



REPLY TO
ATTENTION OF:

Operations Division
Regulatory Branch
Corps No.: NWP-2010-401

DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 2946
PORTLAND, OREGON 97208-2946
May 2, 2011

Mr. George Boehlert
Oregon State University
Hatfield Marine Science Center
2030 SE Marine Science Drive
Newport, OR 97365

Dear Mr. Boehlert:

The U.S. Army Corps of Engineers (Corps) received your request for Department of Army (DA) authorization to install stabilization materials along the shoreline of the Hatfield Marine Science Center. The project is located at Newport, in Lincoln County, Oregon (Section 17, Township 11 South, Range 11 West).

The applicant will place approximately 286 cubic yards (cu. yds.) of river rock, consisting of approximately 208 cu.yds. of small rounded gravel and 78 cu.yds. of cobble, along the eroding HMSC shoreline. This "dynamic revetment" will be placed onto the intertidal beach in an area approximately 260 feet long by 10 to 50 feet wide. The shoreline profile will be shifted seaward by approximately 8 feet. Local river rock will be delivered to the HMSC from Devil's Lake Rock Co. in Lincoln City, OR. Rock will be held in an upland staging area, washed and then placed onto the shoreline using small "skidster" machinery. The rock will be placed at low or ebb tides during approximately a one week period during the in-water work period, November 1 to February 15. The project is shown on the enclosed drawings (Enclosure 1).

This letter verifies that your project is authorized under the terms and limitations of Nationwide Permit (NWP) No. 13 (Bank Stabilization). Your activities must be conducted in accordance with the conditions found in the Portland District NWP Regional Conditions (Enclosure 2) and the NWP General Conditions (Enclosure 3). You must also comply with the Oregon Department of Environmental Quality (DEQ) Water Quality Certification Conditions (Enclosure 4), Oregon Department of Land Conservation and Development (DLCD) Coastal Zone Management Concurrence Conditions (Enclosure 5), and the project specific conditions lettered (a) through (d) below. **Failure to comply with any of the listed conditions could result in the Corps initiating an enforcement action.**

- a. Permittee shall notify the Regulatory Branch with the date the activities authorized in waters of the United States are scheduled to begin. Notification shall be sent by email to cenwp.notify@usace.army.mil or mailed to the following address:

U.S. Army Corps of Engineers
CENWP-OD-GC
Permit Compliance, Lincoln County
PO Box 2946
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

- b. Permittee shall make every effort to minimize project area ground disturbance from equipment by limiting work to that area absolutely necessary to complete the project. We also draw your attention to Regional Condition 3 regarding the protection of human remains or cultural resources that may be located within the permit area.
- c. Permittee shall fully comply with the Essential Fish Habitat conservation measures of the National Marine Fisheries Service's Letter of Concurrence (LOC), issued on February 2, 2011, for the Oregon State University – Hatfield Marine Science Center Dynamic Revetment Project (Enclosure 6). All conservation measures of this LOC are now conditions of the permit authorization.
- d. Prior to operation in or near waters of the U.S. (WOUS), all vehicles and machinery shall be stored and fueled a minimum of 150 feet from WOUS. All equipment shall be clean and free of leaks when operating in or near WOUS.

We direct your attention to NWP General Condition 25 (Enclosure 3) that requires the transfer of this permit if the property is sold, and NWP General Condition 26 that requires you to submit a signed certificate when the work is completed. A "Compliance Certification" is provided (Enclosure 7).

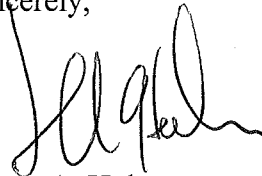
This authorization does not obviate the need to obtain other permits where required. Permits, such as those required from the Oregon Department of State Lands (DSL) under Oregon's Removal /Fill Law, must also be obtained before work begins.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a Public Notice when the NWPs are reissued. Furthermore, if you commence or under contract to commence this activity before the date the relevant NWP expires, is modified or revoked, you will have 12 months from the date of the modification, or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address:
<http://per2.nwp.usace.army.mil/survey.html>.

If you have any questions regarding this NWP verification, please contact Mr. Tom Taylor at the letterhead address, by telephone at (503) 808-4386, or by e-mail thomas.j.taylor@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. A. Holm', with a stylized flourish at the end.

James A. Holm
Team Leader
Regulatory Branch

Enclosures

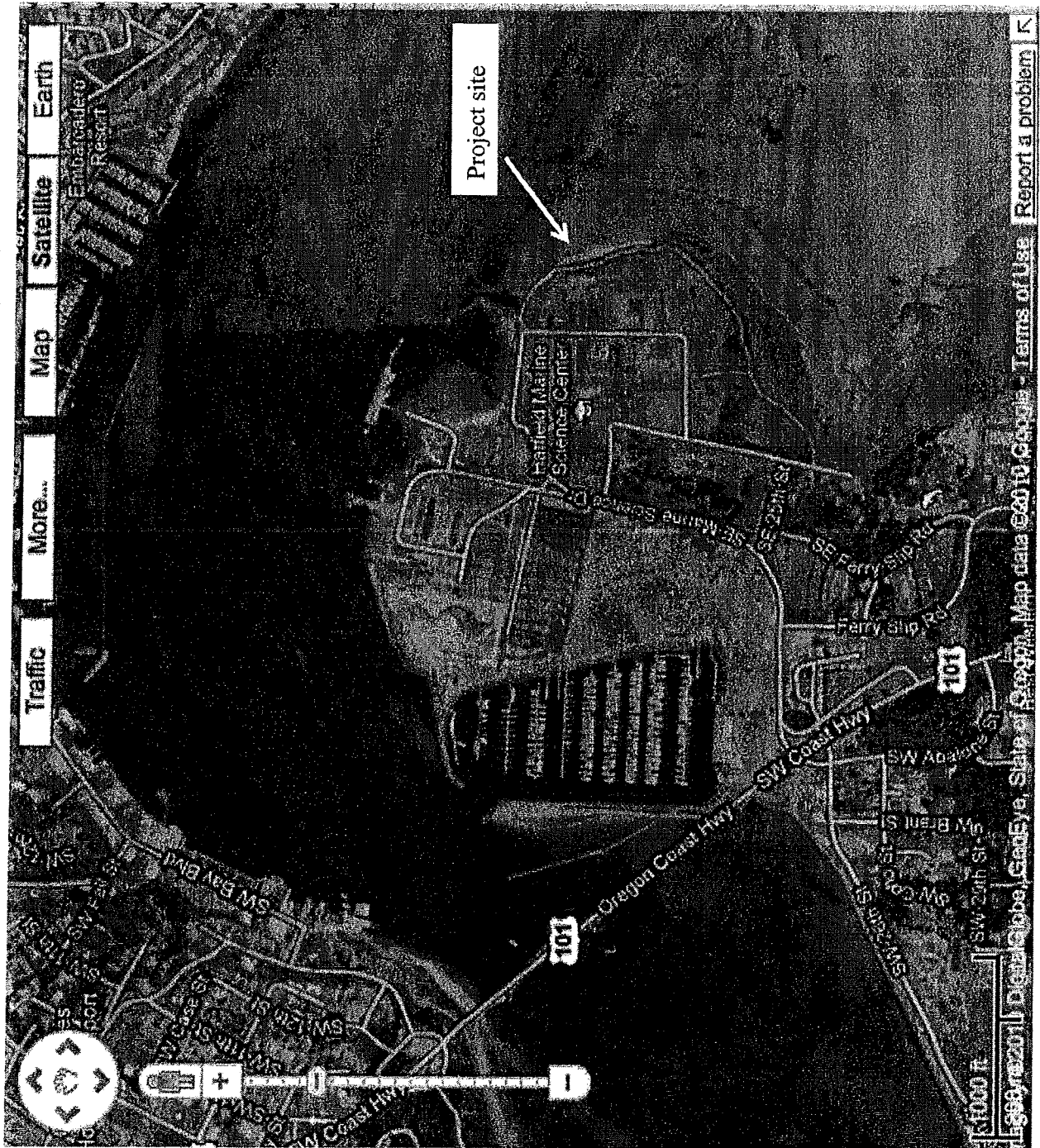
Copy Furnished:

Oregon Department of Land Conservation and Development (Juna Hickner) w/o enclosures
via email

Oregon Department of State Lands (Carrie Landrum) w/ enclosures via email

Hatfield Marine Science Center (Maryann Bozza) w/ enclosures via email

Figure 2a. Aerial view of Hatfield Marine Science Center campus.



ENCLOSURE 1



ENCLOSURE 1

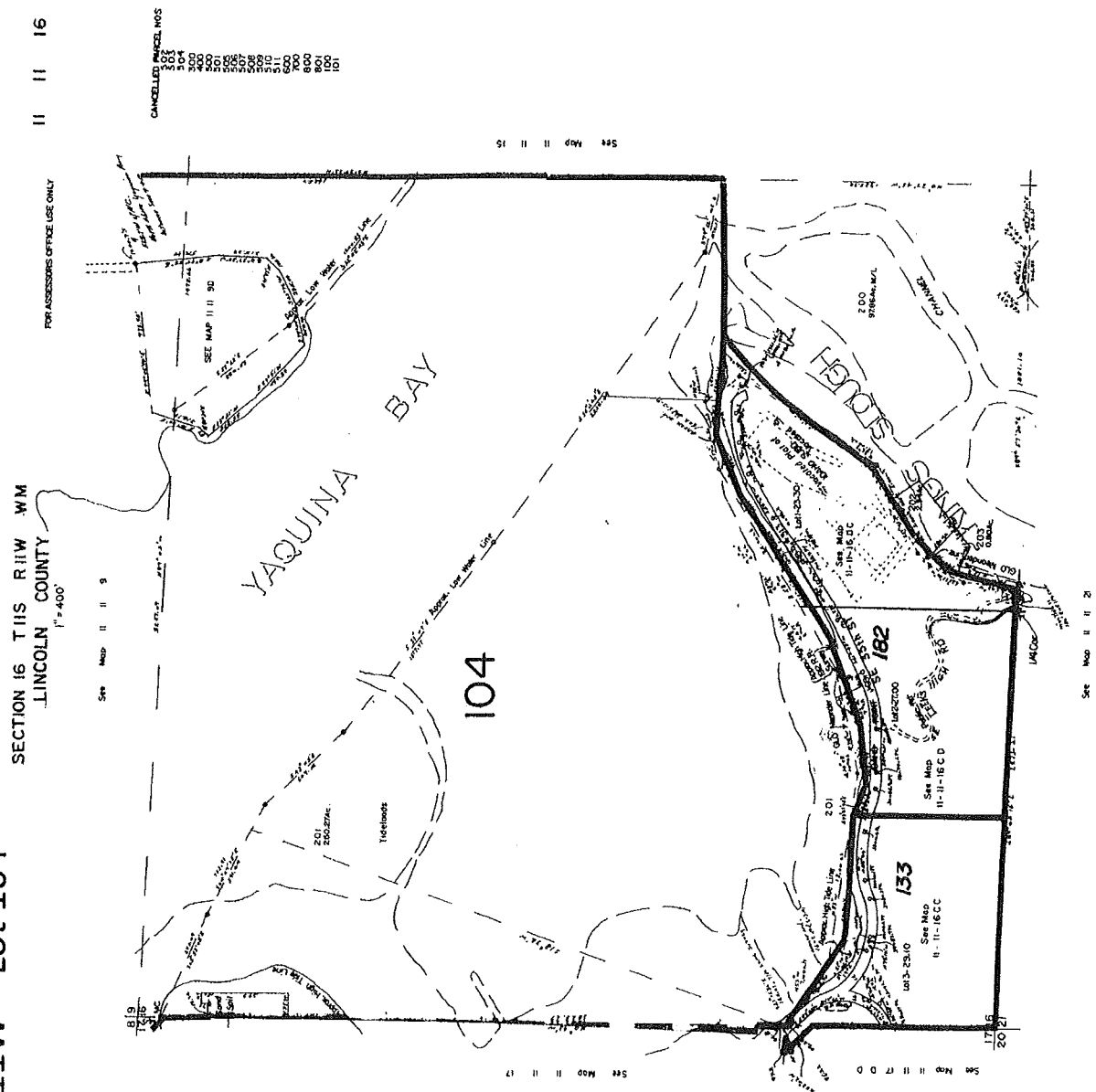
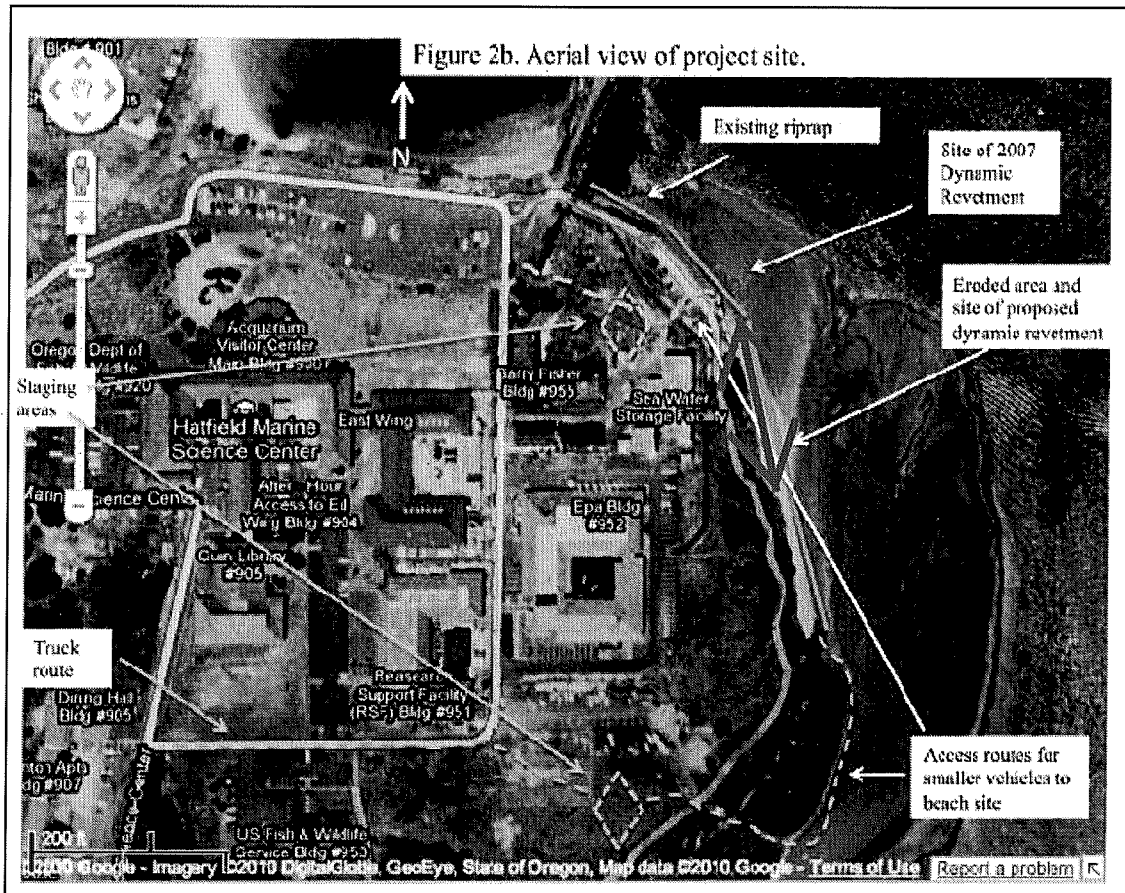


Figure 1. Location of proposed dynamic revetment along the northeastern shoreline of Hatfield Marine Science Center.





**US Army Corps
of Engineers**
Portland District

Nationwide (NWP) Regional Permit Conditions Portland District

The following Nationwide Permit (NWP) regional conditions are for the Portland District Regulatory Branch boundary. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resource concerns.

ALL NWPs –

1. **High Value Aquatic Resources:** Except for NWPs 3, 20, 27, 32, 38, 47 and 48, any activity that would result in a loss of waters of the United States (U.S.) in a high value aquatic resource is not authorized by NWP. High value aquatic resources in Oregon include bogs, fens, wetlands in dunal systems along the Oregon coast, eel grass beds, vernal pools, aspen-dominated wetlands, alkali wetlands, and Willamette Valley wet prairie wetlands.

Ø Willamette Valley wet prairie wetlands are characterized by high species diversity with a dominance of cespitose graminoids such as tufted hairgrass (*Deschampsia caespitosa*). Plant species associated with Willamette Valley wet prairie wetlands may also include ESA-listed plants such as Bradshaw's lomatium (*Lomatium bradshawii*), Willamette daisy (*Erigeron decumbens* var. *decumbens*), Nelson's checkermallow (*Sidalcea nelsoniana*) and rough popcorn flower (*Plagiobothrys hirtus*). Soil series associated with Willamette Valley wet prairie wetlands may include, but are not limited to, the Dayton, Amity, Bashaw, Natroy, and Waldo series.

2. **In-water Work Window:** All in-water work shall be conducted during the listed in-water work window, as applicable (Refer to Oregon Department of Fish and Wildlife (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources"
http://www.dfw.state.or.us/lands/inwater/inwater_guide.pdf).

3. **Cultural Resources and Human Burials-Inadvertent Discovery Plan:** Permittees shall immediately cease all ground disturbing activities and notify the Portland District Regulatory Branch if at any time during the course of the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves and Repatriation Act, are discovered and/or may be affected. The Permittee shall follow the procedures outlined below:
 - Immediately cease all ground disturbing activities.
 - Notify the Portland District Regulatory Branch. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery.
 - Follow up the fax notification by contacting the Corps representative (by email and telephone) identified in the permit letter.
 - Project Located in Oregon: Notify the Oregon State Historic Preservation Office (503-986-0674).
 - Project Located in Washington: Notify the Washington Department of Archaeology and Historic Preservation (360 586-3077).

Failure to stop work immediately and until such time as the Corps has coordinated with all appropriate agencies and complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act, Native American Graves and Repatriation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

4. **Erosion Control:** During construction, permittee shall ensure that all practicable erosion and sediment control measures are installed and maintained in good working order to prevent unauthorized discharge of materials carried by precipitation, snow melt, wind or any other conveyance mechanism into any waterways and wetlands. The permittee is referred to Oregon Department of Environmental Quality's (DEQ) *Oregon Sediment and Erosion Control Manual*, April 2005, for proper implementation of practicable sediment and erosion control measures.
 5. **Heavy Equipment:** Permittee shall ensure that all heavy equipment is operated from the bank and not placed in the stream unless specifically authorized by the District Engineer. Heavy equipment working in waters of the U.S. shall be placed on removable mats or pads. Following the removal of the mats or pads, the area shall be restored to pre-project conditions.
 6. **Deleterious Waste:** All discharge water created during construction (e.g. concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids, etc.) shall be treated to remove debris, sediment, petroleum products, metals, and other pollutants likely to be present.
 7. **Fish Passage:** The permittee shall ensure activities authorized by nationwide permit will not restrict passage of aquatic life. Activities such as the installation of culverts, intake structures, diversion structures, or other modifications to channel morphology, must be designed to be consistent with fish passage standards developed by the Oregon Department of Fish and Wildlife (ODFW) and the National Marine Fisheries Service (NMFS). The standards can be found at OAR 635-412-0035. The streambed shall be returned to pre-construction contours after construction unless the purpose of the activity is to eliminate a fish barrier.
 8. **Fish Screening:** The permittee shall ensure that all intake pipes utilize fish screening that complies with standards developed by NMFS (Juvenile Fish Screen Criteria (revised February 16, 1995) and Addendum: Juvenile Fish Screen Criteria for Pump Intakes (May 9, 1996)).
 9. **Upland Disposal:** Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waterways or wetlands unless otherwise authorized by the Corps of Engineers (such as by NWP 16).
 10. **Inspection of the Project Site:** The permittee shall allow representatives of the Corps to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.
 11. **Sale of Property/Transfer of Permit:** The permittee shall obtain the signature(s) of the new owner(s) and transfer this permit in the event the permittee sells the property associated with this permit. To validate the transfer of this permit authorization, a copy of this permit with the new owner(s) signature shall be sent to the Portland District office at the following address: U.S. Army Corps of Engineers, CENWP-OD-G, P.O. Box 2946, Portland, Oregon, 97208-2946.
- NWP 3 – Maintenance
1. Permittee shall ensure project design includes appropriate grade control necessary to prevent headcutting of streambanks and erosion.
- NWP 5 – Scientific Measurement Devices
1. The permittee shall remove all scientific measurement devices within 30 days after research is completed.
- NWP 6 – Survey Activities
1. Use of in-water explosives is not authorized under this NWP.
 2. The permittee shall ensure that all in-stream exploratory trenching is conducted in the dry.

NWP 12 – Utility Line Activities

1. The permittee shall ensure that utility lines buried within or adjacent to wetland areas utilize trench-blockers of a type and design sufficient to prevent the drainage of the wetland areas (e.g. bentonite clay plugs, compacted sand bags, etc.).
2. The upper 12 inches of topsoil must be removed and stockpiled separately from subsurface soils and shall be used as the final layer in backfilling the trench.

NWP 13 – Bank Stabilization

1. The project design shall include the use of bioengineering techniques and natural products (e.g. vegetation and organic material such as root wads) to the maximum extent practicable and minimize the use of rock. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable. Rip-rap shall be clean, durable, angular rock.
2. Work shall be performed in the dry or during low flows.

NWP 29 – Residential Developments

1. Wetland impacts associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc) shall not exceed ¼ acre.
2. Fill into tributaries regulated as waters of the U.S. shall be limited to the creation of access roads.

NWP 33 – Temporary Construction, Access, and Dewatering

1. Work shall be performed in the dry or during low flows.
2. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized under NWP 33.

3. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering the waterway.
4. Downstream flows shall be maintained by routing flows around the construction site with a pump, bypass pipe, or diversion channel.
5. A sediment basin shall be used to settle sediments in return water prior to release back into the waterway. Settled water shall be returned to the waterway in such a manner as to avoid erosion of the streambank.

NWP 39 – Commercial and Institutional Developments

1. Fill into tributaries regulated as waters of the U.S. shall be limited to creation of access roads.
2. This NWP does not authorize discharges into open water.

NWP 40 – Agricultural Activities

1. Acreage impacts authorized by this NWP are cumulative for contiguous farm tracts under the same ownership. When impacts to contiguous farm tracts under the same ownership reach ½ acre, no further discharges to waters of the United States may be authorized under NWP 40.

NWP 41 – Reshaping Existing Drainage Ditches

1. Work shall be performed in the dry or during low flows.

NWP 42- Recreational Facilities

1. Fill into tributaries regulated as waters of the U.S. shall be limited to creation of access roads.
2. This NWP does not authorize discharges into open water.

NWP 43- Stormwater Management Facilities

1. Work shall be performed in the dry or during low flows.
2. This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for purposes such as recreational lakes, reflecting pools, irrigation, etc.



**US Army Corps
of Engineers**
Portland District

Nationwide (NWP) Permit Conditions

33 CFR Part 330;
Issuance of Nationwide
Permits – March 12, 2007

C. General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, 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 the Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for any NWP.

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 permittees' 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 of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle of 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. Culverts placed in streams must be installed to maintain low flow conditions.

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

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

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP's 4 and 48.

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 flows 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 and stormwater management activities, 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.

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

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No 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 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g. National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

16. 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.

17. Endangered Species.

(a) No activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

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

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

(e) Authorization of an activity by a 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, both lethal and non-lethal "takes" of protected species are in violation of the ESA. 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/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

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

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Office or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR.4 (g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3 (a)). If NHPA Section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that Section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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 ACHP and provide documentation specifying the circumstances, explaining 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.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 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, and 38, notification is required in accordance with General Condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be environmentally appropriate and provides a project-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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

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

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

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

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

25. 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)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. 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 receipt and, as a general rule, 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:

(1) Until 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) If 45 calendar days have passed from the district'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 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to General Condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) *Agency Coordination:*

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer that they intend to provide substantive, site-specific comments. 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, but 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 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.

(3) 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN

and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

(1) That the project does not qualify for authorization under NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

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

E. Definitions

Best management Practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categories as structural and non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term "discharge" means any discharge of dredged or fill material and any activity that causes or results in such a discharge.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom of elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b) (1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See General Condition 20)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings

of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc. are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands continuous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b) (1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody For purposes of the NWP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c) (2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.



**US Army Corps
of Engineers**
Portland District

**Oregon Department of
Environmental Quality (DEQ)
401 Water Quality (WQC) General
Conditions**

In addition to all USACE permit conditions, the following 401 WQC conditions apply to all Nationwide Permit categories certified or partially certified by this 401 WQC, unless specified in the condition. Additional 401 WQC Category Specific Conditions follow, which must also be complied with as applicable.

1) **Turbidity:** All practical Best Management Practices (BMPs) on disturbed banks and within the stream shall be implemented to minimize turbidity during in-water work. OAR 340-041-0036 states that turbidity shall not exceed 10 percent above natural stream turbidities, except where allowed by the rule. This rule also states that limited duration activities necessary to accommodate essential dredging, construction or other legitimate activities and which cause the turbidity standard to be exceeded may be authorized provided all practical turbidity control techniques have been applied and a section 401 water quality certificate has been granted.

a. **Monitoring:** Turbidity monitoring shall be conducted and recorded as described below. Monitoring shall occur each day during daylight hours when in-water work is being conducted. A properly and regularly calibrated turbidimeter is recommended, however, visual gauging is acceptable.

i. **Representative Background Point:** a sample or observation must be taken every four hours at a relatively undisturbed area approximately 100 feet upcurrent from in-water disturbance to establish background turbidity levels for each monitoring cycle. Background turbidity, location, and time must be recorded prior to monitoring downcurrent.

ii. **Compliance Point:** Monitoring shall occur every four hours approximately 100 feet down current from the point of discharge and be compared against the background measurement or observation. The turbidity, location, and time must be recorded for each sample.

b. **Compliance:** Results from the compliance points should be compared to the background levels taken during each monitoring interval. Exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERVAL	ACTION REQUIRED AT 2 ND MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 4 hours	Continue to monitor every 4 hours
5 to 29 NTU above background	Modify BMPs & continue to monitor every 4 hours	Stop work after 8 hours at 5-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work
VISUAL MONITORING		
No plume observed	Continue to monitor every 4 hours	Continue to monitor every 4 hours
Plume observed	Modify BMPs & continue to monitor every 4 hours	Stop work after 8 hours with an observed plume

When monitoring visually, turbidity that is visible over background is considered an exceedance of the standard.

If an exceedance over the background level occurs, the applicant must modify the activity and continue to monitor every four hours or as appropriate (above). If an exceedance over the background level continues after the second monitoring interval, the activity must stop until the turbidity levels return to background. If, however, turbidity levels return to background at second monitoring level due to implementation of BMPs or natural attenuation, work may continue with appropriate monitoring as above.

If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for 2 hours; or 5-29 NTU over background for 8 hours, the activity must stop immediately for the remainder of that 24-hour period.

c. **Reporting:** Copies of daily logs for turbidity monitoring shall be available to DEQ, USACE, National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USFWS), and Oregon Department of Fish & Wildlife (ODFW) upon request. The log must include: background NTUs, compliance point NTUs, comparison of the points in NTUs, and location, time, and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions.

d. **BMPs to Minimize In-stream Turbidity:**

i. Sequence/Phasing of work – The applicant will schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;

ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket shall be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or by using a closed-lipped environmental bucket shall be implemented;

iii. Limit the number and location of stream crossing events. Establish temporary crossing sites as necessary at the least impacting areas and supplement with clean gravel or other temporary methods as appropriate;

iv. Machinery will not drive into the flowing channel;

v. Excavated material will be placed so that it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled; and,

vi. Use of containment measures such as silt curtains, geotextile fabric, and silt fence will be implemented and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

2) Erosion Control: The applicant is referred to DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005. The following erosion control measures (and others as appropriate) or comparable measures as specified in an NPDES 1200-C permit (if required) shall be implemented during construction/project activities:

a. Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination shall be used to prevent movement of soil from uplands into waterways or wetlands;

b. An adequate supply of materials needed to control erosion must be maintained at the project construction site;

c. To prevent stockpile erosion, use compost berms, impervious materials or other equally effective methods, during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;

d. Erosion control measures shall be inspected and maintained daily or more frequently as necessary, to ensure their continued effectiveness and shall remain in place until all exposed soil is stabilized;

- i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary;
 - ii. Remove sediment from erosion and sediment controls once it has reached 1/3 of the exposed height of the control.
- e. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas shall use removable pads, mats, or other methods as necessary to prevent soil compaction, unless doing so would be more impactful to these or surrounding resources;
- f. Flag or fence off avoided wetlands and newly planted areas to protect from disturbance and/or erosion;
- g. Dredged or other excavated material shall be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
- h. Sediment from disturbed areas or in any way able to be tracked by vehicles onto pavement shall not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state and impair water quality. Placement of clean aggregate at all construction entrances, and other BMPs such as truck or wheel washes if needed, will be used when earthmoving equipment will be leaving the site and traveling on paved surfaces; and,
- i. Projects which disturb one acre or more require an NPDES 1200C Storm Water Discharge Permit. Contact the appropriate DEQ regional office for more information (Contact information can be found at: <http://www.deq.state.or.us/wq/>).

3) Post-Construction Stormwater Management for NWP activities involving impervious surfaces (NWPs 3, 14, 15, 29, 36, 39, 42)

Stormwater discharges to waters of the state must not violate state water quality standards, including Oregon Administrative Rule (OAR) 340-041-0004, the Antidegradation Policy for Surface Water. There is a

reasonable expectation that runoff from impervious surfaces will carry pollutants toward the lowest point in the landscape, which is generally a water of the state. Low Impact Development (LID) techniques to reduce amounts and concentrations of runoff leaving the project area and Best Management Practices (BMPs) targeting removal of reasonably expected pollutants (sediment, metals, hydrocarbons, nutrients, pesticides, etc.) prior to discharge of stormwater must be incorporated into project designs. A narrative and site sketch describing these LID techniques, BMPs and other stormwater treatment options commensurate with the scale of the project will constitute a post-construction stormwater management plan which must be submitted by the applicant to DEQ for review and approval prior to construction. DEQ's *Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces* (located under "Removal/Fill" at: <http://www.des.state.or.us/lwa/sec401cert/sec401cert.htm>) provides information to determine the level of detail required for the plan based on project type, scope, location, and other factors, as well as references to assist in designing the plan. Submission of the plan must include:

- a. A site sketch or plan view drawing indicating: the drainage flow directions; discharge locations; contours and spot elevations; location and size of impervious features (e.g., parking lots, driveways, buildings, or roads); nearest downgradient waterbody with direction of stream and surface flow, other physical features of the site, and the location and type of post-construction BMPs;
- b. A narrative description of proposed BMPs and a summary of their anticipated operation to insure adequate capacity, proper function, and appropriate design for the site such that quality, quantity, and seasonality of pre-construction hydrologic conditions are mimicked to the maximum extent practicable, based on stormwater anticipated to be generated due to project-related impervious surfaces and delivered to waters of the state. See local jurisdiction regulations and accepted stormwater manuals for detention and capacity requirements;

c. Implementation of the plan must be concurrent with installation of impervious surfaces and include an adequate operation and maintenance plan with documentation of responsibility for maintenance by a qualified entity;

d. If engineered structural BMPs are incorporated into the post construction stormwater management plan they must be prepared and stamped by an Oregon registered Professional Engineer (PE), and specification drawings must be submitted; or,

e. In lieu of a complete plan, the applicant may submit:

i. Documentation of acceptance of the stormwater into a DEQ permitted National Pollutant Discharge Elimination Strategy (NPDES) Phase I or II Municipal Separate Storm Sewer System (MS4); or

ii. Reference to implementation of a programmatic process developed to achieve these expectations, and acknowledged by DEQ as adequately addressing pollution control or reduction through basin-wide postconstruction stormwater management practices.

4) Deleterious Materials: The following conditions relating to control of hazardous, toxic and waste materials shall be observed:

a. **Treated Wood: Ineligibility-** Projects which propose installation of chemically treated wood that will contact surface or ground water or that will be placed over water where it will be exposed to abrasion require individual, site specific review and are, therefore, **not certified by this 401 WQC.**

b. Projects that require removal of chemically treated wood must:

i. Ensure that no treated wood debris falls into waters of the State. If treated wood debris falls into waters of the State, it must be removed immediately and disposed of properly.

ii. Dispose of all treated wood debris removed during a project, including treated wood pilings, at an upland facility approved for hazardous materials of this classification. Do not leave treated wood pile(s) in the water or stacked on the streambank.

iii. Immediately place removed piling onto an appropriate dry storage site.

iv. Attempt to remove the entire temporary or permanent piling.

v. If complete removal is not possible, ensure that any treated wood piling to remain submerged is broken, cut, or pushed at least 3 feet below the sediment surface.

vi. Fill and cover holes left by each treated timber piling removed with clean, native substrates that match surrounding streambed materials. If chemically treated wood piles are removed using a vibratory hammer, ensure that holes are capped with clean fill as the pile is removed. Surrounding the pile with clean material prior to removal will allow the hole to fill in upon extraction in order to contain any un-decomposed chemicals which have pooled beneath the substrate and may tend to escape upon extraction of the pile as they are less dense than the surrounding water. Clean fill must be accounted for in project description and threshold limits.

c. Biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete shall not be placed in waterways or wetlands. Authorized fill material must be free of these materials. The applicant must remove all foreign materials, refuse, and waste from the project area.

d. An adequate supply of materials needed to contain deleterious materials during a weather event must be maintained at the project site and deployed as necessary.

e. Machinery refueling shall not occur in waterways, wetlands, or riparian areas.

5) Spill Prevention: Fuel, operate, maintain, and store vehicles and construction materials in areas that minimize disturbance to habitat and prevent adverse effects from potential fuel spills.

a. Complete vehicle staging, cleaning, maintenance, refueling, and fuel storage in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance can be made if all practicable prevention and containment measures [as in 5) b through e below, or others] are employed and this distance is not possible because of any of the following site conditions:

i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);

ii. Natural resource features would be degraded as a result of this setback;
or,

iii. Either no contaminants are present or full containment of potential contaminants to prevent soil and water contamination is provided;

b. Inspect all vehicles operated within 150 feet of any waters of the State daily for fluid leaks before leaving the vehicle staging area. Repair any leaks detected in the vehicle staging area before the vehicle resumes operation;

c. Before operations begin and as often as necessary during operation, steam clean (or an approved equal) all equipment that will be used below bankfull elevation until all visible external oil, grease, mud, and other visible contaminants are removed;

d. Diaper all stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state; and,

e. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed contain spills must be maintained at the project construction site and deployed as necessary.

6) Spill & Incident Reporting:

a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge shall be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as possible.

b. If the project operations cause a water quality problem which results in distressed or dying fish, the operator shall immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS and USFWS as appropriate.

7) Vegetation Protection and Restoration:

Riparian, wetland, and shoreline vegetation in the authorized project area shall be protected from unnecessary disturbance to the maximum extent practicable through:

a. Minimization of project and impact footprint;

b. Designation of staging areas and access points in open, upland areas;

c. Fencing or other barriers demarking construction areas; or,

d. Use of alternative equipment (e.g., spider hoe or crane)

If authorized work results in unavoidable vegetative disturbance; riparian, wetland, and shoreline vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved, at the completion of the authorized work.

8) Project Thresholds:

a. Project applications must be complete and account for total impacts at build-out regardless of construction phasing. Projects may not be phased to avoid exceeding USACE or DEQ imposed threshold limitations of wetland impact or cubic yards of material removal or fill; and,

b. Impacts to wetlands and waters of the state for a project are additive relative to the thresholds for eligibility.

9) DEQ is to have site access upon reasonable request.

10) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application materials.

11) A copy of this WQC letter shall be kept on the job site and readily available for reference by the USACE, DEQ personnel, the contractor, and other appropriate state and local government inspectors.

12) DEQ reserves the option to modify, amend or revoke this WQC, as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.

Activity Specific Conditions

In addition to all conditions of the USACE permit and the 401 WQC General Conditions above, the following conditions apply to specific categories of authorized activities.

NWP 12—Utility Lines: This WQC does not authorize the construction of substations or permanent access roads for utility lines in waters of the state including wetlands.

1. All stream permanent or temporary crossings must be made perpendicular to the bankline, or nearly so, and at the narrowest, or least sensitive, portion of the wetland or riparian corridor.
2. Directionally bored stream crossings:
 - a. Drilling Discharge—All discharge equipment, drill recovery and recycling pits, and any waste or spoiled produced, will be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable;
 - b. In the event that drilling fluids unavoidably enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon

Emergency Response System (OERS) at 800.452.0311. Prior to cleanup, plans must be submitted and approved by the regulatory agencies;

c. When drilling is completed, attempts will be made to remove the remaining drilling fluid from the sleeve (e.g., by pumping) to reduce turbidity when the sleeve is removed; and

d. An adequate supply of materials needed to control erosion and/or to contain drilling fluids must be maintained at the project construction site and deployed as necessary.

3. Utility lines through wetlands must be fitted with trench plugs to avoid dewatering wetlands.

NWP 13—Bank Stabilization:

1. **Ineligibility:** The following streambank stabilization activities require individual 401 WQC or additional conditions approved by DEQ.

a. Bank stabilization projects in excess of 500 feet.

b. Permanent placement of material in wetlands adjacent to a stabilization project.

c. Placement of new vertical structures such as retaining walls, bulkheads, gabions or similar structures; or placement of rock in constructed stream channel trenches where bioengineering is not a feature of the project, with the following exceptions:

i. Rock as ballast to anchor or stabilize large woody debris components of an approved bank treatment.

ii. Rock to fill scour holes, as necessary to protect the integrity of the stabilization project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.

iii. Rock to construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of or slope erosion or failure at, an existing structure (e.g., culvert, utility line, roadway or bridge support) to be repaired.

- iv. Rock or vertical structures in projects maintaining existing transportation related structures when a registered professional engineer identifies these at the only effective method due to site specific geotechnical or hydraulic concerns.

For project meeting eligibility or an exception as listed above (in 1.i through iv.), the applicant shall:

2. Identify potential adverse impacts of bank stabilization on water quality parameters and beneficial uses both upstream and downstream of the activity site, and show how these have been avoided, minimized or mitigated.
3. Provide site design and construction features that avoid, then minimize, then mitigate for the adverse impacts of bank stabilization. Appropriate design features include use of biodegradable project materials, riparian vegetation, and woody debris.
4. When rock is necessary, it must be appropriately sized for stability, clean, durable, angular, and include interstitial plantings unless the permittee can demonstrate that such plantings are not practicable.
5. Provide mitigation approved by DEQ for lost or reduced water quality function.

NWP 16—Return Water from Contained Upland Disposal Areas: Return water from material known to contain contaminants in dissolved form at levels which exceed chronic water quality criteria (OAR 340-041-0033, Tables 20, 33A, and 33B, see: <http://www.deq.state.or.us/regulations/rules.htm>) are **not certified under this 401 WQC.**

1. For all materials removed from wetlands and waterways during authorized activities which has been determined to be suitable for in-water disposal, all practicable efforts to return to waters or beneficial reuse all excess material shall be undertaken prior to disposing in upland areas.
2. Upland disposal of materials must conform to existing DEQ solid waste and contaminant requirements which include an appropriately located and designed confined disposal facility and implementation of all practicable measures to prevent material discharge and uncontrolled return water discharge to waterways and wetlands.

3. Upland disposal facilities must receive a DEQ Solid Waste Letter of Authorization or written notice of exemption prior to disposal taking place there. Contact DEQ Land Quality in the regional office covering project area (800-452-4011).

NWP 33—Temporary Construction, Access, and Dewatering: Refer to Appendix D of DEQ's *Oregon Sediment and Erosion Control Manual, April 2005*, for proper dewatering and work area isolation techniques. Minimize general disturbance to existing vegetation and water quality by:

1. Using low impact equipment (e.g., spider hoe, crane);
2. Using existing roadways, travel paths, and drilling pads;
3. Clearing vegetation which must be removed only to ground level (no grubbing);
4. Placing clean gravel over geotextile fabric for access ways;
5. Minimizing the number of temporary stream crossings and locating them in the least impactful areas;
6. Construction temporary crossings of riparian areas and stream at right angles to the main channel;
7. Obliterating all temporary access roads that will not be incorporated into the permanent structure and restoring those areas;
8. Stabilizing any exposed soil; and
9. Revegetating the site.

NWP-38—Cleanup of Hazardous and Toxic Waste:

1. Dewatering of toxic material dredged from in-stream shall not occur over un-isolated waters of the state. Containment of toxics laden return water must be provided such that proper disposal or adequate treatment prior to controlled release back to waters of the state may be accomplished.

2. Upland disposal facilities must receive a DEQ Solid Waste Letter of Authorization or written notice of exemption prior to disposal taking place there. Contact DEQ Land Quality in the regional office covering project area (800-452-4011).

NWP 41—Reshaping Existing Drainage Ditches:

The linear threshold for reshaping drainage ditches under any NWP is 500 feet. **All projects exceeding the 500 feet threshold require individual 401 WQC or additional conditions approved by DEQ.** For projects within the 500 feet threshold, the applicant shall:

1. Work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;
2. Preserve the existing vegetation to the maximum extent practicable;
3. Establish in-stream and riparian vegetation or reshaped channels and side channels wherever practicable. Such plantings shall be targeted to address water quality parameters (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.



**US Army Corps
of Engineers**
Portland District

**Oregon Department
Land Conservation
And Development
(DLCD)**

Coastal Zone (CZM)
Management Concurrence

Standard CZM Conditions – Appendix A

All projects permitted, licensed, or funded by the federal government are subject to review for consistency with the Oregon Coastal Management Program (OCMP). Conditions may be placed on federal permits, licenses, or funding to ensure consistency with the OCMP. The 10 Standard CZM conditions given below are required as part of that consistency concurrence for Nationwide Permits issued in Oregon's Coastal Zone.

Appendix B provides an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies relevant to each condition.

An applicant may choose to not follow one or more of the OCMP conditions. In that instance, an agreement between the OCMP and the applicant must be reached on what conditions will be attached to the federal permit, license or action.

Failure to come to an agreement shall trigger an objection to the federal action by the OCMP. In that instance, the permittee may appeal the state's objection to the Secretary of Commerce, pursuant to 15 CFR 930; subpart H, within 30 days of receipt of the letter informing the applicant of the OCMP's objection. (Ref. 15 CFR 930.63(e)) In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the OCMP and the federal funding, permitting or licensing agency. The Secretary may collect fees from the permittee for administering and processing the request. (Ref 15 CFR 930.63, 1-1-07 Edition)

Appendices A & B addresses the requirements of 15 CFR 930.4(a) (1).

CZ Condition 1. Consistency with Local Comprehensive Plans.

(1) Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project is consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, or to the statewide land use planning goals where applicable. Permits or other authorizations must be obtained, when required, from the applicable local government before work is initiated under any nationwide permit. Verification of the local jurisdiction's decision must be given to the Corps of Engineers in the form of a completed block seven (7) of the Joint Permit Application. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 2. Consistency with Removal-Spill Law.

(1) Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project is consistent with or not subject to the state statutes for state lands and removal-fill in waters of the state. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) For projects found not subject to the Removal/Fill Law by DSL, any changes in project design or implementation which may reasonably be expected to require application of the Removal/Fill Law shall be submitted to DSL for review.

(3) All conditions placed on a Removal-Fill permit by the Oregon Department of State Lands are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 2a. Leases of State Lands.

(1) Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project has obtained any required lease or other license required for the use of state lands or waters. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by the Oregon Department of State Lands are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 3. Department of Environmental Quality.

(1) Authorization for a project in Oregon's coastal zone under any nationwide permit is valid only if the proposed project has been certified or does not require certification by the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process.

(2) All conditions placed on a DA license, permit, or authorization by the Oregon Department of Environmental Quality are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 4. In-Water Work.

(1) All in-water work, including temporary fills or structures, shall occur within the ODFW recommended period for in-water work for the affected water body. Exceptions to the recommended time periods require specific approval from the Corps, and:

- (i) The Corps shall coordinate exceptions to work windows with ODFW and NMFS (NOAA Fisheries). Decisions to not apply ODFW or NMFS work windows shall be accompanied by written approval from ODFW;
- (ii) On tribal lands, the Corps shall coordinate exceptions with the EPA.

(2) No work shall be authorized within or directly impacting areas identified by the Oregon Department of Fish and Wildlife (ODFW) as used by or susceptible for use by spawning fish, unless

approved by ODFW. This restriction shall apply year-round, and is not limited by spawning season or by the presence or absence of fish at any given time.

CZ Condition 5. Fish and Aquatic Life Passage.

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish passage <http://www.dfw.state.or.us/fish/passage/> decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

(2) No work shall be authorized that does not provide for adequate passage of "aquatic life." Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of this state and which are generally present in or around, or pass through the project site.

(3) This condition is effective only where ODFW regulations apply.

CZ Condition 6. Heavy Equipment Use

(1) Heavy equipment shall be operated from the bank, and not placed in a stream unless specifically authorized. In-stream work may be authorized by the Corps of Engineers if necessary in the interest of safety or due to site conditions prohibiting work from the bank.

(2) Heavy equipment in wetlands or on soft soils must be placed on mats or other similar devices to minimize damage to natural resources.

- (i) If the period of use of heavy equipment on the wetland area will exceed 14 (fourteen) calendar days from start to finish, the applicant/permittee shall notify the Corps prior to starting the work. The Corps shall assess if the longer work period is necessary, and what additional protective measures may be required to minimize or mitigate the impacts.
- (ii) All mats or other protective measures shall be removed at the end of each workday unless the Corps determines that to do so would cause greater harm to the resource.

(3) Irrespective of measures taken to limit unintended impacts from heavy equipment, any damage done to vegetation, land, or waterways within or impacting waters of the state beyond the scope of the permit shall be mitigated.

(4) This condition is effective only in situations where the Removal-Fill Law applies.

CZ Condition 7. Collateral Damage

(1) Permittees shall be required to repair, restore, or mitigate for any and all impacts within or impacting waters of the state which occur in the course of the work, including those beyond the scope of the permitted work, whether intentional or unintentional, including those impacts due to accident, misinterpretation, or misunderstanding.

(2) This condition is effective only in situations where the Removal-Fill Law applies.

CZ Condition 8. Multiple Permits

(1) For each NWP-authorized activity, the acreage of impact for a permitted activity shall not exceed the limit for that specific permit. When there are two or more nationwide permits combined for a single project site, the impact for each activity must be limited to that specifically permitted under each applicable NWP. For example, when combining two NWPs at a single site, if one nationwide permit authorizes 1/4 acre of impact for a house, and another 1/4 acre of impact for a road, the total impact *due to the house* may not exceed 1/4 acre.

(2) This condition is effective only in situations where the Removal-Fill Law applies.

CZ Condition 9. Aquaculture

(1) For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels, authorization for projects in Oregon's coastal zone under a nationwide permit is valid only if the applicant has obtained authorization, as required, from the Oregon Department of Agriculture (ODA) for use of state submerged and submersible lands for aquaculture purposes.

(2) All conditions placed on an aquaculture or mariculture operation by the ODA are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

(3) This condition is effective only in situations under the jurisdiction of the ODA.

CZM Concurrence - Appendix B

Standard CZM Conditions - Basis in Law

This appendix provides an explanation of why the conditions given in Appendix A are necessary to ensure consistency with enforceable policies of the Oregon Coastal Management Program, and references the specific enforceable policies relevant to each condition. This Appendix addresses the requirements of 15 CFR 930.4(a) (1).

CZ Condition 1. Consistency with Local Comprehensive Plans.

OAR 660-031-0030 requires denial of a state permit when a proposed activity is not in compliance with a Statewide Planning Goal or compatible with an Acknowledged Comprehensive Plan. Further support for this condition is found in ORS 197.180(1) (a & b), which requires compliance with goals and acknowledged plans.

Paragraph two is considered a logical extension of the requirements of -0030 and 197.180. Any condition required for local approval must also be an enforceable provision of the coastal program (through the Goals and acknowledgement) to be included in the federal permit to ensure consistency.

CZ Condition 2. Consistency with Removal-Fill Law.

The OCMP states that the general criteria for assessing consistency are whether the activity or project conforms to the mandatory policies set forth in applicable state statutes and rules. (Green Book, p 51) Those statutes are found in Table 3, page 23, of the Green Book. As referenced in the Green Book, ORS 541 (later renumbered ORS 196 in 1987) is the Removal-Fill Law. DSL is responsible for administering this law, and the decision to issue a permit or find no jurisdiction constitutes an affirmative determination of consistency with the Removal-Fill Law. (Green Book, P 17)

Paragraph two is considered a logical extension of the requirements of ORS 196. Any condition required for state approval must also be an enforceable provision of the coastal program (through the Goals and plan acknowledgement) to be included in the federal permit for consistency.

CZ Condition 2a. Leases of State Lands.

OAR 141-082-0060 gives DSL the authority to place terms on a lease of state lands as it sees fit. This rule is based upon ORS 274.

Paragraph two is considered a logical extension of the requirements of -0060 and ORS 274. Any condition required for state approval must also be an enforceable provision of the coastal program to be included in the federal permit for consistency.

CZ Condition 3. Department of Environmental Quality.

The OCMP states that the general criteria for assessing consistency are whether the activity or project conforms to the mandatory policies set forth in applicable state statutes and rules. (Green Book, p 51) Those statutes are found in Table 3, page 23, of the Green Book. ORS 454,459, 467, and 468 are referenced as DEQ authorities under the OCMP.

* Note. To be valid any condition asserted under consistency determination must be based on an authority included in the OCMP. Any other authority may be valid under the requirements of Section 401 of the Clean Water Act, but would not be valid for federal coastal zone consistency. ORS 454,459,467 and 468 are referenced as DEQ authorities under the OCMP. Coastal Zone condition 3 is independent of any other conditions DEQ might place on a 401 certifications which are based on authorities other than 454,459,467, and 468.

CZ Condition 4. In-Water Work.

(1) The Fish and Wildlife Commission is responsible for the protection and management of fish and wildlife in the state. (ORS 496.012) Any federal action should be fully consistent with ODFW policies promulgated under ODFW authorities (ORS 496,498, 501, and 506), irrespective of ORS 196 (Removal-Fill Law) or other authorities.

ODFW promulgated the *Oregon Guidelines for Timing of In- Water Work to Protect Fish and Wildlife Resources* under ORS 496.012 and 496.138. OAR 141-085-0029(9) (c) requires consultation by DSL with ODFW if in-water work is requested outside the dates set by ODFW in the *Guidelines*. The Corps is given leave to abrogate these rules, but a clear record of their decision is appropriate.

(2) This condition is based upon the plenary authority of ORS 496.012, is consistent with SLOPES, but goes a little further in exerting ODFW authority.

CZ Condition 5. Fish and Aquatic Life Passage.

The Fish and Wildlife Commission is responsible for the protection and management of fish and wildlife in the state (ORS 496.012). This is taken to include the management and protection of habitat, though 496.012 does not use 'habitat.' Any federal action should be ly consistent with ODFW policies promulgated under OCMP-incorporated ODFW authorities (ORS 496,498, 501, and 506), regardless of ORS 196 (Removal-Fill Law) or other authorities. (Green Book, p 23)

ORS 509.585 sets out requirements for fish passage at artificial obstructions. ORS 509 was incorporated in the OCMP as a routine program change on March 20, 2002 in a letter to Nan Evans from John King.

"Waters of this state" shall be interpreted consistent with its meaning for ORS 496.012. See also definition given in OAR 141-085.

Relevant definitions:

141-085-0010 (5) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(225) "Waters of this State" means natural waterways including all tidal and non-tidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and

non-navigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

496.004 (19) "Wildlife" means fish, shellfish, wild birds, amphibians and reptiles, and feral swine as defined by State Department of Agriculture rule, and other wild mammals.

CZ Condition 6. Heavy Equipment Use

The basis for this condition is found at OAR 141-085-0029.7, .8, and .9c & d, and relates to the minimization of impacts generally for any activity.

CZ Condition 7. Collateral Damage

This condition is based upon OAR 141-085-0029.9.c, minimization of impacts, and 141-085-0079, enforcement. This condition would extend a specialized provision to the NWP program based upon general provisions of the OAR. There are currently provisions in state law requiring this type of restoration, but nothing explicit. This would clarify an existing situation, making enforcement easier and bringing to bear the Corps' enforcement authority.

CZ Condition 8. Multiple Permits

OAR 141-089-0100(6) prohibits the use of more than one state general permit on a project. This condition brings Corps practice more in line with state enforceable policy. *DSL approval is required for the modification of this condition.*

CZ Condition 9. Aquaculture

ORS 622.220 gives ODA authority over shellfish aquaculture. ORS 622 is incorporated into the OCMP.

CZM Concurrence: Appendix C

Guidance for Determination of Denial of Advance Concurrence

Advance concurrence is not extended to the following two classes of permits:

- Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), excepting projects permitted under NWP 1 or NWP 5.
- Any project utilizing NWP 29 or NWP 39 requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

The District Engineer shall be responsible for determining when proposed projects meet one or both of these circumstances. In these instances, the DLCD will undertake an individual review of the project to ensure proper adherence to the OCMP.

Territorial Sea:

Oregon's Territorial Sea extends from the shoreline seaward for a distance of three (3) nautical miles. Estuaries are not considered to be part of the Territorial Sea. Excepting projects permitted under NWP 1, *Aids to Navigation*, and NWP 5, *Scientific Measurement Devices*, any project which occurs on or under the Territorial Sea, or on or beneath the sea bottom, shall be reviewed on an individual basis by DLCD for consistency with OCMP. In addition, any project which results in new or increased activity or impacts on or under the Territorial Sea, or on or under the sea bottom, shall be reviewed on an individual basis by DLCD for consistency with OCMP.

Examples of activities falling under this exception include:

- Construction of an offshore structure or platform;
- Installation of wave or wind energy extraction devices and related infrastructure;
- Installation of a buried or exposed cable;
- A new or expanded port facility which increases ship traffic in the Territorial Sea;

- A new or relocated shipping channel in the Territorial Sea.

These examples are illustrative, not comprehensive. Any questions regarding application of this criterion should be directed to the Oregon Coastal Management Program office.

NWP 29 and 39

Advance concurrence is withheld from any project utilizing NWP 29 or 39 ***and*** requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. Such projects may be identified by block seven (7) of the Joint Permit Application.

Examples of situations falling under this exception include:

- Permit applications where the city/county has checked the box "This project is **not** consistent with the comprehensive plan.. ." in block seven (7) of the JPA;
- The project would require an amendment to a comprehensive plan;
- The project would require a change in zoning;
- The project would require an exception to a Statewide Planning Goal.

These examples are illustrative, not comprehensive. Any questions regarding application of this criterion should be directed to the Oregon Coastal Management Program office.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to NMFS No:
2010/05115

February 2, 2011

Kevin Moynahan
Attention: Mr. Tom Taylor
U.S. Army Corps of Engineers
Regulatory Branch, CENWP-CO-GP
P.O. Box 2946
Portland, Oregon 97208-2946

Re: Endangered Species Act Section 7 Letter of Concurrence and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Conservation Recommendations for the Oregon State University – Hatfield Marine Science Center Dynamic Revetment, Yaquina Bay (6th field HUC: 171002004030), Lincoln County, Oregon (Corps No.: NWP-2010-401)

Dear Mr. Moynahan:

On October 12, 2010, the National Marine Fisheries Service (NMFS) received your request for a written concurrence that the effects of the U.S. Army Corps of Engineers (Corps) proposed issuance of a permit under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act to Oregon State University to install a dynamic revetment for erosion protection at Hatfield Marine Science Center is not likely to adversely affect (NLAA) Oregon Coast coho salmon (*Oncorhynchus kisutch*) or their designated critical habitat. The letter included a request to conduct an essential fish habitat (EFH) assessment under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

On December 17, 2010, the Corps provided additional information on the proposed action that was not included in the original request. On January 6, 2011, the Corps requested concurrence for their determination of effect that the proposed action is NLAA southern green sturgeon (*Acipenser medirostris*), southern Pacific eulachon (*Thaleichthys pacificus*) or designated critical habitat for southern green sturgeon. Critical habitat for Pacific eulachon is not proposed in Yaquina Bay.

This response to your letter was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402 and agency guidance for preparation of letters of concurrence,¹ and concurs with your determination that the proposed action is NLAA Oregon Coast (OC) coho salmon (*Oncorhynchus kisutch*), southern green sturgeon, Pacific eulachon, or designated critical habitat for OC coho salmon, or southern green sturgeon.

¹ Memorandum from D. Robert Lohn, Regional Administrator, to ESA Consultation Biologists (guidance on informal consultation and preparation of letters of concurrence) (January 30, 2006).



This letter also transmits the results of our analysis of the effects of the proposed action on EFH pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation,² and concludes that the proposed action would adversely affect EFH designated for coho and Chinook salmon (*O. tshawytscha*), coastal pelagic species, or groundfish species. NMFS has included two conservation measures that would avoid, minimize, or otherwise offset potential adverse effects on EFH.

DESCRIPTION OF THE PROPOSED ACTION

The proposed action is the Corps issuing a permit under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act to Oregon State University's Hatfield Marine Science Center (applicant) to place a dynamic revetment in the upper intertidal for purposes of slowing or eliminating shoreline erosion (Figure 1).

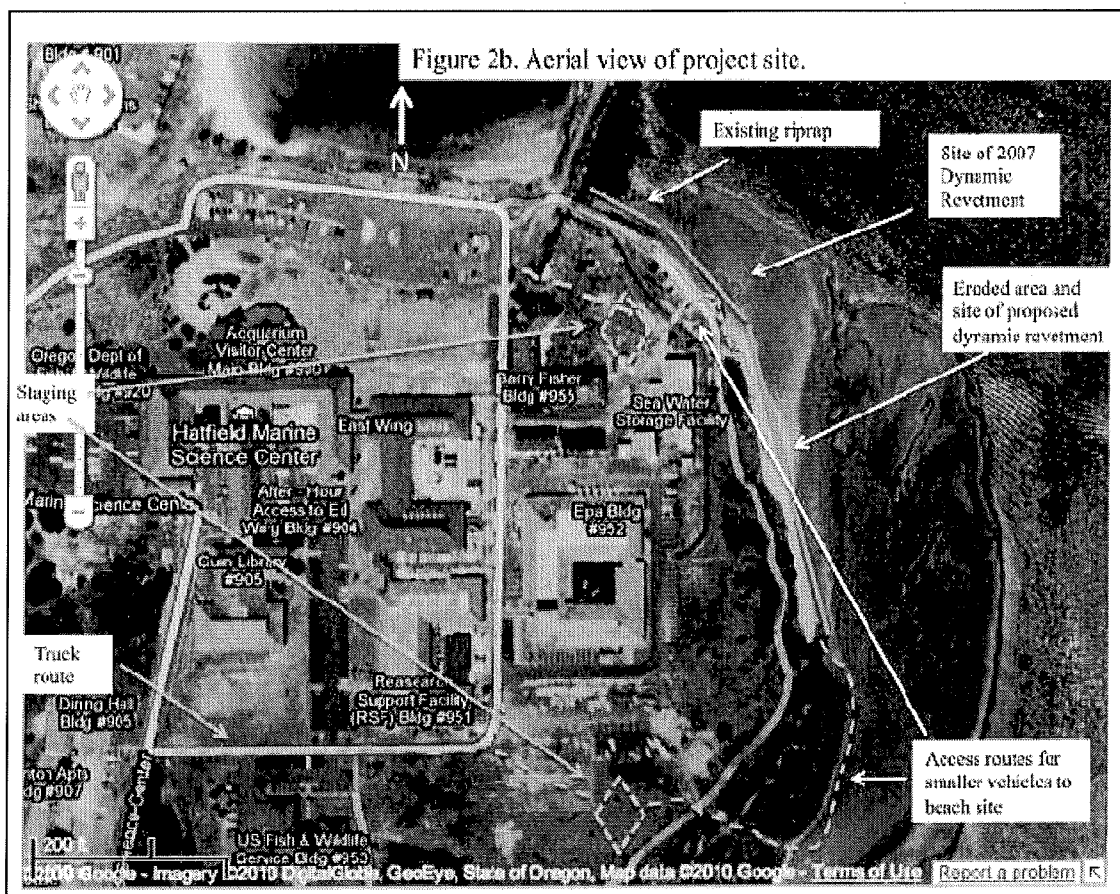
The applicant would place approximately 550 cubic yards of river rock, consisting of 400 cubic yards of small rounded gravel and 150 cubic yards of cobble, along the eroding shoreline. Following the design of the 2007 stabilization effort,³ the project will move the current, eroded shore profile seaward by approximately 8 feet. The applicant would store the washed rock in an upland staging area and then place it on the shoreline using small bulldozers. Gravel will be placed on the exposed shore face at low tide during approximately a one-week period between November 1 and February 15. The dynamic revetment would extend along 500 feet of the shoreline and be approximately 50 feet wide.

The applicant is proposing to maintain the revetment by placing up to 40 cubic yards of gravel per year. The applicant anticipates some loss of material during winter storms because the revetment is not intended to be a hard, fixed structure but one that allows accretion of sand landward of the revetment while deflecting wave energy away from the shoreline.

² Memorandum from William T. Hogarth, Acting Administrator for Fisheries, to Regional Administrators (national finding for use of Endangered Species Act section 7 consultation process to complete essential fish habitat consultations) (February 28, 2001).

³ NMFS EFH consultation completed February 16, 2007 (refer to NMFS No.: 2007/00366).

Figure 1. Location of proposed dynamic revetment along the northeastern shoreline of Hatfield Marine Science Center.



ENDANGERED SPECIES ACT

In the request for concurrence, the Corps determined that the proposed action may affect but is not likely to adversely affect (NLAA) three ESA-listed species or designated critical habitat for OC coho salmon or southern green sturgeon (Table 1).

Table 1. Federal Register notices for final rules that list threatened species, designate critical habitats, or apply protective regulations to listed species considered in this consultation. Listing status: 'T' means listed as threatened under the ESA.

Species	Listing Status	Critical Habitat	Protective Regulations
Coho salmon (<i>O. kisutch</i>)			
Oregon Coast	T 2/11/08; 73 FR 7816	2/11/08; 73 FR 7816	2/11/08; 73 FR 7816
Green sturgeon (<i>Acipenser medirostris</i>)			
Southern	T 4/07/06; 71 FR 17757	10/09/09; 74 FR 52300	6/02/10; 75 FR 30714
Eulachon (<i>Thaleichthys pacificus</i>)			
Eulachon	T 3/18/10; 75 FR 13012	P 01/05/2011; 76 FR 515	Not applicable

Under the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02).

The effects of the proposed action are reasonably likely to include a change in substrate type of the upper intertidal from sand to gravel/cobble. This change in grain size over 25,000 square feet (0.57 acre) will likely change the infaunal and epifaunal invertebrate community that would colonize this area. Typical amphipods, shrimp, and other burrowing or epibenthic invertebrates will not likely colonize this area until sand is deposited on site through natural shoreline processes.

The change in substrate type will cause a permanent loss of 0.57 acre of feeding opportunity for juvenile OC coho salmon and southern green sturgeon because of the proposed initial placement and the maintenance of the upper intertidal as a gravel/cobble intertidal substrate. Juvenile OC coho salmon eat juvenile fish and benthic crustaceans including corophium, gammarid amphipods, copepods, mysids, and larval crangonid shrimp and Dungeness crab larvae while in the estuary. When adult and subadult southern green sturgeon are present in the estuary they likely eat crangonid shrimp, burrowing ghost shrimp, amphipods, clams, polychaetes, juvenile Dungeness crab, juvenile pelagic and demersal fish. Many of these species live in and on sandy or muddy substrate.

The proposed action including short-term installation effects and long-term loss of prey availability in the sandy substrate of the intertidal is reasonably certain to be insignificant⁴ for OC coho salmon, southern green sturgeon, or their designated critical habitat for the following

⁴ Insignificant effects are so mild that the effect cannot be meaningfully measured, detected, or evaluated as take.

reasons: (1) For the short-term effects from installation of the revetment, all work will be done during low tide and at a time of year when juvenile OC coho salmon and subadult/adult southern green sturgeon are not expected to be present in the action area; (2) while in the estuary, juvenile OC coho salmon and subadult/adult southern green sturgeon have other prey to rely on besides benthic invertebrates, including juvenile anchovy, surf smelt, and other fish that are not dependent upon sandy substrate for their survival and thus are not affected by the proposed project; (3) the placement of the gravel/cobble is not anticipated to raise the height of the intertidal, thus, the duration and extent of the area that is submerged and available habitat for juvenile OC coho salmon and subadult/adult southern green sturgeon is not expected to change; and (4) the dynamic revetment is not expected to indirectly cause additional erosion along the shoreline that would encourage a subsequent need for bank hardening because it is designed to absorb, not only deflect, wave energy.

As for designated critical habitat for OC coho salmon and southern green sturgeon, the proposed action may affect the “forage” primary constituent element of designated critical habitat for OC coho salmon and the “food resources” primary constituent element of designated critical habitat for subadult/adult southern green sturgeon. The loss of this area as sandy substrate that enables crustaceans to colonize and become prey does not rise to the level of an adverse affect because these fish have other prey species which they rely on and portions of the revetment may be recolonized by sand providing some habitat for invertebrate species.

For Pacific eulachon, the proposed action is NLAA individuals because there is no reliable or consistent information that indicates eulachon are present, or have recently been present, in Yaquina Bay. In the *Distribution and Abundance of Fishes and Invertebrates in West Coast Estuaries* (Monaco *et al.* 1990⁵, Emmett *et al.* 1991⁶) describe eulachon as “not present” in Yaquina Bay. Willson *et al.* (2006)⁷ lists the Yaquina River as an eulachon spawning stream, citing personal communication from ODFW biologists, but notes that not all spawning streams are used every year. Oregon Department of Fish and Wildlife biologists Bob Buckman and Chris Lorion report evidence of eulachon spawning in Tenmile Creek (south of Yachats, Oregon) but do not indicate the occurrence of eulachon in Yaquina Bay (WDFW/ODFW 2008 as cited in the Corps’ Biological Assessment)⁸. Based on the paucity of information regarding the presence of eulachon in Yaquina Bay and the conflicting nature of the information, it is likely that eulachon may only use Yaquina Bay infrequently, if at all. Given this lack of likelihood that eulachon will

⁵ Monaco, M. E., R. L. Emmett, S. A. Hinton, and D. M. Nelson. 1990. Distribution and abundance of fishes and invertebrates in West Coast estuaries. Volume I: Data summaries. ELMR Report No. 4, Strategic Assessment Branch, NOS/NOAA. U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service. (Accessed December 2010)

http://ccma.nos.noaa.gov/publications/biogeography/ELMR_WestCoast_Vol1.pdf

⁶ Emmett, R.L., S.L. Stone, S.A. Hinton, and M.E. Monaco. 1991. Distribution and abundance of fishes and invertebrates in west coast estuaries, Volume II: Species life history summaries. ELMR Report No. 8. NOAA/NOS Strategic Environmental Assessments Division, Rockville, MD, 329 p. Available at: http://czic.esc.noaa.gov/czic/QL139.E4_no.8/89FF97.pdf. Accessed December 2010.

⁷ Willson, M. F., R. H. Armstrong, M. C. Hermans, and K Koski. 2006. Eulachon: a review of biology and an annotated bibliography. Alaska Fisheries Science Center Processed Report 2006-12. Auke Bay Laboratory, Alaska Fishery Science Center, NOAA, National Marine Fishery Service, Juneau, AK. Available at <http://www.afsc.noaa.gov/publications/ProcRpt/PR%202006-12.pdf>. Accessed December 2010.

⁸ Corps (U.S. Army Corps of Engineers). 2010. Renovation of the Newport International Terminal Biological Assessment. 172 pages.

be present in Yaquina Bay during the placement of the gravel/cobble, that work will be conducted in the dry during a low tide, and that the lifestage of eulachon most susceptible to potential effects would be the egg or larval stage that is moving out to the ocean which would not be affected through any pathway from a change in substrate from sand to gravel/cobble, NMFS concludes that the effects of the proposed action are discountable⁹ based on lack of presence and lack of a meaningful pathway of effect for Pacific eulachon eggs or larvae.

Reinitiation of consultation is required and shall be requested by the Corps, or by the NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

As part of the information provided in the request for ESA concurrence, the Corps determined that the proposed action will adversely affect EFH designated for coho and Chinook salmon, 17 groundfish, and five coastal pelagic species (Appendix A).¹⁰

Under the MSA, "adverse effect" means any impact which reduces quality of EFH, the quantity of EFH, or both. Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions [50 CFR 600.910(a)]. Avoidance and minimization measures are analyzed by NMFS as part of the proposed action.

The effects of the proposed action on EFH are a change of substrate from sand to cobble/gravel which will likely change the invertebrate prey community that inhabits this area. This change is considered a reduction in the quality of the habitat, and thus, would adversely affect EFH. The changes to EFH are those as described above in the ESA portion of the document are likely more of a concern for species that spend a longer period of time in estuary than coho salmon and southern green sturgeon.

⁹ Discountable effects cannot be reasonably expected to occur.

¹⁰ Pacific Fishery Management Council. 2005. Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan. Pacific Fishery Management Council, Portland, Oregon (November). <http://www.pcouncil.org/groundfish/gffmp/gfa19.html>; Pacific Fishery Management Council, 1998b, The Coastal Pelagic Species Fishery Management Plan: Amendment 8. Pacific Fishery Management Council, Portland, Oregon (December 1998). <http://www.pcouncil.org/cps/cpsfmp.html>; Pacific Fishery Management Council, 1999, Amendment 14 to the Pacific Coast Salmon Plan. Appendix A: Description and Identification of Essential Fish Habitat, Adverse Impacts and Recommended Conservation Measures for Salmon. Pacific Fishery Management Council, Portland, Oregon (March 1999). <http://www.pcouncil.org/salmon/salfmp/a14.html>.

Table 2. Species with designated EFH in the project area.

Species		Lifestage	Activity*	Prey
Groundfish¹¹				
Black rockfish	Sebastes melanops	Juveniles	Feeding	Amphipods, barnacle cypriots, copepods, crustacean zoea, fish larvae, mysids, polychaetes
Brown rockfish	Sebastes auriculatus	Larvae	Feeding	
California skate	Raja inornata	Adults	All	
		Eggs	Unknown	
Copper rockfish	Sebastes caurinus	Larvae	Feeding	
English sole	Parophrys vetulus	Juveniles	Feeding	Amphipods, copepods, cumaceans, molluscs, mysids, polychaetes
		Adults	All	Amphipods, crustaceans, cumaceans, molluscs, ophiuroids, polychaetes
		Eggs	Unknown	
		Larvae	Feeding	
Flathead sole	Hippoglossoides elassodon	Juveniles	Feeding	
		Eggs	Unknown	
		Larvae	Feeding	
Lingcod	Ophiodon elongates	Eggs	Unknown	
		Juveniles	Feeding	
Pacific cod	Gadus macrocephalus	Larvae		Copepods
Pacific sanddab	Citharichthys sordidus	Larvae	Feeding	
Petrale sole	Eopsetta jordani	Eggs	Unknown	
		Larvae	Feeding	
Redstripe rockfish	Sebastes proriger	Larvae	Feeding	
Rock sole	Lepidopsetta bilineata	Eggs	Unknown	
		Larvae	Feeding	
Sand sole	Psettichthys melanostictus	Eggs	Unknown	
Southern shark	Galeorhinus galeus	Adults	All	fish, invertebrates
		Juveniles	Growth to Maturity	fish, invertebrates
Spiny dogfish	Squalus acanthias	Adults	All	
		Juveniles	Feeding	
Spotted ratfish	Hydrolagus colliei	Adults	Feeding, breeding	algae, amphipods, annelids, brittle stars, fish, molluscs, nudibranchs, opisthobranchs, ostracods, small crustacea, squid

¹¹ Groundfish species list created from Habitat Use Database. Information contained in this database from McCain et al. 2005. Groundfish Life History Descriptions. Appendix B Part 2. Pacific Coast Groundfish Fishery Management Plan.

Species		Lifestage	Activity*	Prey
		Juveniles	Feeding	algae, amphipods, annelids, brittle stars, fish, molluscs, nudibranchs, opisthobranchs, ostracods, small crustacea, squid
Starry flounder	Platichthys stellatus	Adults	All	Crabs, fish juveniles, molluscs, polychaetes
		Juveniles	Feeding	Amphipods, copepods, polychaetes
		Eggs	Unknown	
		Larvae		
*Activities include: breeding, feeding, growth to maturity, spawning, unknown				
Pacific Salmon				
Chinook salmon	Oncorhynchus tshawytscha			
Coho salmon	Oncorhynchus kisutch			
Coastal Pelagics				
Northern Anchovy	Engraulis mordax			
Jack Mackerel	Trachurus symmetricus			
Pacific Sardine	Sardinops sagax			
Pacific (Chub) Mackerel	Scomber japonicas			
Market Squid	Loligo opalescens			

EFH Conservation Recommendations

The following conservation measures are necessary to avoid, minimize, or offset the impact of the proposed action on EFH:

1. Refrain from conducting annual maintenance of the dynamic revetment. By doing so, the area is more likely to retain sands that have been brought to the site and the area retains its ability to provide sandy substrate habitat for prey species of salmon and groundfish.
2. Reduce the total length of the revetment to only those areas where erosion is posing an imminent threat to infrastructure (*i.e.*, seawater storage facility, estuary interpretive trail).

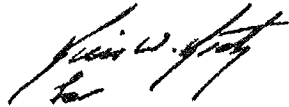
Within 30 days of receiving these recommendations, you must provide NMFS with a detailed written response [50 CFR 600.920(k)]. If your response is inconsistent with the EFH conservation recommendations, you must explain why the recommendations will not be followed, including the scientific justification for any disagreements over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

Following increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, in your statutory reply to the EFH portion of this consultation, please clearly identify the number of conservation recommendations accepted. The EFH portion of this consultation will be completed when NMFS receives your response.

The Corps is required to complete a supplemental EFH consultation with NMFS if it substantially revises its plans for this action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations [50 CFR 600.920(k)].

Please direct questions regarding this letter to Bridgette Lohrman, fish biologist in the Northern Oregon Coast/Lower Columbia River Branch of the Oregon State Habitat Office, at 503.230.5422.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Stelle, Jr.", with a stylized flourish at the end.

William W. Stelle, Jr.
Regional Administrator

cc: Derek Wilson, ODFW

COMPLIANCE CERTIFICATION

U.S. Army Corps of Engineers
CENWP-OD-GC
Post Office Box 2946
Portland, Oregon 97208-2946

1. Permittee Name: George Boehlert
Oregon State University
Hatfield Marine Science Center
2. County: Lincoln
2. Corps Permit No: NWP-2010-401
3. Corps Contact: Tom Taylor
4. Type of Activity: Bank Stabilization

Please sign and return form to the address above:

I hereby certify that the work authorized the above referenced permit has been completed in accordance with the terms and conditions of said permit and that required mitigation is completed in accordance with the permit conditions, except as described below.

Signature of Permittee

Date