



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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May 11, 2007

Colonel Michael McCormick
District Engineer
Seattle District, Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

RE: State of Washington decisions on Section 401 Water Quality Certification and Coastal Zone Consistency Determination in response to Department of the Army, Corps of Engineers "Notice of Reissuance of Nationwide Permits," published in the Federal Register March 12, 2007.

Dear Colonel McCormick:

The Department of Ecology (Ecology) has completed its review of the changes to the Nationwide Permit (NWP) program published in the Federal Register on March 12, 2007, to reissue all existing NWPs, modifications to the General Conditions and definitions, and the issuance of six new NWPs, two new General Conditions and 13 new definitions.

Ecology's review was conducted in response to the Corps' request for certification pursuant to Section 401 of the federal Clean Water Act and a request for concurrence with the state's Coastal Zone Management (CZM) Program pursuant to the federal Coastal Zone Management Act. The review determined whether there was reasonable assurance that the NWPs will not violate applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act and other applicable provisions of state law. Ecology also reviewed the NWPs for consistency with enforceable provisions of the state's CZM Program.

Ecology is basing this certification, in part, on the General Regional Conditions and specific Regional Conditions that the Seattle Corps District provided and the Washington state general and specific conditions described below. If, prior to the Corps' finalization of the NWP any of the NWP Regional Conditions are modified or eliminated, Ecology reserves the right to deny or condition 401 certification and CZM consistency for those NWP affected.

In addition to the National and Regional Conditions, Ecology has developed State General 401 Certification Conditions and specific State 401 Certification Conditions. Ecology's State General 401 Certification conditions include the following:

- Compliance with water quality standards for in-water work.
- No further exceedence in 303(d) listed waterbodies for the specific parameter listed.
- Notification documentation required for review.

- Aquatic resources requiring special protection and mitigation.
- Approval of temporary fills in place for more than 90 days.
- Projects within the boundaries of the Mill Creek Special Area Management Plan.
- State Certification when Corps defaults (does not meet 45 days).

Below is a summary of Ecology's decisions regarding specific NWP:

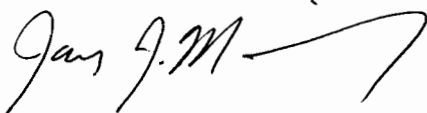
- Ecology certifies 401 Certification for:
NWP # 4, 5, 7, 15, 18, 19, 20, 22, 25, 30, and 31
- Ecology certifies subject to specific 401 Certification conditions for:
NWP #3, 6, 12, 13, 14, 16, 23, 27, 29, 32, 33, 34, 36, 38, 39, 40, 42, 45, 46, and 48
- Ecology denies 401 Certification for:
NWP # 17, 21, 37, 41, 43, 44, 47, 49, and 50

Regarding the Corps' determination for consistency with the state CZM Program - Ecology has determined that the NWP are consistent with the states CZM Program as stated below:

- Ecology concurs with the Corps' determination for the following:
NWP # 1, 2, 4, 5, 7, 9, 10, 11, 15, 18, 19, 20, 22, 25, 28, 30 and 31.
- Ecology concurs with conditions the Corps' determination for the following:
NWP # 3, 6, 12, 13, 14, 16, 23, 27, 29, 32, 33, 34, 36, 38, 39, 40, 42, 45, 46, and 48.
- Ecology objects to the Corps' determination for the following:
NWP # 8, 17, 21, 35, 37, 41, 43, 44, 47, 49, and 50.

Attachment #1 – State of Washington Final Decisions and Conditions for Corps of Engineers Nationwide Permits. This document fully outlines Ecology's State General Conditions as well as Ecology's position on each NWP for Section 401 certification and the agency's CZM determination. Please contact Loreé Randall of my staff at (360) 407-6068 if you have any questions or would like additional information.

Sincerely,



Jay J. Manning
Director

Attachment

ATTACHMENT 1

STATE GENERAL 401 CERTIFICATION CONDITIONS

The following general conditions apply to all Nationwide Permits issued for projects occurring in the State of Washington:

1. **For in-water construction activities.** Individual 401 review is required under this condition for projects or activities authorized under NWPs that will cause, or be likely to cause or contribute to an exceedence of a State water quality standard (WAC 173-201A) or sediment management standard (WAC 173-204).

State water quality standards can be located on Ecology's website:

<http://www.ecy.wa.gov/programs/wq/swqs/>.

Sediment management standards can be located on Ecology's website:

<http://www.ecy.wa.gov/biblio/wac173204.html>.

Information is also available by contacting Ecology's Federal Permit staff.

2. **Projects or Activities Discharging to Impaired Waters.** Individual 401 review is required by this condition for projects or activities authorized under NWPs if the project or activity may result in further exceedences of a specific parameter the waterbody is listed for on the state's list of impaired waterbodies (the 303(d) list).

The current 303(d) listed waterbodies can be identified using search tools available on Ecology's website:

<http://www.ecy.wa.gov/programs/wq/303d/2002/2002-index.html>

or by contacting Ecology's Federal Permit staff.

3. **Notification.** For projects or activities that will require individual 401 review, applicants must provide Ecology with the written documentation provided to the Corps (as described in Corps Nationwide Permit General Condition 27, Pre-Construction Notification), including, when applicable:

- (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.

- (b) Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form.

Note: Forms are available at Ecology's Wetlands website:

<http://www.ecy.wa.gov/programs/sea/wetlands/index.html> or by contacting

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Ecology's Federal Permit staff.

(c) Coastal Zone Management Program "Certification of Consistency" Form if the project is located within a coastal county (Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties).

*Note: Forms are available at the Army Corps of Engineers website:
[http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=mainpage Permit Applicant Info](http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=mainpage%20Permit%20Applicant%20Info)
or by contacting Ecology's Federal Permit staff.*

(d) Other applicable requirements of Corps Nationwide Permit General Condition 27, Corps Regional Conditions, or notification conditions of the applicable NWP.

Ecology's review time shall not begin until the applicable documents noted above have been provided to Ecology and Ecology has received a copy of the final Nationwide Permit verification letter from the Corps.

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

Individual 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Regional Condition 1), except for:

- NWP 20 – Oil Spill Cleanup
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous Waste
- NWP 47 – Pipeline Safety Program Repair

(a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publication #s04-06-025 and #04-06-015):

- estuarine wetlands
- Natural Heritage wetlands
- Bogs
- old-growth and mature forested wetlands
- wetlands in coastal lagoons
- interdunal wetlands
- vernal pools
- alkali wetlands

(b) Bog-like wetlands, aspen-dominated wetlands, camas prairie wetlands,

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and marine water with eelgrass beds (except for NWP 48).

(c) Category 1 wetlands

(d) Category II wetlands with a habitat score > 29 points.

5. Mitigation. 401 Certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects or activities authorized under the NWP Program.

Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (Ecology Publication #s06-06-011a and #06-06-011b) and shall, at a minimum, include the following:

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

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) for guidance on developing mitigation plans.

Ecology encourages the use of alternative mitigation approaches, including advance mitigation and other programmatic approaches, such as mitigation banks and programmatic mitigation areas at the local level. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person.

(see <http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>)

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For information on the state wetland mitigation banking program go to <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/index.html>

6. Temporary Fills. Individual 401 review is required for any project or activity with temporary fill in wetlands or other waters of the State for more than 90 days, unless the applicant has received written approval from Ecology.

7. Mill Creek Special Area Management Plan. This condition applies to all NWP's within the boundaries described in the Mill Creek Special Area Management Plan (SAMP), King County, Washington, dated April 2000 (SAMP). The boundaries of the SAMP encompass all subbasins and tributaries drained by Algona Creek, Auburn Creek, Bingaman Creek, Midway Creek, Mill Creek, and Mullen Slough. The area is bounded roughly on the south by 8th Avenue N in Algona and 4th Street NE in Auburn, on the east and north by the Ordinary High Water Mark of the Green River, and on the west by the plateau that parallels Interstate 5 above the Green River valley.

Individual 401 review is required for projects or activities authorized under the NWP's unless:

1. The project or activity will result in fill-related impacts to only wetlands designated as developable under Alternative #8, as shown on Figure 4-8 of the SAMP.
2. Compensatory mitigation for such impacts is onsite and/or within the areas designated on Figure 3-3, "Maximum Areas for Restoration by Target Habitat Type," in the SAMP Aquatic Resources Restoration Plan (April 2000).
3. Mitigation plans comply with the requirements of the SAMP and, in general, with the guidance in the interagency Wetland Mitigation in Washington State (March 2006; Ecology publications #06-06-011a and #06-06-011b).

Note: You can download the SAMP and Aquatic Resources Restoration Plan at: http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=Mill_Creek_SAMP.

8. State Certification for PCNs not receiving 45-day response. In the event the U.S. Army Corps of Engineers does not respond to a complete pre-construction notification within 45 days, the applicant must contact Ecology for Individual 401 review.

NATIONWIDE SPECIFIC 401 CERTIFICATION CONDITIONS

In addition to compliance with the General Conditions above, the following conditions apply to the specified Nationwide Permits issued for projects occurring in the State of Washington:

1. Aids to Navigation.

Regional Conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Not Applicable (Section 10).

2. Structures in Artificial Canals.

Regional Conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Not Applicable (Section 10).

3. Maintenance.

Regional Conditions – None.

NOTE: Applicants proposing culvert crossings in fish-bearing streams should follow design guidance provided in “Fish Passage Technical Assistance, Design of Road Culverts for Fish Passage” (see www.wdfw.wa.gov/hab/engineer/cm).

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activities are below the OHWM with new work being proposed outside the original footprint.

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2. The proposed project or activity increases the original footprint of the structure by more than 10 percent in wetlands.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for grading, berm construction, placement of substrate, and other activities involving a discharge of dredged or fill material.
2. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

NOTE: Shellfish seeding activities are not authorized by NWP 4. The discharge of shells, shell fragments, gravel, etc., may be authorized by NWP 48.

NOTE: This NWP does not apply to fish hatcheries, net pens, or other structures for aquaculture activities to propagate non-motile species such as mussels and oysters.

CZM Consistency Response – Concur

STATE 401 Certification – Certified

5. Scientific Measurement Devices.

Regional Conditions –

1. Temporary devices must be completely removed within 30 days of project completion and the site restored to its original condition.
2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for the construction of weirs and flumes that do not meet Washington Department of Fish and Wildlife fish passage design criteria (see http://www.wdfw.wa.gov/hab/engineer/cm/culvert_manual_final.pdf)

CZM Consistency Response – Concur

STATE 401 Certification – Certified

6. Survey Activities.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for exploratory trenching activities.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

NOTE: An applicant must apply for a "Permit for Oil or Natural Gas Exploration Activities Conducted from State Marine Waters" pursuant to Chapter 173-15 WAC. This permit is required for CZM consistency.

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves oil or natural gas exploration.
2. The project or activity requires trenching in wetlands.

7. Outfall Structures and Associated Intake Structures.

Regional Conditions – None.

CZM Consistency Response – Concur

State 401 Certification – Certified

8. Oil and Gas Structures on the Outer Continental Shelf.

Regional Conditions – None.

CZM Consistency Response — Object

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An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Not applicable (Section 10)

9. Structures in Fleeting and Anchorage Areas.

Regional Conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Not applicable (Section 10)

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Section 10)

Regional Conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Not applicable (Section 10)

11. Temporary Recreational Structures –

Regional Conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Not applicable (Section 10)

12. Utility Line Activities.

Regional Conditions –

1. When backfilling trenches in wetlands, no more than 10 percent of the soil used to backfill the top 12 inches of the trench may consist of subsurface soil.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for mechanized land clearing in the forested wetland for the construction of a substation.

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3. A pre-construction notification must include drawings and/or a description of the measures that will be used to prevent permanent drainage of adjacent areas by the backfilled trenches and/or along the buried utility line.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The entire utility line project or activity impacts more than ½ acre of wetlands.

NOTE: Applicants must also apply for and obtain coverage under Ecology's Construction Stormwater General Permit for all utility line construction projects which disturb cumulatively one acre or more.

13. Bank Stabilization.

Regional Conditions – None.

NOTE: Fills for bank stabilization in special aquatic sites including wetlands, mudflats, and pool and riffle complexes waterward of the ordinary high water line are discouraged.

NOTE: The length of a bank protection project, especially in the case of barbs, is measured as the total length of shoreline/bank to be protected by the structure.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

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Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity is greater than 500 feet in length.
2. The project or activity exceeds an average of one cubic yard per running foot below the Ordinary High Water Mark or High Tide Line.
3. The project or activity involves discharges of dredged or fill material into special aquatic sites.

14. Linear Transportation Crossings.

Regional Conditions –

1. Private linear transportation crossings placed in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP.
2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-construction Notification) for linear transportation crossing activities in tidal waters.

NOTE: Applicants must provide information in the PCN about changes in base and peak flows, and water quality impacts that would result directly or indirectly from the proposed linear transportation crossing as required by Nationwide Permit General Conditions 9 (Management of Water Flows), 27 (Pre-Construction Notification), and 21 (Water Quality).

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

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Individual 401 review is required for projects or activities authorized under this NWP if:

1. The entire linear transportation project or activity impacts more than ½ acre of wetlands.
2. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

15. U.S. Coast Guard Approved Bridges

Regional conditions – None.

NOTE: For a list of navigable waters in Washington State see <http://www.nws.usace.army.mil>.

CZM Consistency Response – Concur.

STATE 401 Certification – Certified

NOTE: An Individual 401 will be required for the Coast Guard permit.

16. Return Water from Upland Contained Disposal Areas.

Regional conditions – None.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity is not covered by an NPDES permit.

17. Hydropower Projects.

Regional conditions – None.

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

18. Minor Discharges.

Regional conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Certified

19. Minor Dredging.

Regional conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for dredging proposed to occur in riffle and pool complexes or mudflats.

CZM Consistency Response – Concur.

STATE 401 Certification – Certified

20. Oil Spill Cleanup.

Regional conditions – None.

CZM Consistency Response – Concur.

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STATE 401 Certification – Certified

21. Surface Coal Mining Activities.

Regional conditions –

1. Reclamation to OSM standards must be completed within 5 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal losses of aquatic ecosystem functions in waters of the U.S. (see Nationwide Permit General Condition 20 for mitigation requirements).

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

22. Removal of Vessels.

Regional conditions – None.

CZM Consistency Response – Concur.

STATE 401 Certification – Certified

23. Approved Categorical Exclusions.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) in all instances. The notification must include a statement/form verifying the proposed work as categorically exempt. The statement/form must be signed by an official of the Federal agency that issued the categorical exemption.

CZM Consistency Response — Concur with Conditions

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Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity has fill impacts to waters of the state greater than ½ acre.

24. State Administered Section 404 Program.

There is no State administered Section 404 program in Washington.

25. Structural Discharges.

Regional Conditions -- None.

CZM Consistency Response – Concur.

State 401 Certification – Certified.

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

Regional Conditions –

1. For projects subject to pre-construction notification and involving work that would result in any loss of waters of the U.S. in a special aquatic site (e.g., mudflat, wetland, or pool and riffle complex), the notification must explain why the loss is necessary and show how it would be fully offset by the beneficial impacts of the project. The notification must describe the pre-project site conditions (including photographs), general wetland functions the site provides, and proposed maintenance and monitoring plans.
2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for any proposed project located in a Department of the Army permit compensatory mitigation

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site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund) site, Resource Conservation and Recovery Act hazardous waste clean-up site, or Washington State Model Toxics Control Act clean-up site.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves fill in tidal waters.
2. The project or activity has impacts to wetlands.

28. Modification of Existing Marinas.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) in all instances.

CZM Consistency Response – Concur.

STATE 401 Certification – Not applicable (Section 10).

29. Residential Developments.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The

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District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

NOTE: The Seattle District is concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. Seattle District will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than 0.5 acre of waters of the United States, including wetlands, to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.

NOTE: Compensatory mitigation plans for development projects should normally include protected vegetated buffers (riparian areas) to protect wetlands, streams, and other aquatic areas. Buffers should consist of native herbaceous, scrub-shrub, and/or tree species and be at least 100 feet wide, unless otherwise approved by the District Engineer.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The residential development has impacts to waters of the state greater than ¼ acre.

2. The project is a subdivision.

NOTE: “Subdivision” is the division or redivision of land into lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.

3. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.

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4. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

30. Moist Soil Management for Wildlife.

Regional Conditions – None

CZM Consistency Response – Concur.

STATE 401 Certification – Certified

31. Maintenance of Existing Flood Control Facilities.

Regional Conditions – None

CZM Consistency Response – Concur.

STATE 401 Certification – Certified

32. Completed Enforcement Actions

Regional Conditions – None

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity has impacts to waters of the state greater than $\frac{1}{4}$ acre.

33. Temporary Construction, Access and Dewatering.

Regional Conditions –

1. Temporary fills may be in place no longer than six months unless the permittee requests and receives an extension from the District Engineer.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity has temporary fills left in place for more than 90 days. The 90 day period begins when fill is initially placed in wetlands or other waters of the state.

34. Cranberry Production Activities.

Regional Conditions – None.

NOTE: The boundaries of an “existing cranberry production operation” are verified by the Corps on a case-by-case basis. In most cases, these boundaries coincide with the boundaries of the existing contiguous cranberry operation property. A cranberry operator may modify up to 10 acres of waters of the U.S. during the lifetime of the cranberry operation provided there is no net loss of wetland acreage. An operator may continue to manipulate those 10 acres of wetlands to produce cranberries during each 5-year period the NWP is valid; however the operator may not be expanded beyond those 10 acres without authorization by standard individual permit.

NOTE: Mitigation may be required to compensate for temporal losses of wetland functions. Please refer to the Corps’ 1998 public notice titled “Guidelines for Implementation of Compensatory Mitigation Requirements for Conversion of Wetlands to Cranberry Bogs” for more information.

CZM Consistency Response — Concur with Conditions

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Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP unless the proposed project meets 1 or 2 below:

1. The proposed expansion area:
 - a. Does not include forested wetland with trees of 8" diameter or greater at Breast Height or provide 30% or greater of the areal canopy coverage of that wetland;
 - b. Is not within 50 feet of the Pacific County Drainage Ditch 1; and
 - c. Is located within the geographic area as described below (see attached map, based on USGS maps 46124-G1-TF-024 (Grayland, WA – revised 1984) and 46124-F1-TB-024 (North Cove, WA – revised 1984):

Beginning at the intersection of Smith Road (aka Smid and/or Cranberry Road) and State Route 105 and running thence south and southeast along SR 105 to the intersection of SR 105 and Smith Anderson Road; thence north to the intersection of Smith Anderson Road and Lungren Road; thence north 1320.0 feet along Smith Anderson Road; thence west 450.0 feet; thence north 1690.0 feet; thence 13 degrees west of the northerly direction approximately 11,280.0 feet to the intersection of the east section line of Section 6 and the west section line of Section 5 (Township 15 North, Range 11 West Meridian) and Smith Road; thence west on Smith Road to the point of beginning.

2. Anywhere in Washington, the proposed expansion area has previously been used for cranberry production. Ecology will verify the expansion for these areas upon receipt of appropriate documentation that adequately demonstrates prior cranberry production in the proposed expansion area. Documentation may include one or more of the following:
 - a. Evidence of the presence of old dikes around the boundary of the proposed expansion (dated photographs, dated video, topographic surveys);

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- b. Old aerial photographs showing cranberry bogs within the proposed expansion area;
- c. Old maps drawn by registered engineers/surveyors showing the presence of cranberry bogs in the proposed expansion area; or
- d. Evidence that established plants of cultivated (not native) cranberry varieties are present within the proposed expansion area.

NOTE: Applicants who do not meet the above criteria may still apply for 401 Certification. Certification will be granted by Ecology if it is determined that the proposed expansion will not cause significant degradation of wetland functions, or where adequate mitigation is proposed.

35. Maintenance Dredging of Existing Basins.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) in all cases. The notification shall include the results of any required sediment testing and identify the location of the upland disposal area(s). Applicants are strongly encouraged to contact the Seattle District's Dredged Material Management Office (telephone 206.764.3768) for specific sediment testing requirements early in the project planning process.

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Not applicable (Section 10)

36. Boat Ramps.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for boat ramps wider than 12 feet or located on smelt, herring, sand lance, candlefish, or salmon spawning beaches. Spawning beach location information can be obtained from the

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StreamNet database (see <http://www.streamnet.org>), Washington Department of Fish and Wildlife, and other sources.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity results in a discharge greater than 50 cubic yards into waters of the state.
2. The boat ramp exceeds 20 feet in width.

37. Emergency Watershed Protection and Rehabilitation.

Regional Conditions – None.

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

38. Cleanup of Hazardous and Toxic Waste.

Regional Conditions – None

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A

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“Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity is not authorized through a Model Toxics Control Act (MTCA) order or a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) order.

39. Commercial and Institutional Developments.

Regional Conditions --

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

NOTE: The Seattle District is concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. Seattle District will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than 0.5 acre of waters of the United States, including wetlands, to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.

NOTE: Compensatory mitigation plans for development projects should normally include protected vegetated buffers (riparian areas) to protect wetlands, streams, and other aquatic areas. Buffers should consist of native herbaceous, scrub-shrub, and/or tree species and be at least 100 feet wide, unless otherwise

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approved by the District Engineer.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.
2. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

40. Agricultural Activities.

Regional Conditions – None.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves fill or mechanized clearing impacting more than 1/10 acre of wetlands.

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2. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.

41. Reshaping Existing Drainage Ditches.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 27 (Pre-Construction Notification) for activities that involve permanent side casting of excavated material into waters of the U.S.
2. Upon completion of the work, all exposed soil surfaces shall either be hydro-seeded or planted with appropriate native herbaceous vegetation.

NOTE: The applicant should plant native woody vegetation along excavate ditches that provide salmon habitat.

NOTE: This NWP does not authorize the conversion of waters of the U.S. to other uses such as impoundments or recovery areas for irrigation waters.

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

42. Recreational Facilities.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The

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District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

NOTE: The Seattle District is concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. Seattle District will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than 0.5 acre of waters of the United States, including wetlands, to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.

NOTE: Compensatory mitigation plans for development projects should normally include protected vegetated buffers (riparian areas) to protect wetlands, streams, and other aquatic areas. Buffers should consist of native herbaceous, scrub-shrub, and/or tree species and be at least 100 feet wide, unless otherwise approved by the District Engineer.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity causes the loss of greater than 300 linear feet of intermittent or ephemeral streambeds.
2. The project or activity disturbs one acre or more of land (including uplands, wetlands, and other aquatic areas) and the post-development stormwater controls are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

43. Stormwater Management Facilities.

Regional Conditions –

1. The pre-construction notification must include a maintenance plan if periodic maintenance dredging is proposed.

NOTE: The Seattle District will consider allowing compensatory mitigation in a stormwater management facility if: (1) hydrology is sufficient to support permanently vegetated wetlands; (2) sinuous edges, islands, vegetation class and open water interspersion are incorporated into the design; and (3) water quality treatment is incorporated outside of the compensatory mitigation area.

NOTE: NWP 43 may not be appropriate in areas of seasonal high groundwater conditions that will interfere with a stormwater management facility's ability to retain/detain stormwater.

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

44. Mining Activities.

Regional Conditions –

1. Reclamation, when required by the Washington State Department of Natural Resources (DNR), must be achieved with 5 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal losses of aquatic ecosystem functions in waters of the U.S. unless waived by the District Engineer. (See Nationwide Permit General Condition 20 for additional mitigation requirements.)
3. This NWP may only be used for aggregate mining activities in lower perennial streams that meet the following criteria:
 - a. Aggregate may not be excavated from vegetated bar or flowing water, or pushed across a wetted channel.
 - b. A 5-foot (horizontal) buffer must be left in a natural state

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along the river edge of the aggregate bar during excavation. After aggregate material is removed, the area must be graded to restore a natural appearance not trap fish.

c. Aggregate material may be temporarily stockpiled within the channel above the plan of the water surface for up to 7 days. Aggregate material may not be stockpiled in wetlands or flowing water.

d. Aggregate material may not be disposed in the channel or where it could re-enter a water of the United States.

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

45. Repair of Uplands Damaged by Discrete Events.

Regional Conditions – None.

NOTE: Applicant should avoid fills in wetlands, mudflats, and pool and riffle complexes. Pool and riffle complexes are frequently created when erosion occurs. These pools provide important spawning, rearing, and predator avoidance habitat.

NOTE: The length of bank protection project, especially in the case of barbs, is measured as the total length of shoreline/bank to be protected by the structure.

NOTE: The Washington State Department of Fish and Wildlife also has jurisdiction over restoration of recently destroyed uplands. Work authorized under this NWP may also require approval from the Washington Department of Fish and Wildlife if the work will use, divert, obstruct, or change the natural flow or bed in salt or fresh waters of the state.

NOTE: On April 6, 2006, the Corps of Engineer's Northwester Division issued guidance on determining whether Department of Army (DA) authorization may be necessary to replace upland areas lost as the result of storms, floods, and other discrete events. This guidance states in part:

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- a. If the post event (new) Ordinary High Water Mark (OHWM) or High Tide Line (HTL) remains at the same location as the pre-event (old) OHWM/HTL, no DA authorization is required for work to occur above (landward of) the OHWM/HTL. If the work is proposed to occur below (waterward of) the OHWM/HTL, a DA authorization will likely be required for the work in this area.
- b. If the new OHWM/HTL establishes below the old OHWM/HTL, no DA authorization is required for work to occur above (landward of) the new OHWM/HTL. If work is proposed to occur below (waterward of) the new OHWM/HTL, a DA authorization will like be required for work in this area.
- c. If the new OHWM/HTL establishes above (landward of) the old OHWM/HTL, no DA authorization is required for work to occur above the new OHWM/HTL. If work is proposed to occur below (waterward of) the new OHWM/HTL, a DA authorization will likely be required for work in this area.

This guidance is available on the Internet at <http://www.nws.usace.army.mil> (select Regulatory and then Regulator/Permits, News and Updates).

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A “Certification of Consistency” form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity will involve the placement of more than 25 cubic yards of dredged or fill material into waters of the United States.
2. The project or activity involves impacts to waters of the state greater than ½ acre.

46. Discharges into Ditches.

Regional Conditions – None.

NOTE: Ditches constructed in and/or connecting waters of the U.S. may provide

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essential fish habitat for anadromous fish in Washington State. For information about EFH in Washington State, please refer to:
<http://wdfw.wa.gov/mapping/salmonscapte/index.html>.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity discharges dredged or fill material into a ditch that receives water or discharges water to a wetland within ½ mile of project site.

47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.

Recommended Best Management Practices –

1. Avoid placing new pipeline in different alignment than original pipeline. When pipeline must be placed in different location, remove original pipeline unless removal will result in more environmental damage than leaving pipeline in place.
2. When backfilling trenches in wetlands, no more than 10 percent of the material used to backfill the top 12 inches of the trench may consist of subsurface soil.
3. Incorporate measures such as plugs and collars to prevent permanent drainage of waters from the bottom of the backfilled trench or along the pipe.
4. In waters subject to scour, determine the scour level for the watercourse that the utility line will cross. Consider placing the utility line below the scour level if flood events may damage the line. Use caution, however, to not break an impermeable layer in the stream substrate, which could result in drainage.

CZM Consistency Response — Object

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An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

48. Existing Commercial Shellfish Aquaculture Activities.

Regional Conditions –

1. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

NOTE: The location, size and density of beds of eelgrass (*Zostera* spp.) and other submerged aquatic vegetation can vary over time. Please contact WDFW Area Habitat Biologists to determine the appropriate protocols for determining the presence and extent of eelgrass beds. Due to site variability (eelgrass density, patchiness, depth of growth, etc), site specific characteristics may need to be considered to determine the most suitable survey protocol. More information regarding eelgrass surveys will be posted on the Corps web site when available.

CZM Consistency Response — Concur with Conditions

Where individual 401 review is triggered, an individual CZM Consistency Response must be obtained for projects located within the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

State 401 Certification – Certified subject to the following:

Project proponent complies with State General Conditions.

Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity is an existing geoduck operation.

49. Coal Remining Activities.

Regional Conditions –

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1. Reclamation to OSM standards must be completed within 5 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. (See National General Condition 20 for additional mitigation requirements).

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.

50. Underground Coal Mining Activities.

Regional Conditions –

1. Reclamation to OSM, DOI or state agency standards must be completed within 5 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. (See National General Condition 20 for additional mitigation requirements).

CZM Consistency Response — Object

An individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A "Certification of Consistency" form must be submitted in accordance with State General Condition 3 (Notification).

STATE 401 Certification – Denied without prejudice.

Individual 401 Certification is required for all projects or activities under this NWP.