULKHEAD		
BEDROCK		
ROCKERY WALLS		
GRAVEL BEACH NOURISHMENT		
GRAVEL-SAND BEACH NOURISHMENT		

HORIZONTAL SCALE: 10' 0 5' 10' 20'

FINAL DESIGN

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Lat: 48.5203 North Long: -122.9177 West
Application By: Lyn and Katherine Sorensen
Assessors Parcel Number: 252212004000

Natural Systems Design + Coastal Geologic Services

REVISIONS

DRAWN BY: ADT
DESIGNED BY: JWJ
CHECKED BY: WC
DATE SURVEYED: 5/27/2021 & 2/26/2021
MAPPED BY: ADT & JWJ / HOLMAN

WEEKS POINT BEACH RESTORATION

PROPOSED CONDITIONS

SITE PLAN

LYN AND KATHERINE SORENSEN

State of Washington Engineering Geologist 353 Licensed Geologist
James W. Johannessen

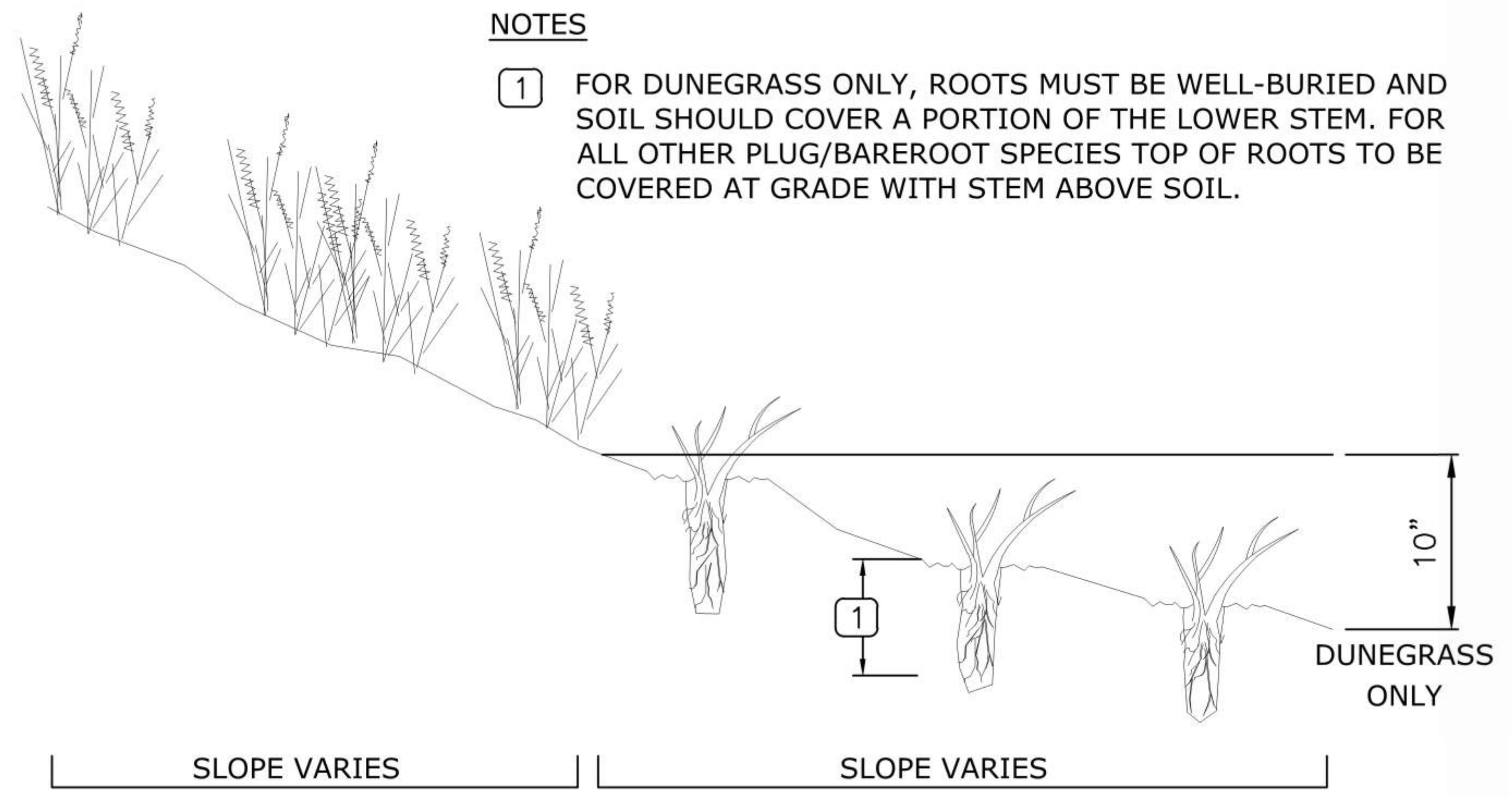
MLLW
ELEV. MHW: 7.11 FT
ELEV. MHHW: 7.76 FT
ELEV. HTL: 9.7 FT

SCALE: AS SHOWN
DATE: 2/26/2026
SHEET: 3
OF: 5

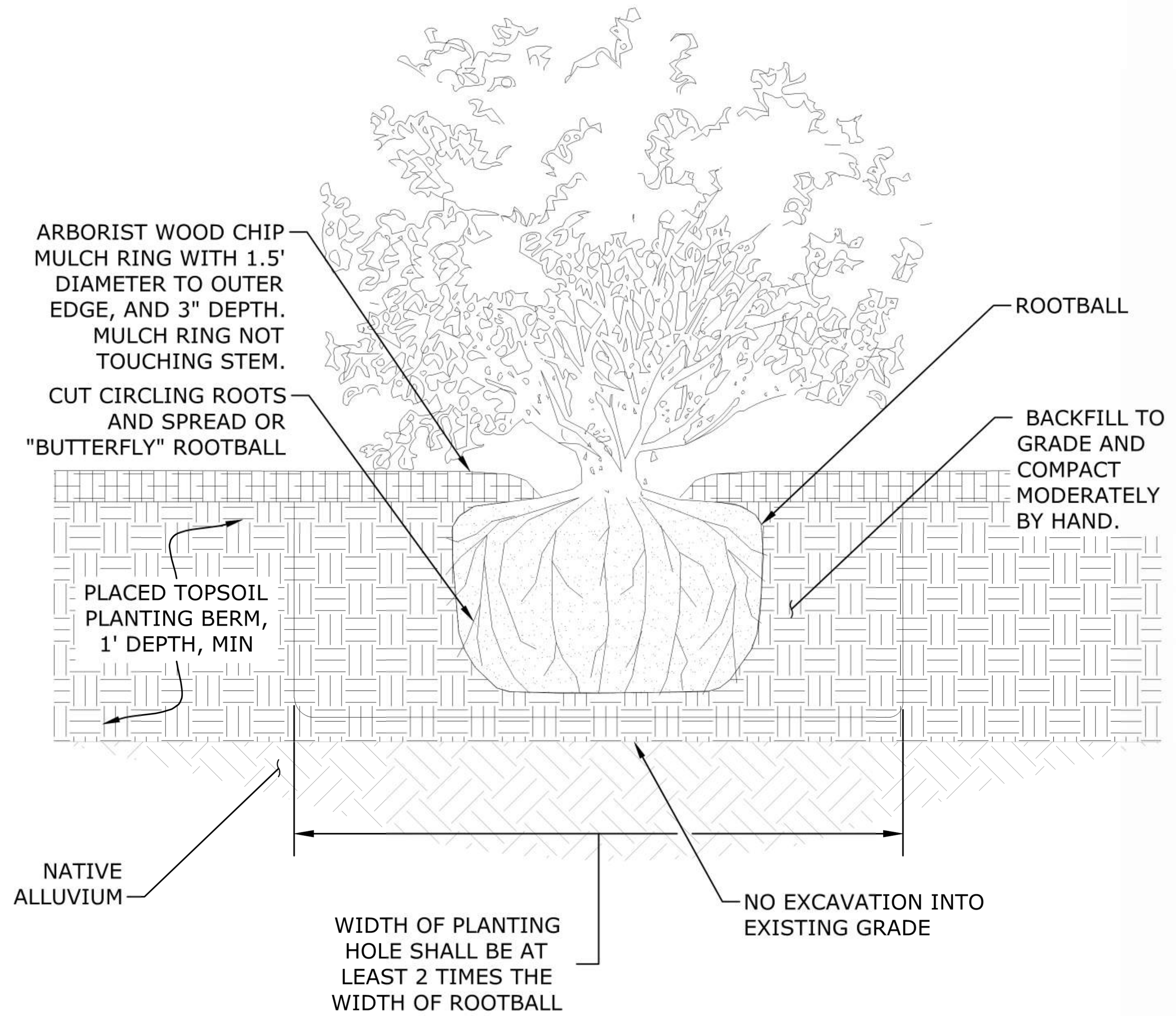
P:\N_P\NWSFI\23027 NWSF Shore Friendly 2023-2025\23-027-T4-1b Sorenson-Weeks-Pt-NWSFI\CAD\21-016 Sorensen_FD_NDS+CGS.dwg

NOTES

1. FOR DUNEGRASS ONLY, ROOTS MUST BE WELL-BURIED AND SOIL SHOULD COVER A PORTION OF THE LOWER STEM. FOR ALL OTHER PLUG/BAREROOT SPECIES TOP OF ROOTS TO BE COVERED AT GRADE WITH STEM ABOVE SOIL.



2 **DUNEGRASS AND HERBACEOUS PLUGS-BARE ROOT DETAIL**
NOT TO SCALE



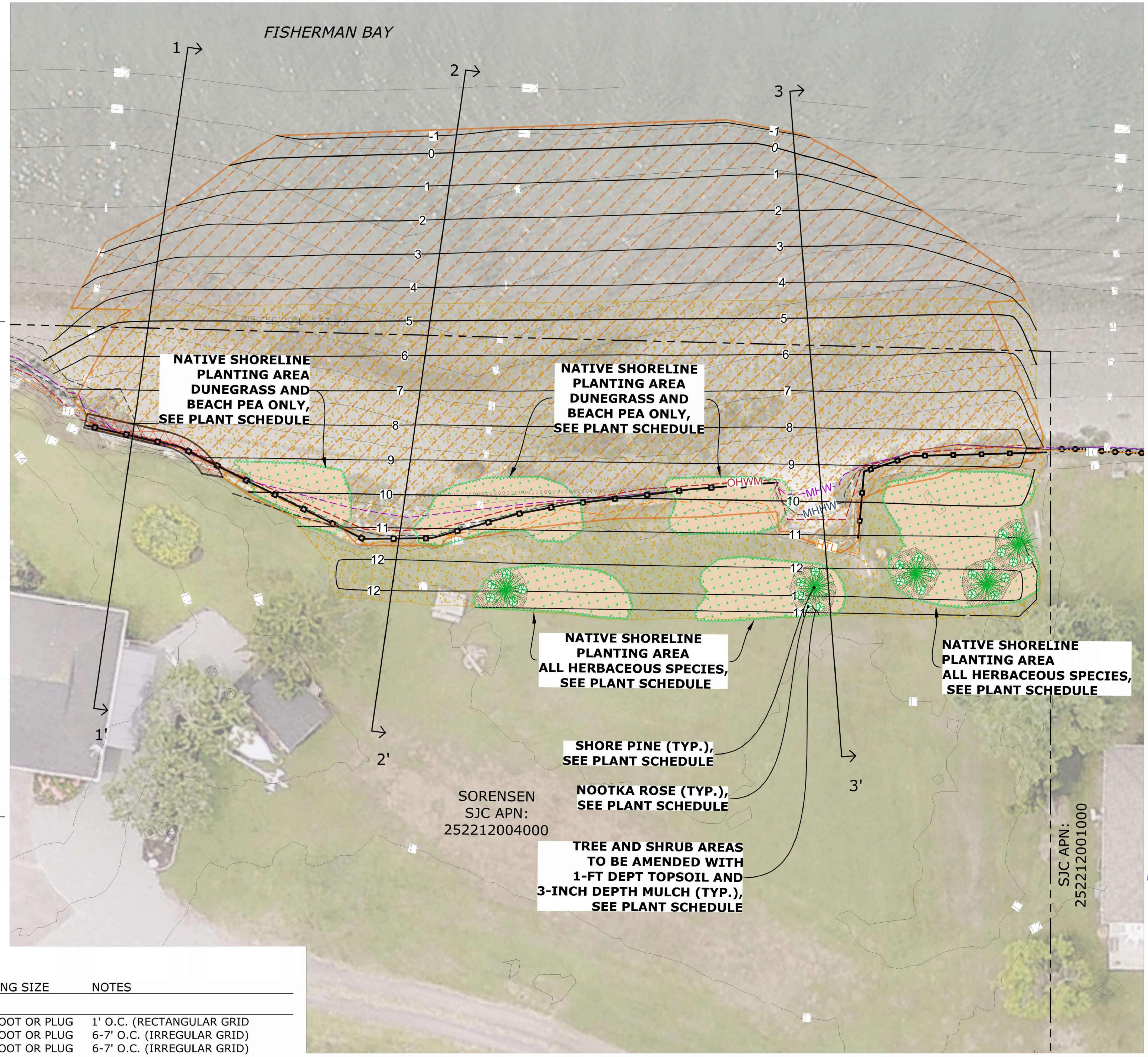
2 **CONTAINER PLANT (TREES AND SHRUBS) DETAIL**
NOT TO SCALE

PLANTING NOTES:

1. NO PLANTING HOLES TO PENETRATE SURFACE OF PRE-PROJECT EXISTING SOIL SURFACE LAYER TO PROTECT CULTURAL RESOURCES.
2. IN PLANTING AREAS WITH SHORE PINE AND NOOTKA ROSE A 12" LIFT OF TOPSOIL WILL BE ADDED TO SOIL SURFACE, TOPPED WITH 3" OF WOOD CHIP MULCH. ALL OTHER AREAS TO BE PLANTED WITH HERBACEOUS PLUGS WILL HAVE AT LEAST 6" DEPTH OF BEACH SAND TO PLANT INTO.
3. ANY AREAS TO BE PLANTED THAT DO NOT MEET MINIMUM SOIL DEPTHS REQUIRED FOR PLANTING TO AVOID CULTURAL RESOURCE DISTURBANCE WILL BE SUPPLEMENTED WITH ADDITIONAL SOIL OR SAND.

PLANT SCHEDULE

SYMBOL	COMMON NAME	BOTANIC NAME	QUANTITY	PLANTING SIZE	NOTES
NATIVE SHORELINE PLANTING AREA: 1,350 SF (150 SY)					
	DUNEGRASS	*Leymus mollis*	1350	BARE ROOT OR PLUG	1' O.C. (RECTANGULAR GRID
	BEACH PEA	*Lathyrus japonicus*	30	BARE ROOT OR PLUG	6-7' O.C. (IRREGULAR GRID)
	YARROW	*Achillea millefolium*	30	BARE ROOT OR PLUG	6-7' O.C. (IRREGULAR GRID)
	GUMWEED	*Grindelia integrifolia*	30	BARE ROOT OR PLUG	6-7' O.C. (IRREGULAR GRID)
	SHORE PINE	*Pinus contorta*	5	1 GALLON POT	PER PLAN
	NOOTKA ROSE	*Rosa ntkana*	25	1 GALLON POT	PER PLAN



10' 0 5' 10' 20'
HORIZONTAL SCALE

FINAL DESIGN

Proposed: Bulkhead Removal and Beach Restoration
USACE Ref. #: NWS-2023-27
In: Fisherman Bay, Lopez Island
County: San Juan State: WA
Lat: 48.5203 North Long: -122.9177 West
Application By: Lyn and Katherine Sorensen
Assessors Parcel Number: 252212004000

NSD CGS Natural Systems Design + Coastal Geologic Services

REVISIONS

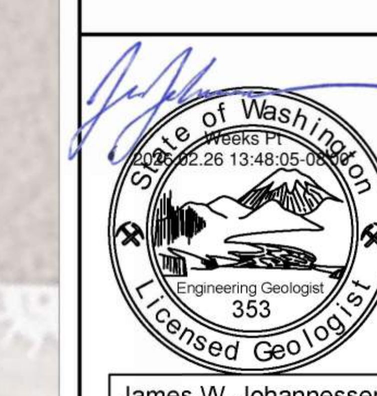
DRAWN BY: ADT
DESIGNED BY: JWJ
CHECKED BY: WC
DATE SURVEYED: 5/27/2021 & 2/26/2021
MAPPED BY: ADT & JWJ / HOLMAN

WEEKS POINT BEACH RESTORATION

PROPOSED CONDITIONS

PLANTING SITE PLAN - PLAN SCHEDULE - DETAILS

LYN AND KATHERINE SORENSEN



MLLW
ELEV. MHW: 7.11 FT
ELEV. MHHW: 7.76 FT
ELEV. HTL: 9.7 FT

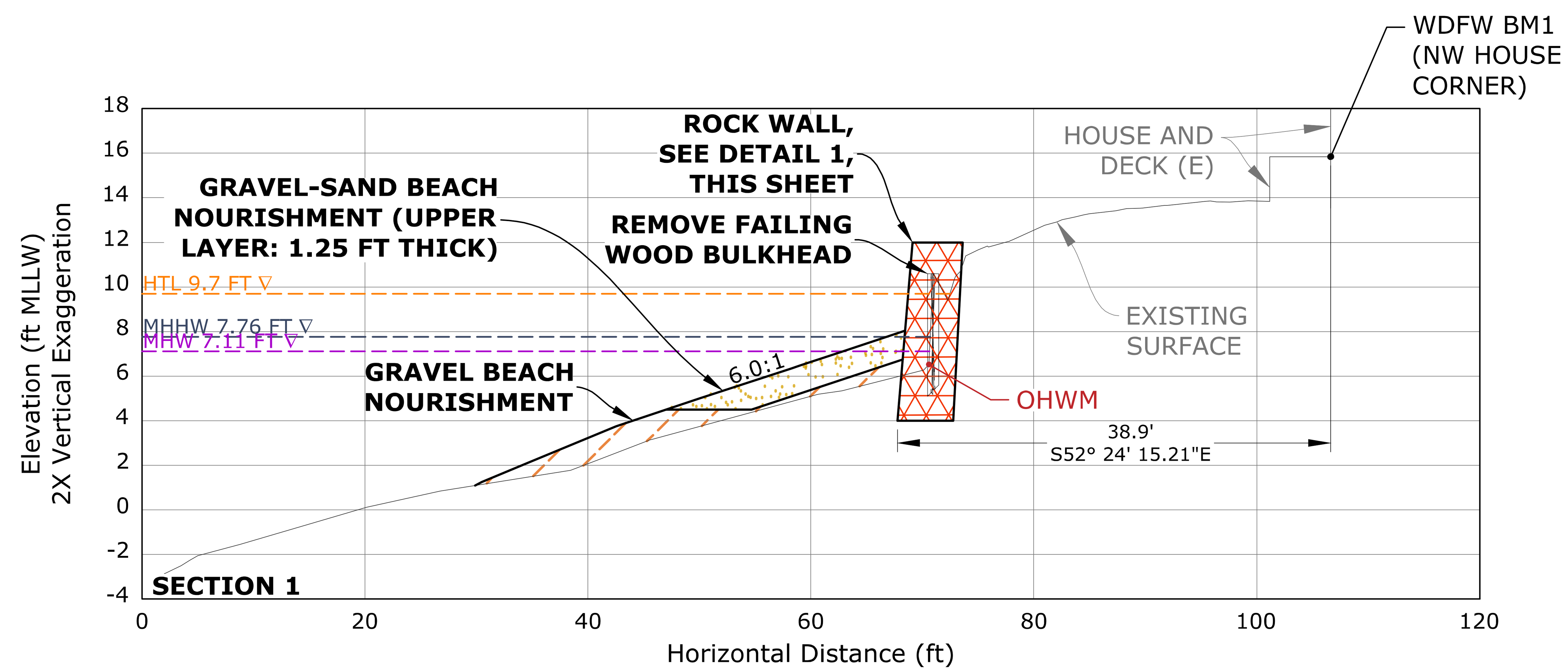
SCALE: AS SHOWN

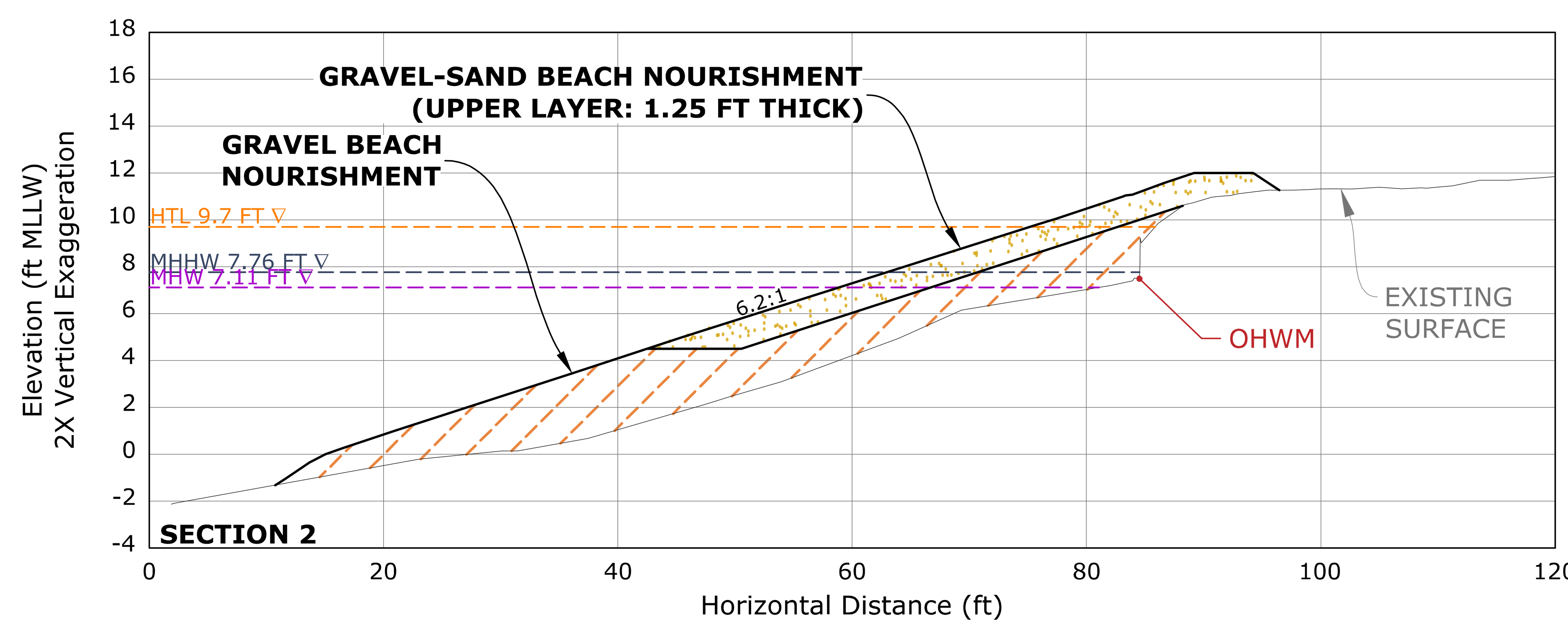
DATE: 2/26/2026

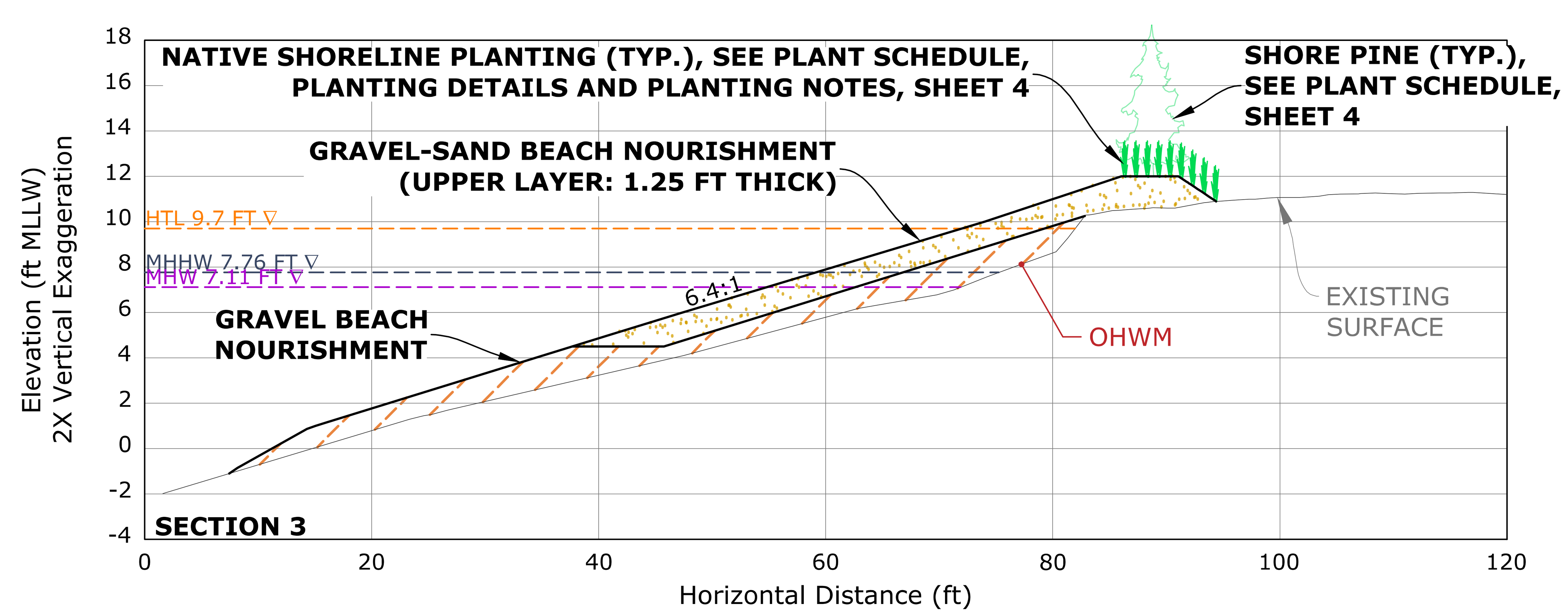
SHEET: 4

OF: 5

P:\N_P\NWSF\23027 NWSF Shore Friendly 2023-2025\23-027-T4-1b Sorenson-Weeks-Pt-NWSF\CAD\21-016 Sorensen_FD_NDS+CGS.dwg





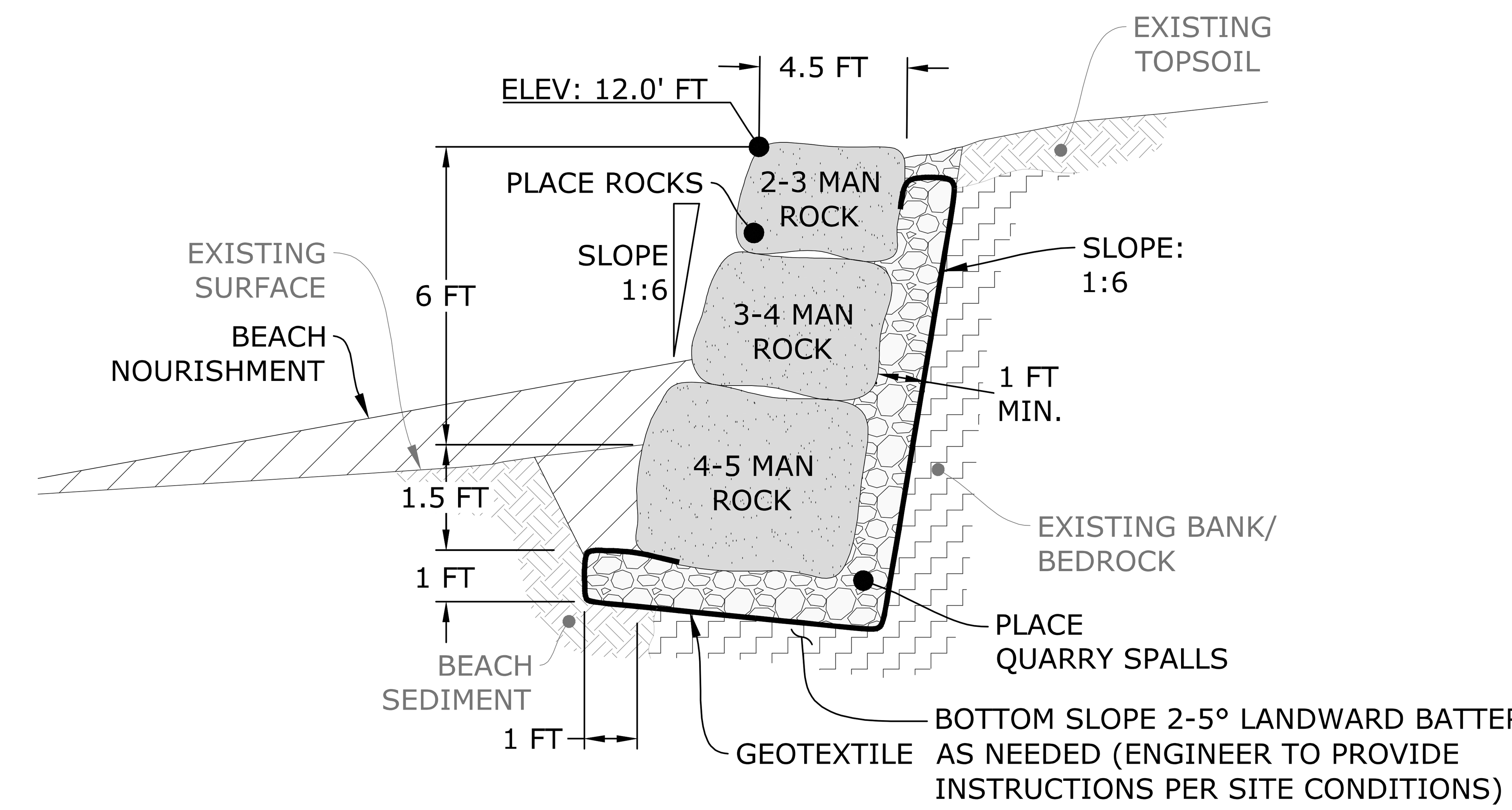


ROCKERY WALL NOTES:

1. FIT IN FIELD, ALL DIMENSIONS ARE APPROXIMATED DUE TO THE HIGHLY VARIABLE NATURE OF THE MATERIAL.
2. 6"x6" MAXIMUM VOIDS BETWEEN ARMOR STONES ON ROCKERY FACE.
3. ALL ADJACENT STONES 3-POINT CONTACT.
4. ALL ROCKS TO HAVE A LANDWARD BATTER.
5. 4-5 MAN ROCKS SHALL BE USED AT THE TOE.
6. 3-4 MAN ROCKS SHALL BE SELECTED AND STACKED IN DECREASING IN SIZE FROM BOTTOM TO TOP.

ROCK SIZING: (AS PER WSDOT 9.13-7(1), GENERAL SIZES LISTED HERE FOR REFERENCE)

4-5 MAN: 3.5-4.0 FT WIDE, 3.5 FT HIGH
3-4 MAN: 2.5-3.5 FT WIDE, 2.5-3.0 FT HIGH
2-3 MAN: 2.0-2.5 FT WIDE, 2.0 FT HIGH



1 **SOUTH ROCKERY WALL DETAIL**
NOT TO SCALE

FINAL DESIGN

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USACE Ref. #: NWS-2023-27
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County: San Juan State: WA
Lat: 48.5203 North Long: -122.9177 West
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Natural Systems Design + Coastal Geologic Services

REVISIONS

DRAWN BY: ADT
DESIGNED BY: JWJ
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DATE SURVEYED: 5/27/2021 & 2/26/2021
MAPPED BY: ADT & JWJ / HOLMAN

WEEKS POINT BEACH RESTORATION
PROPOSED CONDITIONS
CROSS SECTIONS - DETAILS
LYN AND KATHERINE SORENSEN

State of Washington Licensed Geologist — Engineering Geologist 353 — James W. Johannessen

WEI CHEN — STATE OF WASHINGTON — 43641 — REGISTERED PROFESSIONAL ENGINEER

MLLW
ELEV. MHW: 7.11 FT
ELEV. MHHW: 7.76 FT
ELEV. HTL: 9.7 FT

SCALE: AS SHOWN
DATE: 2/26/2026
SHEET: 5
OF: 5

P:\N_P\NWSF\23027 NWSF Shore Friendly 2023-2025\23-027-T4-1b Sorenson-Weeks-Pt-NWSF\CAD\21-016 Sorensen_FD_NDS+CGS.dwg

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

Regulatory Branch September 22, 2025

Northwest Straits Marine Conservation Foundation
Ms. Lisa Kaufman
1155 North State Street #400
Bellingham, Washington 98225

Reference: NWS-2023-27
Northwest Straits Marine Conservation Foundation (Shoreline Restoration and Bulkhead Replacement)

Dear Ms. Kaufman:

We have reviewed your application to remove an existing 162 linear-foot timber bulkhead, to place up to 16 cubic yards of quarry spalls and up to 27 cubic yards of angular armor rock to install a 26.5 linear-foot (LF) rock wall, to place up to 912 cubic yards of gravel and sand material as beach nourishment, and to install up to 1,602 square feet of marine riparian plantings on the beach berm within Fisherman Bay on Lopez Island, in San Juan County, Washington. Based on the information you provided to us, Nationwide Permits (NWPs) 13, *Bank Stabilization*, and 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities (*Federal Register December 27, 2021 Vol. 86, No. 245), authorizes your proposal as depicted on the enclosed drawings dated November 10, 2022.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 13,* and *NWP 27, Terms and Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act (ESA) and the Magnuson Stevens Fishery Conservation and Management Act (MSA), you must implement and abide by the applicable terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" and the applicable Essential Fish Habitat Conservation Recommendations as set forth in the Salish Sea Nearshore Programmatic (SSNP) Biological Opinion (BO) (National Marine Fisheries Service (NMFS) Reference Number WCRO-2019-04086) dated June 29, 2022 and U.S. Fish and Wildlife Service (USFWS) Reference Number FWS/R1/2022-

0048454 dated July 29, 2022). The specific General Construction Measures, Project Design Criteria, Essential Fish Habitat Conservation Measures, and monitoring and/or reporting requirements applicable to this permit are identified in the enclosed Notification Summary Sheet dated July 28, 2025 (NMFS Reference Number WCRO-2019-04086-9687; USFWS Reference Number 2022-0048454-S7-333). The BO is available on the U.S. Army Corps of Engineers (Corps) website (https://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/Endangered-Species/). You must provide the Corps and NMFS the information requested in the enclosed Notification Summary Sheet. All information must prominently display the reference number NWS-2023-27. Failure to comply with these requirements constitutes non-compliance with the ESA and your Corps permit. The NMFS and USFWS is the appropriate authority to determine compliance with the terms and conditions of their BO and with the ESA. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and/or the MSA.

b. In order to meet the requirements of the Endangered Species Act you may conduct the authorized in-water activities (e.g., pile driving) during the period from September 1 through March 1 in any year this permit is valid. You shall not conduct any in-water work authorized by this permit during the period from March 2 through August 31 in any year this permit is valid.

c. You shall implement and abide by the plan titled "Archaeological Monitoring and Inadvertent Discovery Plan for the Weeks Point Shoreline Restoration Project, 312 Weeks Point Way, Lopez Island" dated August 13, 2025. A professional archaeologist shall be on-site to monitor for the presence of archaeological resources for the monitoring areas identified in the plan.

d. You shall prepare and submit a summary report of the findings of the archaeological monitoring (positive or negative) to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch within 60 days after monitoring has been completed. The report must prominently display the reference number NWS-2023-27.

e. If human remains, historic resources, or archaeological resources are encountered during construction, all ground disturbing activities shall cease in the immediate area and you shall immediately (within one business day of discovery) notify the U.S. Army Corps of Engineers (Corps), Seattle District, Regulatory Branch. You shall perform any work required by the Corps in accordance with Section 106 of the National Historic Preservation Act and Corps regulations.

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

As part of our permit application review process, we notified Native American tribes that have an interest in this area. The Swinomish Tribe requested to be notified of the project start date. Based on our coordination, you agreed to notify the Tribe of the project’s start. Please contact Marcia Julius at THPO@swinomish.nsn.us prior to commencing construction.

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 decision for this NWP. No further coordination with Ecology for WQC and CZM is required.

Fisherman Bay is a water of the U.S. The Section 10 jurisdictional boundaries are shown on the enclosed permit drawings. If you believe these boundaries are inaccurate, you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

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

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. All compliance reports should be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch electronically at nws.compliance@usace.army.mil. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. Referenced documents and information about our program are available on our website at www.nws.usace.army.mil, select “Regulatory Permit Information”.

A copy of this letter with enclosures will be furnished to Ms. Marcia Fischer with NSD + CGS at marcia@naturaldes.com. If you have any questions, please contact me at jaime.liljegren@usace.army.mil or (206) 402-9276.

Sincerely,

Jaime Liljegren, Project Manager
Regulatory Branch

Enclosures

cc:
Ecology (ecyrefedpermits@ecy.wa.gov)
USFWS (SSNP_WA@fws.gov)

US Army Corps of Engineers
Seattle District

NATIONWIDE PERMIT 13
Terms and Conditions

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

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

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

A. DESCRIPTION OF AUTHORIZED ACTIVITIES

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

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

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

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

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

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

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

Note: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

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

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

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

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

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

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

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

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

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by 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 Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

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

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

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency

with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

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

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

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

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

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

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

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

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

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

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

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

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

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

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

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

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:
(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under

NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1⁄3-acre.
(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

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

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

____
(Transferee)

____
(Date)

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

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

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

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

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

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See

paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

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

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

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

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

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

(2) Location of the proposed activity;

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

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

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

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

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

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

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

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

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

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

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

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

RGC 2, Aquatic Resources Requiring Special Protection
A PCN is required for activities resulting in a loss of waters of the United States in wetlands in dunal systems along the Washington coast, mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.

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

RGC 4, Commencement Bay
No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

RGC 5, Bank Stabilization
All projects including new or maintenance bank stabilization activities in waters of the United States where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

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

a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.

b. The type and length of existing bank stabilization within 300 feet of the proposed project.

c. A description of current conditions and expected post-project conditions in the waterbody.

d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

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

RGC 6, Crossings of Waters of the United States
Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the U.S. Army Corps of Engineers (see NWP general condition 32).

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

a. The existence of extraordinary site conditions.

b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

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

RGC 7, Stream Loss
A PCN is required for all activities that result in the loss of any linear feet of streams.

RGC 8, Construction Boundaries
Permittees must clearly mark all construction area boundaries within waters of the United States before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

RGC 9, ESA Reporting to NMFS
For any nationwide permit that may affect threatened or endangered species:

Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries, National Marine Fisheries Service (NMFS) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NMFS, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by the NMFS to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

RGC 10, Limitations on New Bank Stabilization Within the Salish Sea
The length of new bank stabilization within waters of the U.S., including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length, cannot exceed 50 linear feet within the Salish Sea under any NWP.

RGC 11, Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs)
No NWP activity can:

a. cause more than minimal adverse effects to forage fish spawning beaches or drift cells; or

b. prevent the functioning of feeder bluffs, including more than minimal adverse effects to sediment recruitment, transport, or deposition.

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

RGC 12, Bank Stabilization Design Considerations
Bank stabilization activities, including maintenance activities, shall utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

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

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

RGC 14, Maintenance of Existing Bank Stabilization Structures and Fills
(Applicable to NWP 3, Maintenance Activities) Maintenance of existing bank stabilization structures that expand the existing structure's footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers are not eligible for NWP 3.

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

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

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

<u>A. State General Conditions for all Nationwide Permits</u>

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

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

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

1. **In-water construction activities**. Ecology WQC review is required for projects or activities authorized under NWPs where the project proponent has indicated on the Joint Aquatic Resource Permit Application (JARPA) question 9e that the project or activity will not meet State water quality standards, or has provided information indicating that the project or activity will cause, or may be likely to cause or contributeto an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC).

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

2. **Projects or Activities Discharging to Impaired Waters**. Ecology WQC review is required for projects or activities that will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listedparameter to determine if the project meets this programmatic WQC or will require individual WQC.

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

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

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

a. Activities in or affecting the following aquatic resources:
    i. Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):
        - Estuarine wetlands.
        - Wetlands of High Conservation Value.
        - Bogs.
        - Old-growth forested wetlands and mature forested wetlands.
        - Wetlands in coastal lagoons.
        - Wetlands in dunal systems along the Washington coast.
        - Vernal pools.
        - Alkali wetlands.

    ii. Fens, aspen-dominated wetlands, camas prairie wetlands.

    iii. Category I wetlands.

    iv. Category II wetlands with a habitat score ≥ 8 points.

b. Activities in or resulting in a loss of eelgrass (Zostera marina) beds.

This state general condition does not apply to the following NWPs:
NWP 20 – Response Operations for Oil and Hazardous Substances
NWP 32 – Completed Enforcement Actions
NWP 48 – Commercial Shellfish Mariculture Activities

4. **Loss of More than 300 Linear Feet of Streambed.** For any project that results in the lossof more than 300 linear feet of streambed Ecology WQC review is required to determineif the project meets this programmatic WQC or will require individual WQC.

5. **Temporary Fills.** For any project or activity with temporary fill in wetlands or other waters for more than six months Ecology WQC review is required to determine if theproject meets this programmatic WQC or will require individual WQC.

6. **Mitigation.** Project proponents are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resourceswherever practicable. For projects requiring Ecology WQC review or an individual WQC with unavoidable impacts to aquatics resources, a mitigation plan must be provided.

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

        i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.

        ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).

iii. The rationale for the mitigation site that was selected.

iv. The goals and objectives of the compensatory mitigation project.

v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.

vi. How it will be maintained and monitored to assess progress toward goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.

vii. How the compensatory mitigation site will be legally protected for the long term.

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

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

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

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

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

b. Following construction, prevention or treatment of on-going stormwater runofffrom impervious surfaces shall be provided.

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

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

a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project discharge(s) would cause, best management practices (BMPs), and proposed means to monitor the discharge(s).

b. List of all federal, state or local agency authorizations required to be used for anypart of the proposed project or any related activity.

c. Drawings indicating the OHWM, delineation of special aquatic sites, and other waters of the state. Wetland delineations must be prepared in accordance with thecurrent method required by the Corps and shall include Ecology's Wetland Rating form. Wetland Rating forms are subject to review and verification by Ecology staff.

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

d. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See stategeneral condition 5.

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

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

Ecology Section 401 Water Quality Certification – Granted with conditions. Ecology individual WQC is required for all projects and activities authorized under this NWP if:

1. The project or activity includes new, complete replacement, or expansion of existing,bank stabilization measures in marine and estuarine waters of the Salish Sea; or

2. The project or activity has a length greater than 500 feet (individually or cumulatively) along the bank; or

3. The project or activity has not been designed and stamped by a Professional Engineer or Engineering Geologist; or

4. The project or activity exceeds an average of one cubic yard per running foot belowthe OHWM or High Tide Line.

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

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

General Conditions:

EPA General Condition 1 – Aquatic Resources of Special Concern

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

EPA General Condition 2 – Soil Erosion and Sediment Controls

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

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

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

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

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

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

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

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

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

Projects or activities are not authorized under the NWPs if the project will involve point source discharges into an active channel (e.g., flowing or open waters) of a water of the U.S. listed as impaired under CWA Section 303(d) and/or if the waterbody has an approved Total Maximum Daily

Load (TMDL) and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed or has an approved TMDL. The current lists of impaired waters of the U.S. under CWA Section 303(d) and waters of the U.S. for which a TMDL has been approved are available on EPA Region 10's web site at: https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10.

EPA General Condition 5 – Notice to EPA

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

EPA General Condition 6 – Unsuitable Materials

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

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

EPA NWP Specific Conditions:

NWP 13 is conditionally certified, subject to the general conditions listed above, except that an individual project-specific WQC is required when:

1. The entire scope of the project is greater than 300 linear feet; or
2. The project includes hard armoring approaches; or
3. The project is in marine waters and has not completed the assessments set forth in the Marine Shoreline Design Guidelines (for projects proposed on tribal lands or lands of exclusive federal jurisdiction in Washington State); or
4. The project involves permanent fill in wetlands that are waters of the U.S.

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

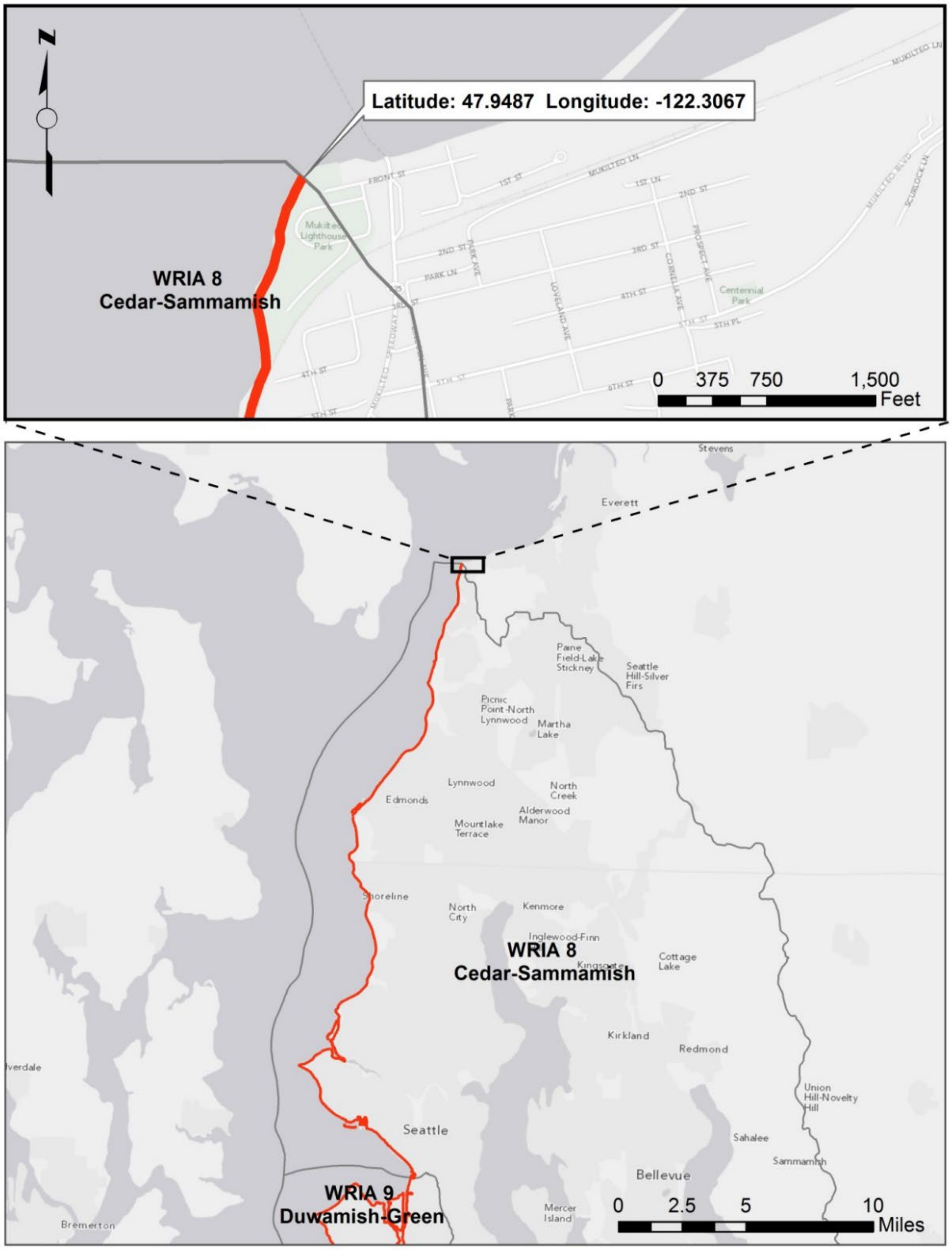
WQC was issued by the Swinomish Indian Tribal Community. WQC was waived by the Confederated Tribes of the Chehalis Reservation and Colville Indian Reservation, Kalispel Tribe of Indians, Port Gamble S'Klallam Tribe, Quinault Indian Nation, and the Spokane Tribe of Indians. WQC was denied by the Lummi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

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

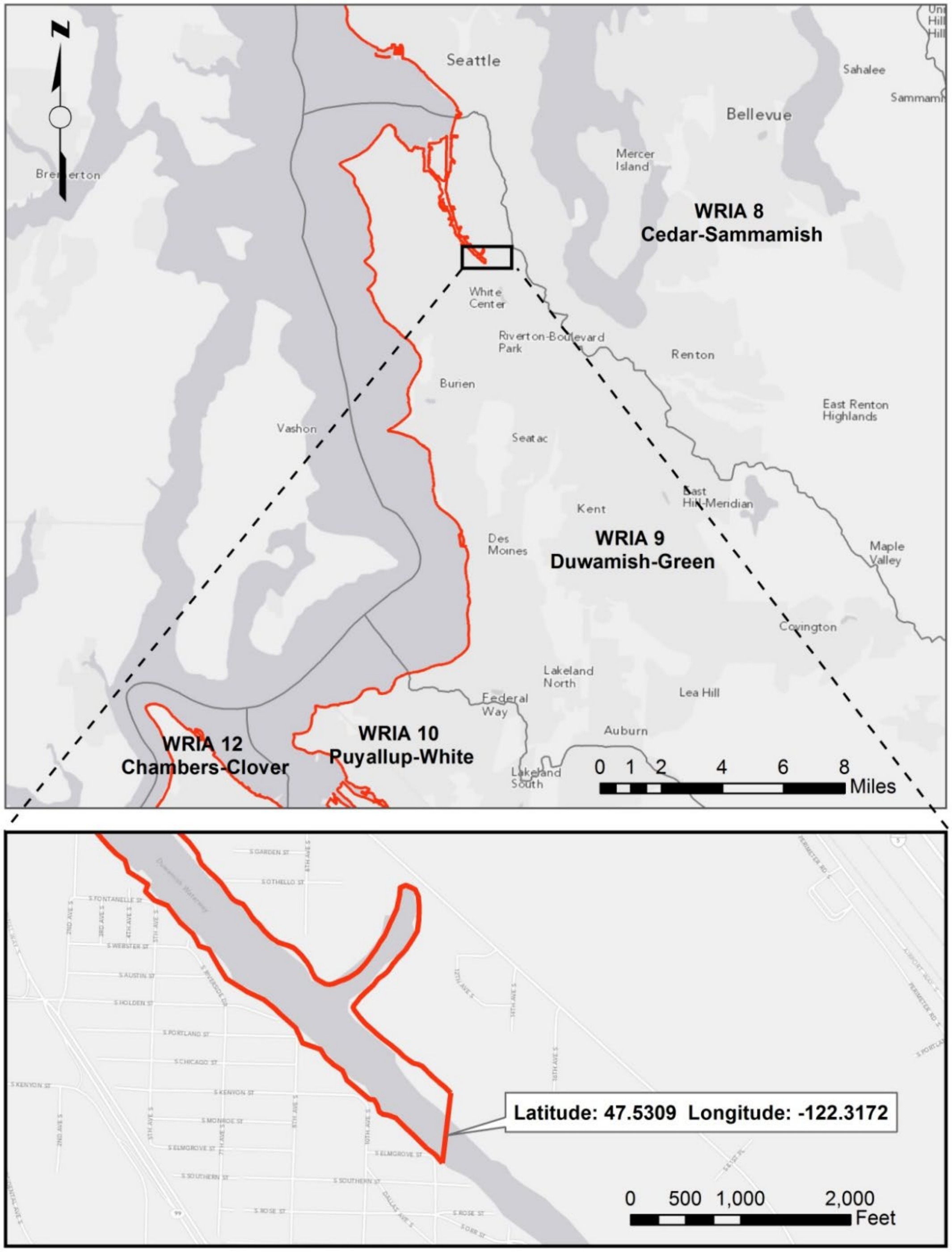
Ecology’s determination is that they concur with conditions that this NWP is consistent with CZMA.

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

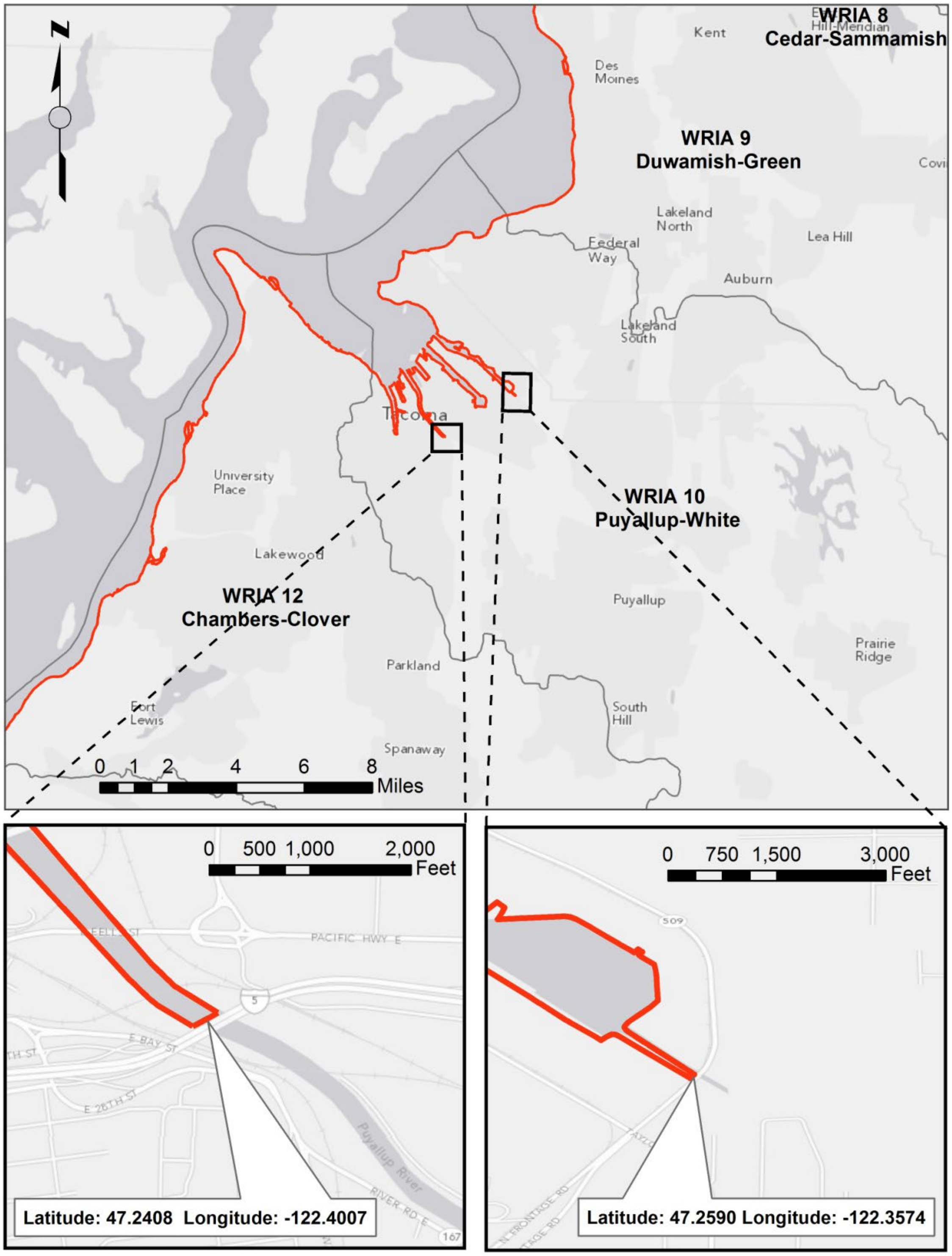
Seattle District Regional General Conditions - Figures
Figure 1: RGC 3 - WRIAs 8, 9, 10, 11, and 12
a. WRIA 8



b. WRIA 9

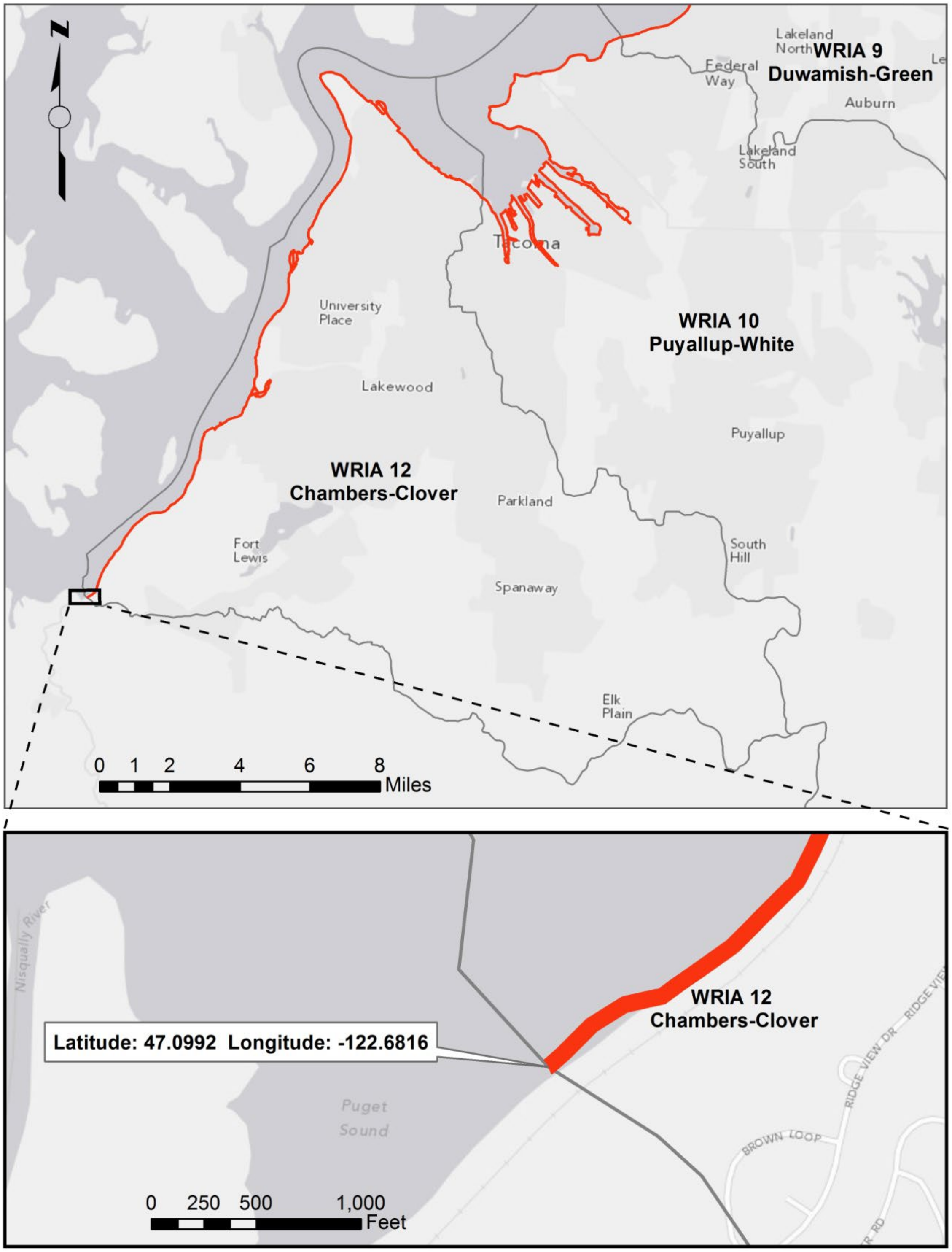

Seattle
Bellevue
Bremerton
Mercer Island
Sahalee
WRIA 8
Cedar-Sammamish
White Center
Riverton-Boulevard Park
Renton
Burien
Vashon
Seatac
East Renton Highlands
East Hill-Meridian
Kent
Des Moines
WRIA 9
Duwamish-Green
Maple Valley
Covington
Lakeland North
Lea Hill
Federal Way
Auburn
WRIA 12
Chambers-Clover
WRIA 10
Puyallup-White
Lakeland South
0 1 2 4 6 8
Miles
Latitude: 47.5309 Longitude: -122.3172
0 500 1,000 2,000
Feet

c. WRIA 10



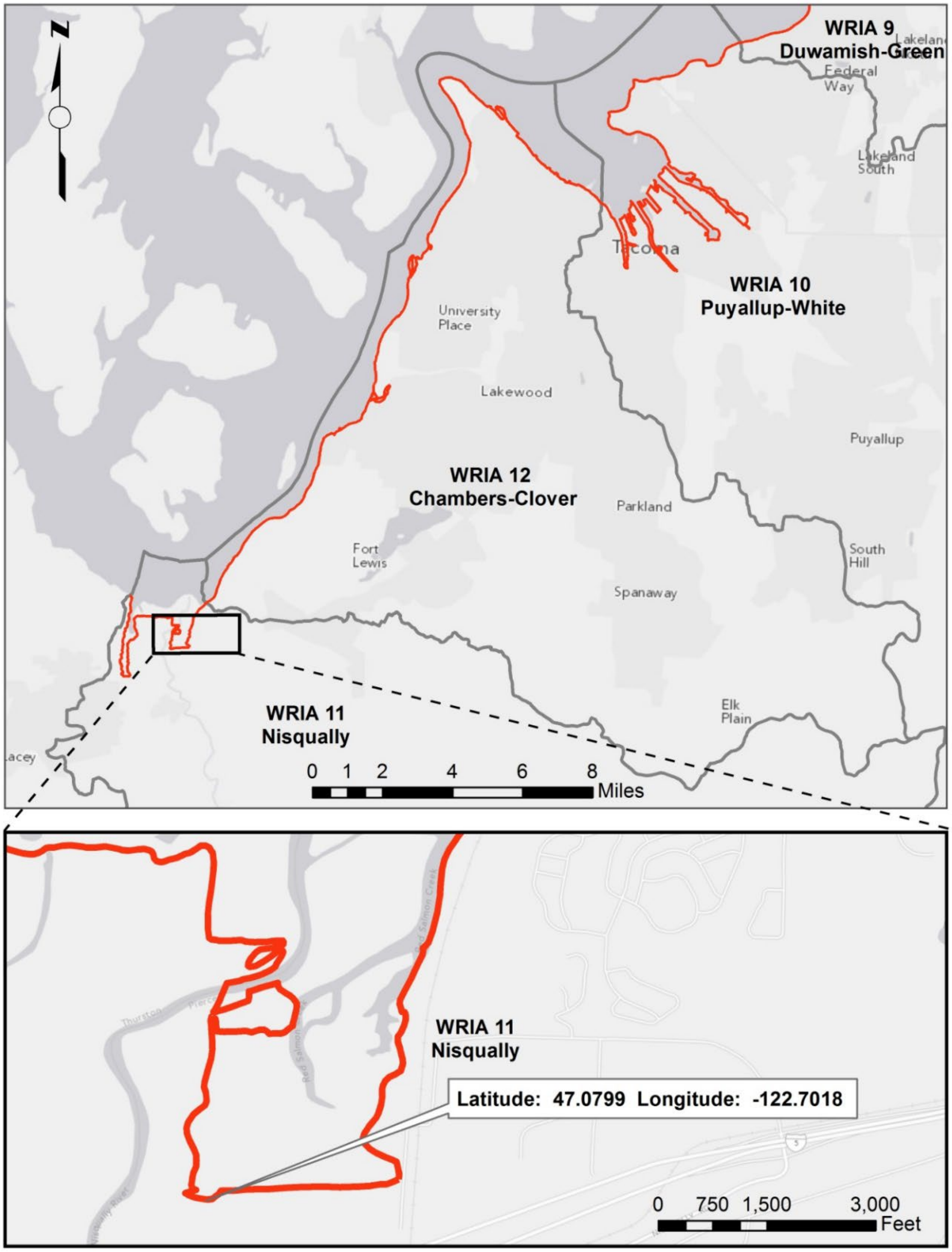
WRIA 8
Cedar-Sammamish
Kent
Des Moines
WRIA 9
Duwamish-Green
Lakeland North
Federal Way
Lea Hill
Auburn
Lakeland South
Tacoma
University Place
WRIA 10
Puyallup-White
Lakewood
WRIA 12
Chambers-Clover
Puyallup
Prairie Ridge
Parkland
Fort Lewis
South Hill
Spanaway
0 1 2 4 6 8
Miles
0 500 1,000 2,000
Feet
PACIFIC HWY E
E BAY ST
E 26TH ST
Puyallup River
RIVER RD E
Latitude: 47.2408 Longitude: -122.4007
0 750 1,500 3,000
Feet
Latitude: 47.2590 Longitude: -122.3574

d. WRIA 12



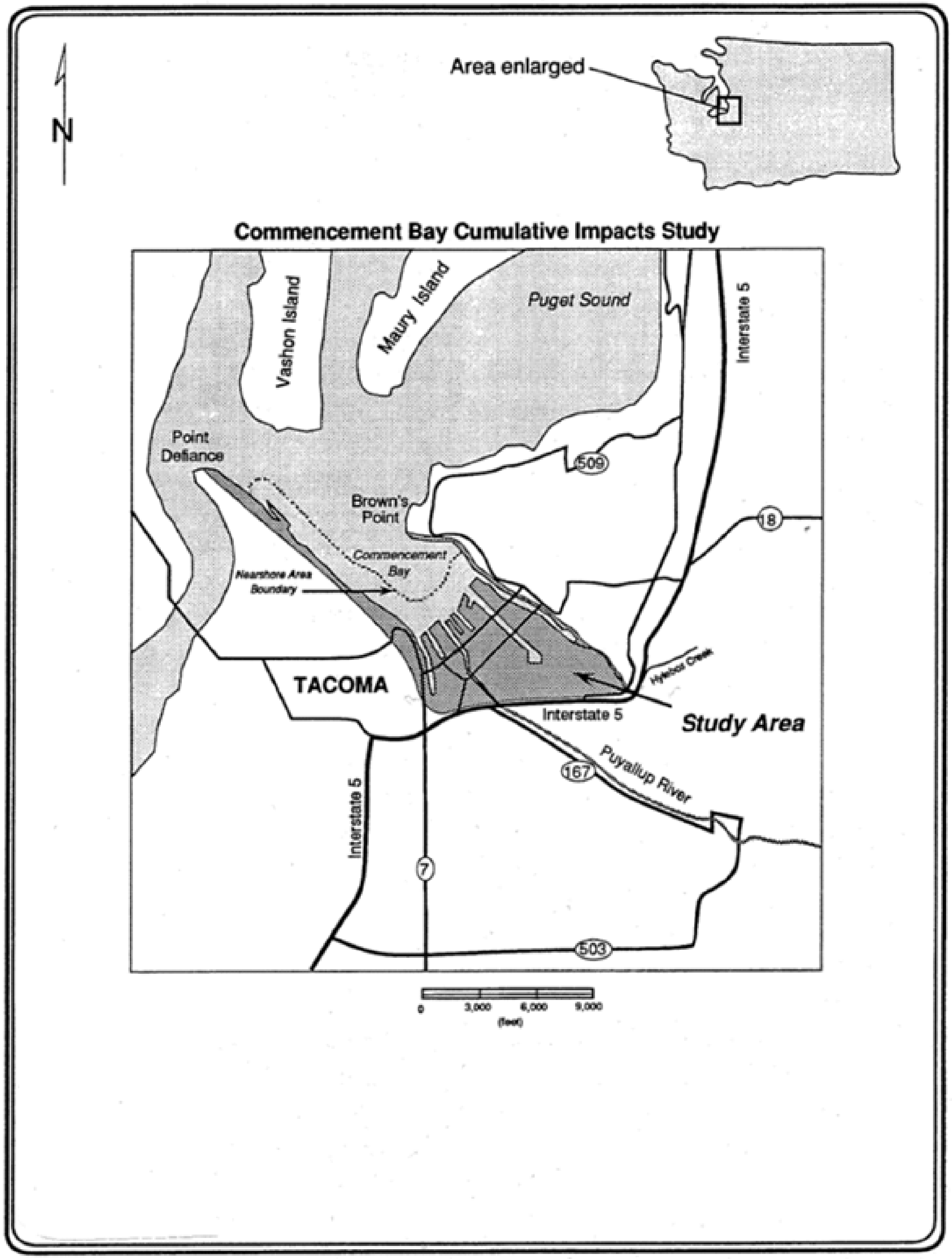
N
Lakeland North
WRIA 9
Duwamish-Green
Federal Way
Auburn
Lakeland South
Tacoma
University Place
WRIA 10
Puyallup-White
Lakewood
Puyallup
WRIA 12
Chambers-Clover
Parkland
Fort Lewis
South Hill
Spanaway
Elk Plain
0 1 2 4 6 8 Miles
Nisqually River
WRIA 12
Chambers-Clover
Latitude: 47.0992 Longitude: -122.6816
Puget Sound
BROWN LOOP
RIDGE VIEW DR
0 250 500 1,000 Feet

e. WRIA 11



WRIA 9
Duwamish-Green
Federal Way
Lakeland South
Tacoma
WRIA 10
Puyallup-White
University Place
Lakewood
Puyallup
WRIA 12
Chambers-Clover
Parkland
Fort Lewis
South Hill
Spanaway
WRIA 11
Nisqually
Elk Plain
Lacey
0 1 2 4 6 8
Miles
WRIA 11
Nisqually
Latitude: 47.0799 Longitude: -122.7018
0 750 1,500 3,000
Feet

Figure 2. RGC 4 - Commencement Bay Study Area



US Army Corps
of Engineers ®
Seattle District

NATIONWIDE PERMIT 27
Terms and Conditions

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

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

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

A. DESCRIPTION OF AUTHORIZED ACTIVITIES

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

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

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitats; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; coral restoration or relocation activities; shellfish seeding; activities needed to reestablish vegetation, including plowing or 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 of dredged or fill material occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

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

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

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

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

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

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

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

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

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

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

1. <u>Navigation</u>. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

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

2. <u>Aquatic Life Movements</u>. 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 Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

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

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

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

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

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

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

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

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

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

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal,

and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

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

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

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

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

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

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

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

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

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:
(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1⁄3-acre.
(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

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

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

____
(Transferee)

____
(Date)

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

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

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

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

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

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

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

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

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

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

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

(2) Location of the proposed activity;

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

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or

other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

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

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

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

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

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

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

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

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

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

RGC 1, Project Drawings
Drawings must be submitted with a pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the United States will be affected. Drawings

must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

RGC 2, Aquatic Resources Requiring Special Protection
A PCN is required for activities resulting in a loss of waters of the United States in wetlands in dunal systems along the Washington coast, mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.

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

RGC 4, Commencement Bay
No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

RGC 5, Bank Stabilization
All projects including new or maintenance bank stabilization activities in waters of the United States where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

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

a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.

b. The type and length of existing bank stabilization within 300 feet of the proposed project.

c. A description of current conditions and expected post-project conditions in the waterbody.

d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

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

RGC 6, Crossings of Waters of the United States
Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the U.S. Army Corps of Engineers (see NWP general condition 32).

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

a. The existence of extraordinary site conditions.

b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

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

RGC 7, Stream Loss
A PCN is required for all activities that result in the loss of any linear feet of streams.

RGC 8, Construction Boundaries
Permittees must clearly mark all construction area boundaries within waters of the United States before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

RGC 9, ESA Reporting to NMFS
For any nationwide permit that may affect threatened or endangered species:

Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries, National Marine Fisheries Service (NMFS) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NMFS, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by the NMFS to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

RGC 10, Limitations on New Bank Stabilization Within the Salish Sea
The length of new bank stabilization within waters of the U.S., including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length, cannot exceed 50 linear feet within the Salish Sea under any NWP.

RGC 11, Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs)
No NWP activity can:

a. cause more than minimal adverse effects to forage fish spawning beaches or drift cells; or

b. prevent the functioning of feeder bluffs, including more than minimal adverse effects to sediment recruitment, transport, or deposition.

This regional general condition applies to all NWP activities within the Salish Sea. Information regarding the location of forage fish spawning beaches is available on the Washington Department of Fish and Wildlife's (WDFW) Forage Fish Spawning Map at https://wdfw.maps.arcgis.com/home/webmap/viewer.html?webmap=19b8f74e2d41470cbd80b1 af8dedd6b3. Information regarding the location and movement of drift cells, shoreline stability, and coastal landforms, to include feeder bluffs, is available at the Washington State Department of Ecology's Coastal Atlas Map website: https://apps.ecology.wa.gov/coastalatlasmap. These maps are resources that can be used to help identify the location of forage fish spawning beaches, drift cells, and feeder bluffs; they are not a substitute for site-specific data. Information about forage fish, their spawning habitats, and spawning behavior are available through the WDFW. Additional information about the importance of these species as prey species for Endangered Species Act listed salmonids can be found on the National Marine Fisheries Service website.

RGC 12, Bank Stabilization Design Considerations
Bank stabilization activities, including maintenance activities, shall utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

RGC 13, PCNs for Activities in Areas Where There May Be Treaty-Reserved Tribal Rights
To ensure compliance with General Condition 17, Tribal Rights, a pre-construction notification (PCN) is required for all NWPs associated with structures or fills in areas where Tribes have retained via treaty the right to fish in their usual and accustomed grounds and stations.

RGC 14, Maintenance of Existing Bank Stabilization Structures and Fills
(Applicable to NWP 3, Maintenance Activities) Maintenance of existing bank stabilization structures that expand the existing structure's footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers are not eligible for NWP 3.

D. SEATTLE DISTRICT REGIONAL SPECIFIC CONDITIONS FOR THIS NWP:

NWP 27 Specific Regional Conditions:
1. A pre-construction notification (PCN) must be submitted to the district engineer (see NWP general condition 32) for any proposed project located in a Department of the Army permit compensatory mitigation site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund) site, Resource Conservation and Recovery Act hazardous waste clean-up site, Washington State Department of Ecology compensatory mitigation site, or Washington State Model Toxics Control Act clean-up site.

2. For projects subject to PCN, if there is a loss of waters of the U.S. the project proponent must explain in the PCN why the loss is necessary. The project proponent must also demonstrate how despite the loss of waters the overall project would result in a net increase in aquatic/ecological functions .

3. The PCN must contain a description of pre-project site conditions including presence of wetlands (including photographs) and aquatic/ecological functions the site provides within the watershed.

4. For projects that would result in a loss of waters of the U.S., the project proponent must include maintenance and monitoring plans with the PCN.

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

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

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

A. State General Conditions for all Nationwide Permits

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

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

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

1. **In-water construction activities**. Ecology WQC review is required for projects or activities authorized under NWPs where the project proponent has indicated on the Joint Aquatic Resource Permit Application (JARPA) question 9e that the project or activity will not meet State water quality standards, or has provided information indicating that the project or activity will cause, or may be likely to cause or contributeto an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC).

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

2. **Projects or Activities Discharging to Impaired Waters**. Ecology WQC review is required for projects or activities that will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listedparameter to determine if the project meets this programmatic WQC or will require individual WQC.

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

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

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

a. Activities in or affecting the following aquatic resources:
    i. Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):
        - Estuarine wetlands.
        - Wetlands of High Conservation Value.
        - Bogs.
        - Old-growth forested wetlands and mature forested wetlands.
        - Wetlands in coastal lagoons.
        - Wetlands in dunal systems along the Washington coast.
        - Vernal pools.
        - Alkali wetlands.

    ii. Fens, aspen-dominated wetlands, camas prairie wetlands.

    iii. Category I wetlands.

    iv. Category II wetlands with a habitat score ≥ 8 points.

b. Activities in or resulting in a loss of eelgrass (Zostera marina) beds.

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

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

4. **Loss of More than 300 Linear Feet of Streambed.** For any project that results in the lossof more than 300 linear feet of streambed Ecology WQC review is required to determineif the project meets this programmatic WQC or will require individual WQC.

5. **Temporary Fills.** For any project or activity with temporary fill in wetlands or other waters for more than six months Ecology WQC review is required to determine if theproject meets this programmatic WQC or will require individual WQC.

6. **Mitigation.** Project proponents are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resourceswherever practicable. For projects requiring Ecology WQC review or an individual WQC with unavoidable impacts to aquatics resources, a mitigation plan must be provided.

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

        i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.

        ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).

        iii. The rationale for the mitigation site that was selected.

        iv. The goals and objectives of the compensatory mitigation project.

        v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.

        vi. How it will be maintained and monitored to assess progress toward goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.

        vii. How the compensatory mitigation site will be legally protected for the long term.

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

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

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

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

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

   b. Following construction, prevention or treatment of on-going stormwater runofffrom impervious surfaces shall be provided.

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

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

   a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project discharge(s) would cause, best management practices (BMPs), and proposed means to monitor the discharge(s).

   b. List of all federal, state or local agency authorizations required to be used for anypart of the proposed project or any related activity.

   c. Drawings indicating the OHWM, delineation of special aquatic sites, and other waters of the state. Wetland delineations must be prepared in accordance with thecurrent method required by the Corps and shall include Ecology's Wetland Rating form. Wetland Rating forms are subject to review and verification by Ecology staff.

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

   d. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See stategeneral condition 5.

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

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

Ecology Section 401 Water Quality Certification – Granted with conditions.

1. Ecology WQC review is required if the project or activity is in a known contaminatedor cleanup site to determine if an individual WQC is required or the project meets the programmatic WQC for this NWP.

2. Ecology individual WQC is required for projects or activities authorized under thisNWP

if:

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

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

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

General Conditions:

EPA General Condition 1 – Aquatic Resources of Special Concern

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

EPA General Condition 2 – Soil Erosion and Sediment Controls

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

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

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

For Marine Water	**Point of Compliance for Temporary Area of Mixing**

Estuaries or Marine Waters	Radius of 150 feet from the activity causing the turbidity exceedance

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

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

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

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

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

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

EPA General Condition 5 – Notice to EPA

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

EPA General Condition 6 – Unsuitable Materials

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

1. Wood preservatives and their application shall be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act;
2. Use of chemically treated wood products shall follow the Western Wood Preservatives Institute (WWPI) guidelines and BMPs to minimize the preservative migrating from treated wood into the aquatic environment;
3. For new or replacement wood structures, the wood shall be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood include untreated

wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and

4. All removal of chemically treated wood products (including pilings) shall follow the most recent “EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State.”

EPA NWP Specific Conditions:

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

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

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

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

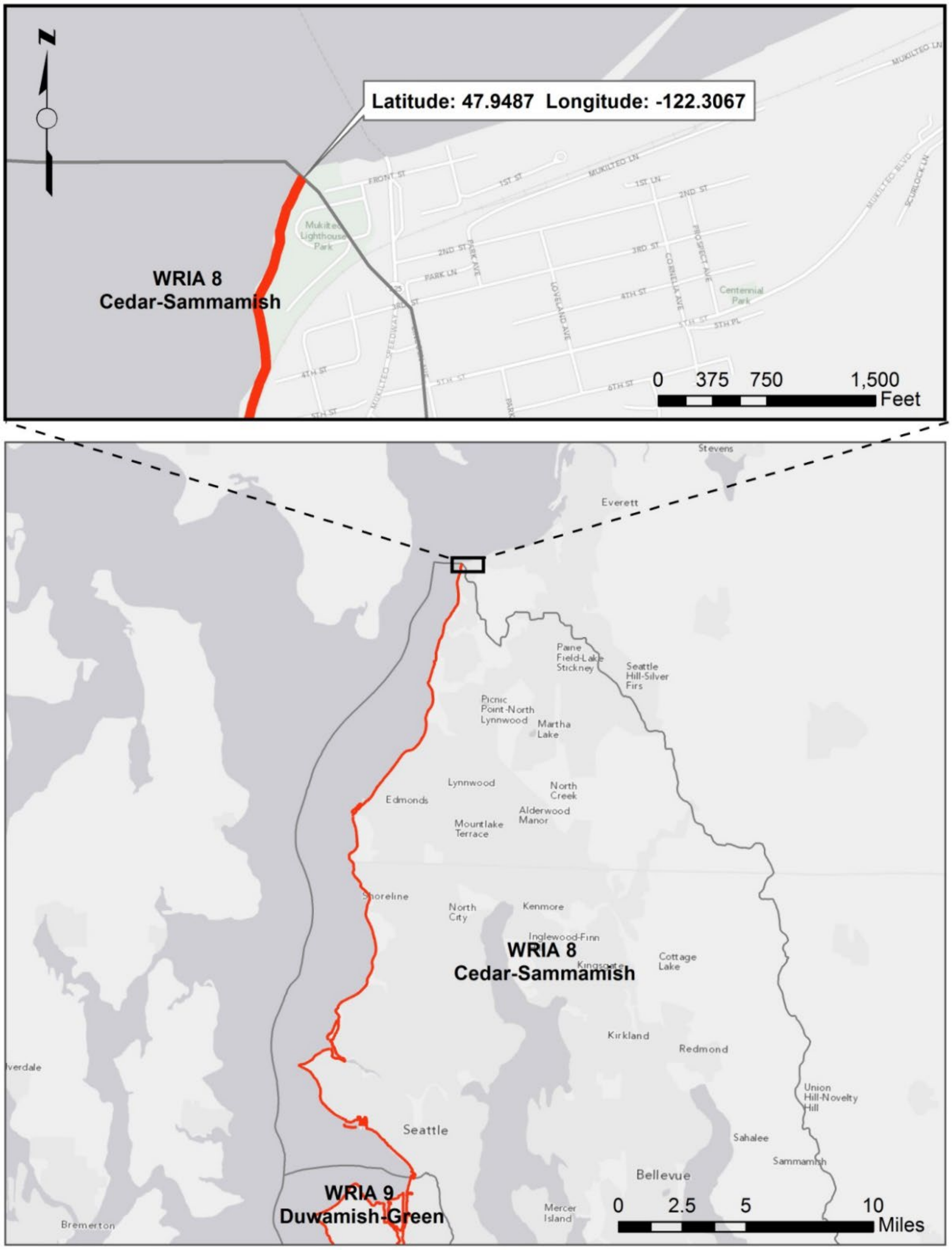
F. COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY RESPONSE FOR THIS NWP:

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

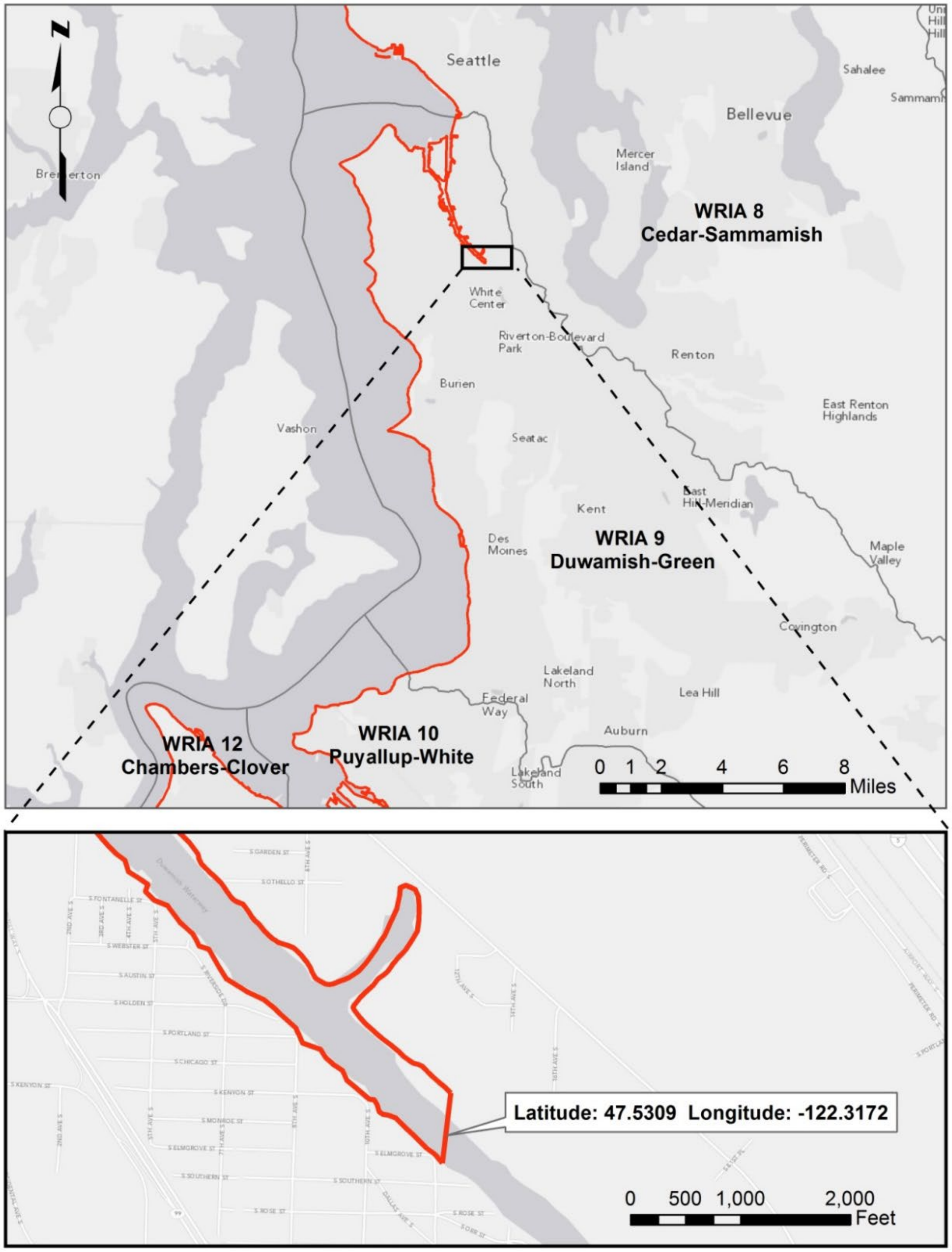
CZM Federal Consistency Response – Concur with Conditions.

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

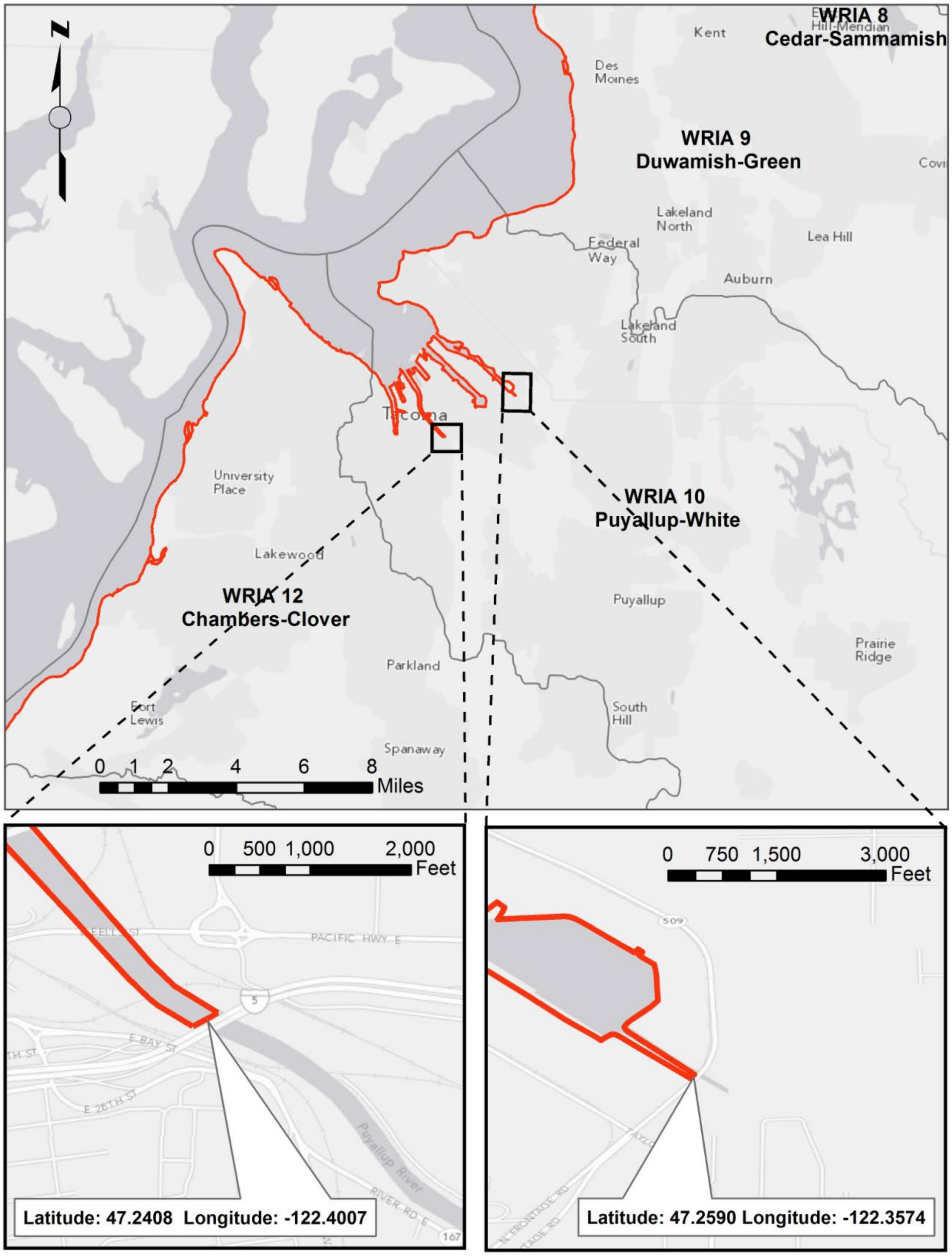
Seattle District Regional General Conditions - Figures
Figure 1: RGC 3 - WRIAs 8, 9, 10, 11, and 12
a. WRIA 8



b. WRIA 9

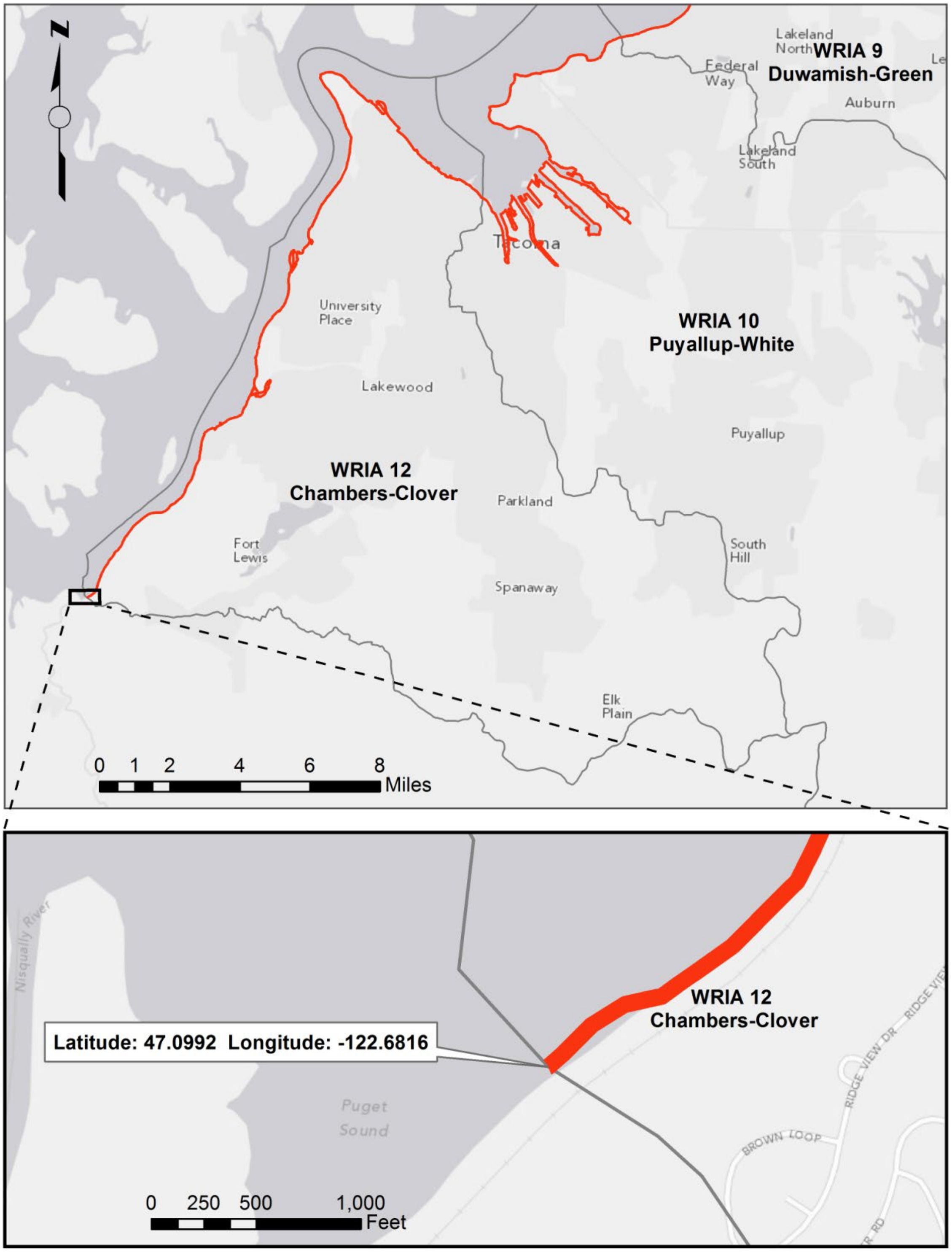

Seattle
Bellevue
Mercer Island
Sahalee
WRIA 8
Cedar-Sammamish
White Center
Riverton-Boulevard Park
Renton
Burien
Vashon
Seatac
East Renton Highlands
Kent
Des Moines
WRIA 9
Duwamish-Green
Maple Valley
Covington
Lakeland North
Lea Hill
Federal Way
Auburn
WRIA 12
Chambers-Clover
WRIA 10
Puyallup-White
Lakeland South
0 1 2 4 6 8
Miles
Latitude: 47.5309 Longitude: -122.3172
0 500 1,000 2,000
Feet

c. WRIA 10



WRIA 8
Cedar-Sammamish
Kent
Des Moines
WRIA 9
Duwamish-Green
Lakeland North
Federal Way
Lea Hill
Auburn
Lakeland South
Tacoma
University Place
WRIA 10
Puyallup-White
Lakewood
WRIA 12
Chambers-Clover
Puyallup
Prairie Ridge
Parkland
Fort Lewis
South Hill
Spanaway
0 1 2 4 6 8 Miles
0 500 1,000 2,000 Feet
Puyallup River
Latitude: 47.2408 Longitude: -122.4007
0 750 1,500 3,000 Feet
Latitude: 47.2590 Longitude: -122.3574

d. WRIA 12


Lakeland North
WRIA 9
Duwamish-Green
Federal Way
Auburn
Lakeland South
Tacoma
University Place
WRIA 10
Puyallup-White
Lakewood
Puyallup
WRIA 12
Chambers-Clover
Parkland
Fort Lewis
South Hill
Spanaway
Elk Plain
0 1 2 4 6 8
Miles
Nisqually River
WRIA 12
Chambers-Clover
Latitude: 47.0992 Longitude: -122.6816
Puget Sound
RIDGE VIEW DR
BROWN LOOP
0 250 500 1,000
Feet

e. WRIA 11

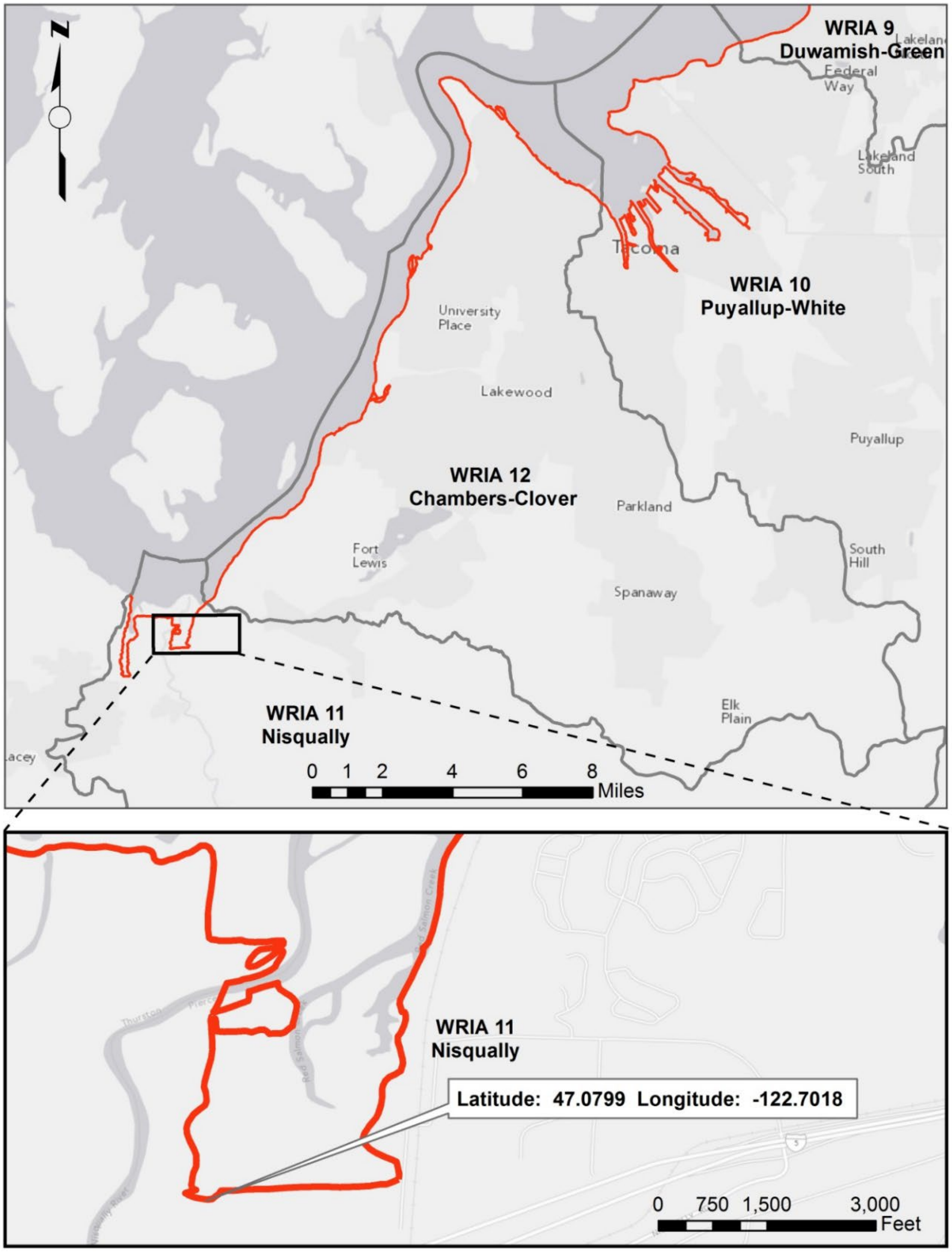
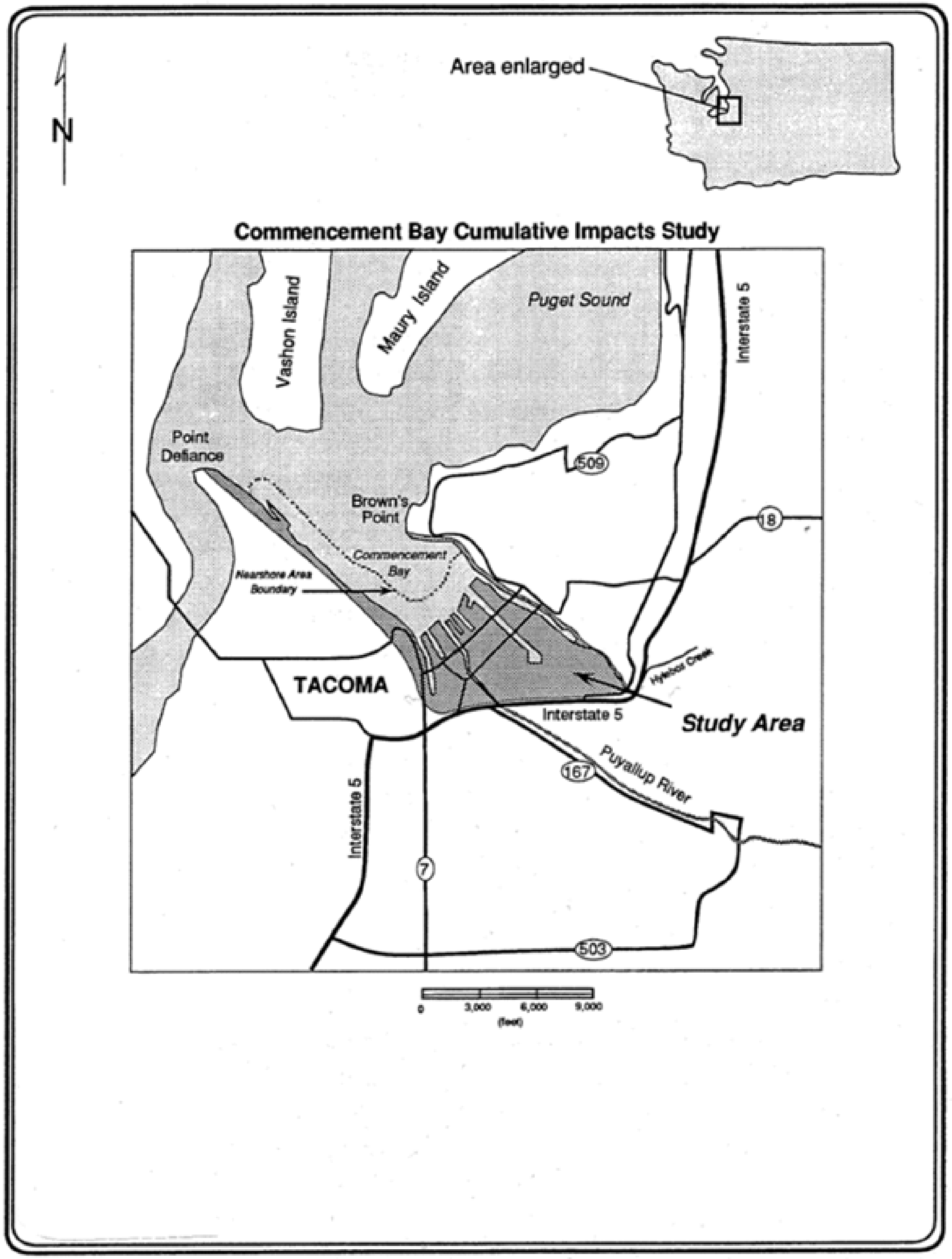

WRIA 9
Duwamish-Green
Federal Way
Lakeland South
Tacoma
WRIA 10
Puyallup-White
University Place
Lakewood
Puyallup
WRIA 12
Chambers-Clover
Parkland
Fort Lewis
South Hill
Spanaway
Elk Plain
WRIA 11
Nisqually
0 1 2 4 6 8 Miles
WRIA 11
Nisqually
Latitude: 47.0799 Longitude: -122.7018
0 750 1,500 3,000 Feet

Figure 2. RGC 4 - Commencement Bay Study Area



Project Description	The applicant is proposing to remove an existing 162 linear-foot timber bulkhead, to place up to 16 cubic yards of quarry spalls and up to 27 cubic yards of angular armor rock to install a 26.5 linear-foot (LF) rock wall, to place up to 912 cubic yards of gravel and sand material as beach nourishment, and to install up to 1,602 square feet of marine riparian plantings on the beach berm within Fisherman Bay on Lopez Island, in San Juan County, Washington. Installation of the 26.5LF rockery armoring would be located 2.5 feet waterward of the existing bulkhead to prevent erosion impacts to the existing single-family residence onsite. The proposed bulkhead removal and shoreline restoration would be completed with the minimal amount of intrusion to native soils as possible. The bulkhead would be removed using excavators located upland of the bulkhead and with foot-based personnel on the beach. Excavators would be used to conduct a minimal amount of grading (up to 7 cy) to prepare the south end for the rockery installation. Sediment would be stockpiled for reuse as nourishment to rebuild a more natural beach berm and slope, and the existing pickleweed would be conserved for replacement on the restored slope. Nourishment is proposed to fill the pre-existing dredge hole, to lift the beach to meet the more natural slope, and to restore potential forage fish spawning habitat. Up to 461 cy clean gravel and 451 cy of clean 'fish mix' sediment (composed of coarse sand to pea gravel with small percentages of up to 0.5” rounded gravel) would be delivered by dump truck and moved into place along the beach using a skid steer or track hoe. Gravel would be placed as low as -1.4’ MLLW and up to the existing bank face varying around elevation of 10’. Sand would be placed at 4.5’ and up to the berm top at 12’, except for where the beach intersects the rock wall. The rockery wall would be constructed with clean armor rock and quarry spalls, using an excavator and foot-based personnel. Archaeological monitors would be present during all soil disturbing activities. All bulkhead debris would be transported by dump trucks to an upland facility for disposal. All work would occur in the dry during sufficiently low tides to prevent
Indicate which conservation offset pathway is proposed:	☐ N/A, offsets are not required per the PDC ■ Option 1, design project to avoid and minimize ☐ Option 2, applicant-responsible habitat improvements ☐ Option 3, fund a local habitat restoration “sponsor” ☐ Option 4, purchase conservation credits

Review the *Project Design Criteria (PDC) List of Requirements* for each applicable activity category:

Applicable? Y/N	Criteria Met? N/A, Y, N	Activity Category	Project Design Criteria (PDC)
		Culvert and bridge repair and replacement resulting in improvements for fish passage	PDC #1
		Utilities	PDC #2
		Stormwater facilities and outfalls	PDC #3
Y	Y	Shoreline modifications	PDC #4
		Expand or install a new in-water or overwater structure	PDC #5
		Repair or replace an existing structure	PDC #6
		Minor maintenance of an existing structure	PDC #7
		Repair, replace, or install a new aid to navigation, scientific measurement device, or tideland marker	PDC #8
		Dredging for vessel access	PDC #9

		Dredging and debris removal to maintain functionality of culverts, water intakes, or outfalls	PDC #10
Y	Y	Habitat enhancement activities	PDC #11
		Set-back or removal of existing tidegates, berms, dikes or levees	PDC #12
Y	Y	Beach nourishment	PDC #13
		Sediment remediation	PDC #14

If applicable project design criteria are not met, describe why and how the work would not result in any adverse effects beyond those considered in the programmatics. **Verification is required from both NMFS and USFWS if any PDC is not fully met**:

<u>Review the *General Construction Measure (GCM) List of Requirements* for each applicable activity category:</u>

Applicable? Y/N	Criteria Met? N/A, Y, N	Criteria	General Construction Measure (GCM)
Y	Y	Minimize Construction Impacts at Project Site	GCM #1
Y	Y	In-Water Work Timing	GCM #2
		Isolation of Concrete Work	GCM #3
		Fish Screens	GCM #4
		Drilling, Boring, and Tunneling	GCM #5
		Pile Installation	GCM #6
		Marbled Murrelet Monitoring Plan	GCM #7
		Treated Wood Piles	GCM #8
		Pile Removal – Intact	GCM #9
		Pile Removal – Broken or Intractable	GCM #10
		Treated Wood for Uses Other Than Piles	GCM #11
		Barge Use	GCM #12
		Stormwater Management	GCM #13
Y	Y	Pollution and Erosion Control	GCM #14
		Fish Capture and Release	GCM #15
		Marine Mammals	Program Administration # 9

If applicable GCM(s) are not met, describe why and how the work would not result in any adverse effects beyond those considered in the programmatics. **Verification is required from both NMFS and USFWS if any applicable GMC is not fully met**:

Essential Fish Habitat Conservation Measures:

Applicable Y/N	If applicable but will **not** be implemented, explain.	**Where appropriate and feasible, and to the maximum extent practicable:**
N		1. Projects resulting in a loss of eelgrass habitat, are required to follow eelgrass mitigation monitoring requirements put forth in the WDFW "Eelgrass/Macroalgae Habitat Interim Survey Guidelines" unless it conflicts with Seattle District Corps guidelines, in which case the Corps guidelines apply.
N		2. New moorings buoys should be anchored in areas where SAV habitat is absent. New mooring buoys should, to the maximum extent practicable, be in waters deep enough so that the bottom of the vessel remains a minimum of 18 inches off the substrate during extreme low tide events.
N		3. When repairing or replacing mooring buoys, within SAV habitat, should be of the type that use midline floats to prevent chain scour to the substrate.
N		4. Encircle the pile with a silt curtain that extends from the surface of the water to the substrate.
N		5. Drive piles during low tide periods when substrates are exposed in intertidal areas.
N		6. Any cross/transverse bracing should be placed above the plane of MHHW to avoid impacts to water flow and circulation.
N		7. Minimize the footprint of the overwater structure.
N		8. Design structures in a north-south orientation to minimize persistent shading over the course of a diurnal cycle.
N		9. For residential dock and pier structures, the height of the structure above water should be a minimum of 5 feet above MHHW.
N		10. The use of floats should be minimized to the extent practicable and should be restricted to terminal platforms placed in deep water where appropriate and feasible and when the Corps determines there will not be a navigation hazard.
N		11. When breakwaters are required, floating breakwaters are preferred. Encourage seasonal use of breakwaters.
Y		12. Use soft approaches (e.g., beach nourishment, soft or hybrid armoring, vegetative plantings, and placement of LWD) in lieu of "hard" shoreline stabilization and modifications (such as concrete bulkheads and seawalls, concrete or rock revetments).
N		13. If planting in the riparian zone, use an adaptive management plan with ecological indicators and performance standards to oversee monitoring and ensure mitigation objectives are met, unless it is contrary to a Corps approved riparian planting plan.

NMFS Response Form

We reviewed the notification email and project package the U.S. Army Corps of Engineers (Corps) submitted for the below referenced project requesting NMFS review and confirmation the action meets the SSNP Biological Opinion and/or Essential Fish Habitat (EFH) programmatic consultation issued to the Corps on June 29, 2022. Based on the materials and documentation submitted by the Corps, NMFS has reviewed and ☐ **verified** or ☐ **denied** the proposed action meets SSNP based on the following applicable elements:

Date:	8/22/25	NMFS Biologist Email:	nissa.rudh@noaa.gov
Programmatic #:	WCRO-2019-04086	NMFS Tracking #:	9687
Statutory Authority:	☒NMFS: ESA & EFH	Branch: ▣ CPS ▣ NPS	
GCM Requirements Met? ■ Yes ☐ No, the following GCM/PA(s) are not met:			
PDC Requirements Met? ■ Yes ☐ No, the following PDC(s) are not met:			
EFH CRs Met? ■ Yes ☐ No, the following CR(s) are not met:			
Conservation Offsets ☐ N/A, offsets not required ■Offsets met ☐Offsets **not** met (Project Denied)	Pathway: ▣ Option 1, design project to avoid and minimize ☐ Option 2, applicant-responsible habitat improvements ☐ Option 3, fund a local habitat restoration “sponsor” ☐ Option 4, purchase conservation credits		
	Final Calculator Date: 8/22/2025	Output: 0	Calc Version: 1.6
Attachments:	■ Final calculator ☐ Presale/Sale Agreement ☐ Other:		
Additional details:	Calc should be 1.7 but no difference in output (at 0) so NR did not update or ask COE to update		

NMFS would like to emphasize the following specific project elements:	None. Thank your for designing this project with conservation in mind!

Archaeological Monitoring and Inadvertent Discovery Plan for the Weeks Point Shoreline Restoration Project, 312 Weeks Point Way, Lopez Island

US Army Corps of Engineers Permit Reference #: NWS-2023-027
DAHP Project # 2021-04-02070

The following Monitoring and Inadvertent Discovery Plan (MIDP) outlines the procedures that will be followed in the event archaeological materials or human skeletal remains are discovered during the Weeks Point Shoreline Restoration Project at 312 Weeks Point Way on Lopez Island.

Archaeological site 45SJ255 is located along the shoreline of the property and to ensure no cultural deposits or historic properties are impacted during the undertaking cultural resource monitoring will occur during project construction.

A Caldera archaeologist who meets the federal secretary of the interior's standards for a professional archaeologist (as required by RCW 27.53.030) will monitor all ground disturbances to document sediment content and protect any cultural deposits and human skeletal remains that may be present. The USACE, DAHP and the interested Tribes will be notified of the project schedule when it has been set. Notification will be sent by email two weeks in advance of the start of construction.

A weekly email summary of monitoring observations will be sent to all consulting parties for any week the monitoring archaeologist is on-site. A monitoring report that documents our observations will be prepared and uploaded to the DAHP WISAARD following the completion of monitoring. The report will also be provided to all consulting parties for review.

The procedures to be followed during archaeological monitoring of ground disturbances are described below.

Monitoring Procedures

Prior to beginning work, the archaeologist will meet with the contractor to review the work areas to be monitored, outline the monitoring protocols, and discuss the notification procedures that will be followed in the event cultural materials or human skeletal remains are identified. The contractor will be provided with a copy of the MIDP.

The archaeological monitor will be present during any planned ground disturbances or activities with the potential for ground disturbance. The archaeologist will have the authority to stop work at any time.

Sediments exposed during excavation will be visually examined as excavation is occurring and the sidewalls of all cuts and spoils will be routinely inspected for the presence of any formed artifacts or human skeletal remains throughout the duration of the project. Excavation will be temporarily halted if any potential cultural materials are observed so that the deposits can be assessed.

In the event precontact cultural materials or human skeletal remains are discovered the protocols outlined below in the inadvertent discovery plan will be followed.

Examples of precontact cultural materials 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 sediment with artifacts or fire-cracked rocks.
d. Stone tools or waste flakes.

Inadvertent Discovery Plan

In the event cultural material or potential cultural material is discovered all excavation will be halted in the immediate area of the discovery. Work necessary to secure the jobsite and area around the inadvertent discovery will be allowed to proceed under the direction of the monitoring archaeologist. The archaeologist may conduct limited excavation to determine the nature and extent of the deposit if necessary.

The monitoring archaeologist will notify the USACE Archaeologist of the inadvertent discovery; the USACE will notify the DAHP and interested Tribes. If the monitoring archaeologist is unable to contact USACE staff, the DAHP will be notified of the discovery. If the agency representatives determine that the discovery is an eligible cultural resource, the agency will follow post-review discoveries at 33 CFR 800.13.

All prehistoric and historic cultural material determined to be greater than 50 years in age discovered during project construction will be recorded by a professional archaeologist on a State of Washington cultural resource site or isolate form using standard techniques. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.

If human skeletal remains are identified during any work the procedures below will be followed (consistent with RCWs 68.50.645, 27.44.055, and 68.60.055).

Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055)

If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

Contacts:

US Army Corps of Engineers, Seattle District
Project Manager, Regulatory Branch
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Corps Archaeologist
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cultural.resources@usace.army.mil

Department of Archaeology and Historic Preservation
State Archaeologist
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Rob.Whitlam@dahp.wa.gov

State Physical Anthropologist
Guy Tasa
(360) 790-1633
Guy.Tasa@dahp.wa.gov

Lummi Nation
Tribal Historic Preservation Officer
Lena Tso
360.312.2257
LenaT@lummi-nsn.gov

Samish Indian Nation
Tribal Historic Preservation Officer
Jackie Ferry
jferry@samishtribe.nsn.us
(360) 293-6404 ext. 126

San Juan County Sheriff
San Juan County Sherriff's Office Non-Emergency
(360) 378-4151

San Juan County Coroner
(360) 378-3180

Caldera Archaeology
Edward Arthur
(360) 676-8193 (Cell)
ed@calderaarchaeology.com

CULTURAL RESOURCES REPORT COVER SHEET

DAHP Project #: 2021-04-02070

Author: Edward Arthur

Title of Report: Archaeological Monitoring and Inadvertent Discovery Plan for the Weeks Point Shoreline Restoration Project, 312 Weeks Point Way, Lopez Island

Date of Report: August 13, 2025

County: San Juan Section: 22 Township: 35N Range: 2W

Quad: Shaw Island Acres: ~0.25 acre

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 ☒ No

DAHP Archaeological Site #:

Northwest Straits FOUNDATION
partners in marine conservation

ATTACHMENT E

CONSTRUCTION CONTRACT #2026-XX-XXXXX

THIS CONSTRUCTION CONTRACT, made and entered into this___day of___________, 2026, shall be the agreed basis of performing the following work by and between Northwest Straits Marine Conservation Foundation, hereinafter referred to as the "Contracting Agency," and _____________________________ hereinafter referred to as the "Contractor" and collectively referred to as "Parties."

Contracting Agency and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. **The Project.** The Project is called ***Weeks Point Restoration*** and is located at the **312 Weeks Point Way, Lopez Island**, **WA** and is more fully described in the attached Special Provisions which are incorporated in full by this reference.

2. **The Work.** The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, facilities, etc., necessary to perform the work called for in the Contract Documents (the "Work"), in conformance with all government laws, codes, regulations, ordinances and appropriate industry standards as they apply to the performance of the Work.

3. **Time of Completion.** The Work to be performed under this Contract shall commence as soon as the Contractor has been provided written Notice to Proceed. The Contractor shall achieve Substantial Completion of the entire Work in accordance with the allotted contract time. The work shall be completed within 30 working days after the Notice to Proceed (the "Contract Time") date. Working days are Monday through Fridays, exclusive of federal holidays. Night work will be permitted to accommodate tides with adequate and sufficiently early notification to landowners and adjacent property owners.

4. **Liquidated Damages.** The Contracting Agency and Contractor further agree that time is of the essence and that Property Owner and Contracting Agency will suffer financial loss if the Work is not completed in the Contract Time as adjusted for changes. Therefore, in the event Contractor does not obtain Substantial Completion with the Contract Time as adjusted for changes, liquidated damages shall be assessed against the Contractor, as a reasonable estimate of damages and not as a penalty, in the amount of $650.00 per day for each day that expires after the time specified in Paragraph 3.

5. **Contract Sum.** In consideration of the performance of the Work, the Contracting Agency hereby agrees to pay the Contractor for said work completed according to the Contract Documents, the sum of ________________ dollars ($________________) plus 8.35% State Sales Tax, subject to additions and deductions as provided in the Contract Documents. The Contractor has a clear understanding of the scope of the Work and has included sufficient funds to complete those repairs. In preparing bids and establishing allowance amounts, the Contractor has taken into account all reasonably anticipatable

construction conditions.

The unit prices are hereby accepted as per the SCHEDULE OF VALUES which is attached and incorporated herein by reference.

6. **Payments.** Contractor shall submit invoices for progress payments, as provided in the Standard Specifications, monthly. Contracting Agency shall pay the amount due less Retainage within forty-five (45) days of receipt of the properly documented invoice.

a. **Retainage.** Contracting Agency shall withhold five percent (5%) as retainage from each progress payment (the "Retainage"). Contracting Agency shall release Retainage to the Contractor as provided in Standard Specification, §1-09.9(1) as modified. The Retainage is a fund for the protection of the Contracting Agency (a) from incomplete or defective work by Contractor; (b) for the payment of persons who supplied materials or who worked on the Project and were not paid by Contractor; and (c) damages incurred due to other breaches of the Contract.

7. **The Contract Documents.** The Contract Documents comprise the entire agreement between Contracting Agency and Contractor concerning the Work and include: this Contract, together with the exhibits expressly incorporated herein, the Plans (7 sheets); Permits (attached hereto as **Appendix A**); Special Provisions; WSDOT Standard Specifications for Road, Bridge and Municipal Construction 2025 as modified or supplemented by this Contract; Addenda issued prior to execution of this Contract, and Modifications issued after execution of this Contract. Collectively, the foregoing Contract Documents comprise the "Contract."

The Contract Documents are intended to be complimentary and what is required by one is required by all. Conflicts or discrepancies among the Contract Documents shall be resolved by the order of precedence set forth in Standard Specifications, §1-04.2.

8. **Indemnification.** In addition to the indemnification and defense obligations set forth in Standard Specifications §1-07.14 as modified, the Contractor agrees to indemnify, defend and hold harmless the Contracting Agency, Engineer, Washington State Parks and Recreation Commission (Property Owner), their respective agents and employees, and those parties described in the modified Standard Specification §1-07.14 as the "Indemnified Parties" from any claim made or asserted for damage or injury of any kind or nature to any person or property, including injuries to or death of any employee of Contractor, or subcontractors, or suppliers of any tier arising out of or connected with the execution of the Work, except Contractor shall not be required to defend or indemnify the Indemnified Parties to the extent the claim is the result of the Indemnified Parties' negligence or willful misconduct.

Contractor specifically and expressly waives any immunity that may be granted it under the Washington Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit act. Nothing in this paragraph shall affect applicability of the Washington Industry Insurance Act to claims made by Contractor's employees directly against the Contractor.

9. **Insurance.** Prior to commencing the Work and at all times during the Project, the Contractor shall obtain and keep in force the policies of insurance set forth in Standard Specification §1-07.18 as modified, and shall provide Contracting Agency evidence of such insurance and of the Contracting Agency's "additional insured" status under the policies.

10. **Dispute Resolution.** The Parties shall, as a condition precedent to litigation, endeavor to resolve any disputes arising out of or pertaining to this Contract as provided in Standard Specifications §1-09.11. In the event the Parties cannot first resolve their dispute, the matter shall be subject to litigation in the Superior Court of Whatcom County, in the State of Washington. As set forth more fully in Standard Specification §1-09.11(3), the Contractor shall bring any such lawsuit no later than 180-calendar days from the date of final acceptance.

11. **General Provisions.**

a. The Contract represents the entire and integrated agreement between the parties as to this subject matter and supersedes prior negotiations, representations or agreements either written or oral. Subsequent Contract amendments shall be ineffective unless signed by a party having authority to bind the Contracting Agency.

b. If any portion of this Contract is found invalid or unenforceable by any Court, the remaining provisions shall remain in force between the Parties.

12. **Execution**

The parties agree that this Contract will be considered signed when the signature of a party is delivered by electronic transmission. Signatures transmitted by electronic transmission shall have the same effect as original signatures.

IN WITNESS THEREOF, the parties have executed this Contract as of

CONTRACTING AGENCY
Northwest Straits Foundation
By: Don Hunger

Signature:________________________
Title: Executive Director

Date: ____________________________
____

CONTRACTOR

By:____________________________

Signature: ________________________
Title: _________________________

Date: ____________________________

Washington State Contractor's License No.:
____

Federal Tax ID No. ___________________

ATTACHMENT E

UBI No. ______________________________