



US Army Corps  
of Engineers  
Seattle District



# Joint Public Notice

## Proposal for a Wetland Mitigation Bank

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Public Notice Date: February 3, 2010  
Expiration Date: March 2, 2010

Reference No.: NWS-2009-890  
Name: Blue Heron Slough Conservation  
and Bank

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Interested parties are hereby notified that the U.S. Army Corps of Engineers (Corps) and the Washington Department of Ecology (Ecology) are considering a proposal to establish the Blue Heron Slough Conservation and Mitigation Bank, in Snohomish County, Washington. A prospectus describing the proposed mitigation bank has been received from the bank sponsors, the Port of Everett and Wildlands, Inc., dated January 2010, and titled *Blue Heron Slough Conservation and Mitigation Bank*. The site has already been authorized as a proposed conservation bank by National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). This Public Notice pertains to the site's proposed use as a mitigation bank.

BANK SPONSOR – Wildlands, Inc.  
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Rocklin, CA 95765  
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LOCATION – The proposed Blue Heron Slough Conservation and Mitigation Bank (Bank) is located between the cities of Everett and Marysville in unincorporated Snohomish County (Figure 1). The Bank site is bounded to the north and east by Steamboat Slough, to the south by Union Slough, and to the west by Interstate 5. The main channel of the Snohomish River is located west of the Bank.

The 344-acre Bank is located on North Spencer Island between Steamboat and Union sloughs, near their confluence with Possession Sound. The Snohomish Estuary extends upstream of the Bank site, and the adjacent sloughs are strongly influenced by daily tides, seasonal river flooding, and surface water runoff. The north shoreline of the Bank extends from approximately river mile (RM) 1.5 to RM 3 along Steamboat Slough. The south shoreline of the Bank extends from approximately RM 1 to RM 1.8 along Union Slough. The Bank is located in Sections 3, 4, 9, and 10 of Township 29 N, Range 5 E, on the Willamette Meridian at latitude 48°01'41"N, longitude 122°10'02"W.

**MITIGATION BANKING** – Wetland mitigation banks provide an alternative to traditional, concurrent, compensatory wetland mitigation by offering an opportunity to implement compensatory mitigation at a regional scale in advance of impacts. “Credits” are established at mitigation banks by restoring, creating, enhancing and/or preserving wetlands and other natural resources. These credits can then be used to meet regulatory requirements for compensating for unavoidable wetland impacts within the banks’ designated “service area.” The bank sponsor can sell credits to a third party who needs to offset unavoidable wetland impacts. The bank sponsor develops a Mitigation Banking Instrument (MBI) in consultation with the Interagency Review Team (IRT), which includes federal, state, and local agencies and affected tribes. The MBI contains the legal contract between the bank sponsor and IRT. It also spells out the technical and procedural elements of constructing, operating, and maintaining the bank. Prior to the MBI, a prospectus is submitted to the IRT to determine whether the bank is feasible and appropriate for offsetting regulatory requirements. The Corps and Ecology published this public notice to request comments on the Blue Heron Slough Conservation and Mitigation Bank prospectus.

**PROJECT DESCRIPTION** – The Port of Everett in partnership with Wildlands, Inc. seeks certification of their Bank as a joint fisheries conservation and wetland mitigation bank. In 2008, the NMFS and the USFWS approved the Bank as a conservation bank for salmonid species, steelhead, and bull trout. The bank sponsor now requests federal approval and state certification of the site as a wetland bank in addition to its value as a conservation bank.

The applicants propose to re-establish estuarine habitat throughout the Bank by restoring tidal flows and re-connecting the Snohomish River to the Bank via the adjacent sloughs. Re-establishing connections between the Bank and the Snohomish River will make the Bank accessible to fish species that occur in the river, including Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*), Puget Sound steelhead trout (*O. mykiss*), and bull trout (*Salvelinus confluentus*). In addition, the project would re-establish wetlands and rehabilitate currently degraded wetlands. The Bank will also restore intertidal mudflats and marsh, as well as riparian scrub-shrub and forested habitat.

#### **Conservation Bank**

The Conservation Bank was designed in consultation with NMFS and USFWS to restore and enhance estuarine habitat that would provide benefits for Chinook salmon, steelhead trout, and bull trout. These species are federally listed as threatened. Threatened and candidate fish species are known to use habitats surrounding the Bank.

The conservation bank generates “fish credits” that applicants can use to reduce adverse effects to estuarine and freshwater habitat used by salmonids, steelhead, and bull trout listed as threatened or endangered under the Endangered Species Act (ESA).

The Corps issued a Nationwide Permit 27 (NWP 27) for construction of the bank on August 12, 2008 (Corps Reference # NWS-2007-1973-NO) with a special condition to not proceed with any work that involves mechanized excavation and grading; or removal/alteration of a farm residence until notified that the Corps’ cultural resources review was completed. In a letter dated February 4, 2009, the Corps completed their cultural resources review and authorized the proposed work under the terms and conditions of NWP 27 as described in the their August 12, 2008; letter with a special condition for discovery of human remains. Wildlands Inc. constructed a portion of the Bank in the summer of 2008.

#### **Mitigation Bank**

Certification of the Bank by the IRT as a wetland bank and establishment of its value for wetland credits would allow the Bank to offer compensatory mitigation for unavoidable impacts to wetlands and other aquatic resources.

Existing wetlands were delineated using the Corps' Wetland Delineation Manual and the Ecology's Washington State Wetland Identification and Delineation Manual.

Jurisdictional wetlands cover approximately 63 acres of the Bank site (Figure 4). Of those, 40 percent were determined to be a Category IV, nearly 60 percent were determined to be Category III, and only one wetland was determined to be a Category II. The primary wetland habitat type present is palustrine emergent. Cultivated areas without vegetation were included in this category on the assumption that emergent vegetation would re-establish rapidly if agricultural activities were discontinued. The one remnant on-site slough covers approximately 7 acres. Intertidal marsh habitat exists on benches on the waterward side of dikes along Steamboat and Union sloughs, starting at an elevation of approximately +4.5 mean lower low water (MLLW) and extending upwards in some places to the Ordinary High Water mark.

The Bank property was diked and drained in the early 1900s for agricultural use. Currently, a series of dikes and a tide gate separate the wetlands from the Snohomish River delta estuarine system. The Bank site contains nearly 17 acres of private perimeter dike that is approximately 14 feet above MLLW. The Bank site also contains several structures including a two-story residence, barn, outbuildings, and children's play area. The applicant proposes to remove these structures prior to construction in these areas.

The general Bank design includes constructing an interior slough network that traverses the entire site, re-sculpting site topography to create an array of tidal habitats, re-establishing native vegetation, installing large woody debris, removing the tide gate, breaching the perimeter dike in four locations, and lowering five areas of the dike to allow high tides and floods to enter the Bank (Figure 6). The rest of the dike will remain on the site. In addition, a dike will be constructed along Interstate 5 to protect the highway from tidewaters that will flow onto the Bank following the dike breaches.

A more detailed description of the proposal is included in the *Blue Heron Slough Conservation and Mitigation Bank Prospectus*, dated January 2010. This prospectus is available for review at the above-listed Corps and Ecology offices. It can also be downloaded at the following internet addresses:

[http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=Public\\_Notices](http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=Public_Notices)

<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/public-notices.html>

**SERVICE AREA** – The service area of a mitigation bank is the geographic area in which credits may be used for compensatory mitigation.

The proposed service area for the wetland bank will differ from the approved conservation bank service area because the conservation bank service area does not accurately reflect the geographic area where the wetland bank can be expected to provide appropriate mitigation for wetland impacts.

The proposed wetland service area for the Bank includes the Snohomish Basin, Water Resource Inventory Area (WRIA) 7, below elevation 1,100 feet and the NMFS marine service area, which is the eastern half of Puget Sound (Figure 7b). In Figure 7b, the dark polygons located within the light colored proposed service area are excluded areas, with elevations above 1,100 feet. The applicant expects tidal habitat benefits from the Bank to accrue for all estuarine dependent species in the Snohomish River system (WRIA 7) and adjacent marine waters of Port Gardner and Possession Sound. The proposed service area may change based on public comments and comments from the IRT.

Location of an impact project within the service area of a bank does not mean applicants receive automatic approval from permitting agencies to mitigate at the bank. All projects are reviewed on a case-by-case basis for suitability of the proposed mitigation by each agency that regulates wetland impacts. The agencies are interested in comments regarding the extent of the proposed wetland service area.

PURPOSE – The purpose of the Blue Heron Slough Conservation and Mitigation Bank is to provide compensatory mitigation for unavoidable impacts to wetlands and other aquatic resources occurring in the designated service area. The Bank will also be used by NMFS and USFWS to address impacts to listed salmonid species, steelhead, and bull trout.

ADDITIONAL INFORMATION – The bank sponsor will work with the IRT to develop the MBI in accordance with 33 CFR Part 325 and 332 Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, dated April 10, 2008; Ecology’s wetland mitigation bank certification rule, Chapter 173-700 WAC; and other applicable federal, state, and local rules. The IRT will work with NMFS and USFWS on the relationship between wetland credits and conservation credits to ensure that the same area of credit is not used for more than one project. For example, the Bank will have a specific number of wetland credits and conservation credits. When a project removes wetland credits the amount of conservation credits is also reduced.

ENDANGERED SPECIES – Pursuant to the requirements of the Endangered Species Act of 1973 (ESA), the Corps must assess the potential impacts of its actions on species listed, or proposed for listing, as threatened or endangered under the ESA. The marbled murrelet (*Brachyramphus marmoratus*), threatened; Puget Sound Chinook salmon, threatened; Puget Sound steelhead trout, threatened; and bull trout, threatened; are known to occur in the vicinity of the project area. In addition, there is critical habitat in the vicinity of the project area for Puget Sound Chinook salmon and bull trout.

NMFS issued a biological opinion (No: 2007/08287), dated June 10, 2008, that concluded that the proposed action is not likely to jeopardize the continued existence of Puget Sound Chinook salmon and Puget Sound steelhead, or result in the destruction or adverse modification of Puget Sound Chinook salmon critical habitat. In a letter dated March 28, 2008, USFWS concluded informal consultation (USFWS 13410-2008-I-0147) by determining that the Bank project “*may affect, not likely to adversely affect*” bull trout and bull trout critical habitat. ESA consultation has been completed for this project.

ESSENTIAL FISH HABITAT – The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires Federal agencies to consult with NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). The Corps has determined that EFH for groundfish, coastal pelagic species, and Pacific salmon occurs in the action area.

The Corps determined that the Bank would not adversely affect EFH for groundfish, coastal pelagic species, and Pacific salmon. However, on June 10, 2008, in its biological opinion, NMFS demonstrated that the short-term, local pulses of turbidity from shoreline construction activities, and the proposed modification of 700 feet of riparian habitat constitute an adverse effect on EFH. Therefore, the Corps revised their determination, concluding the proposed project would have an adverse effect on EFH. Special conditions were added to the NWP 27 permit in order to minimize impacts to EFH. EFH consultation has been completed for this project.

CULTURAL RESOURCES – A cultural report for the Bank site was completed in 2007 by ERCI. No archaeological sites were identified during this investigation. An historic property inventory report for the on-site residence and an archaeological site inventory form for the farm levee were submitted to the Corps. The State Historic Preservation Officer (SHPO) determined *No Historic Properties Affected* in a letter dated

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February 23, 2009. The Corps and SHPO agreed that the project would not affect any known cultural resources. The approval included a special condition for the unanticipated discovery of cultural resources.

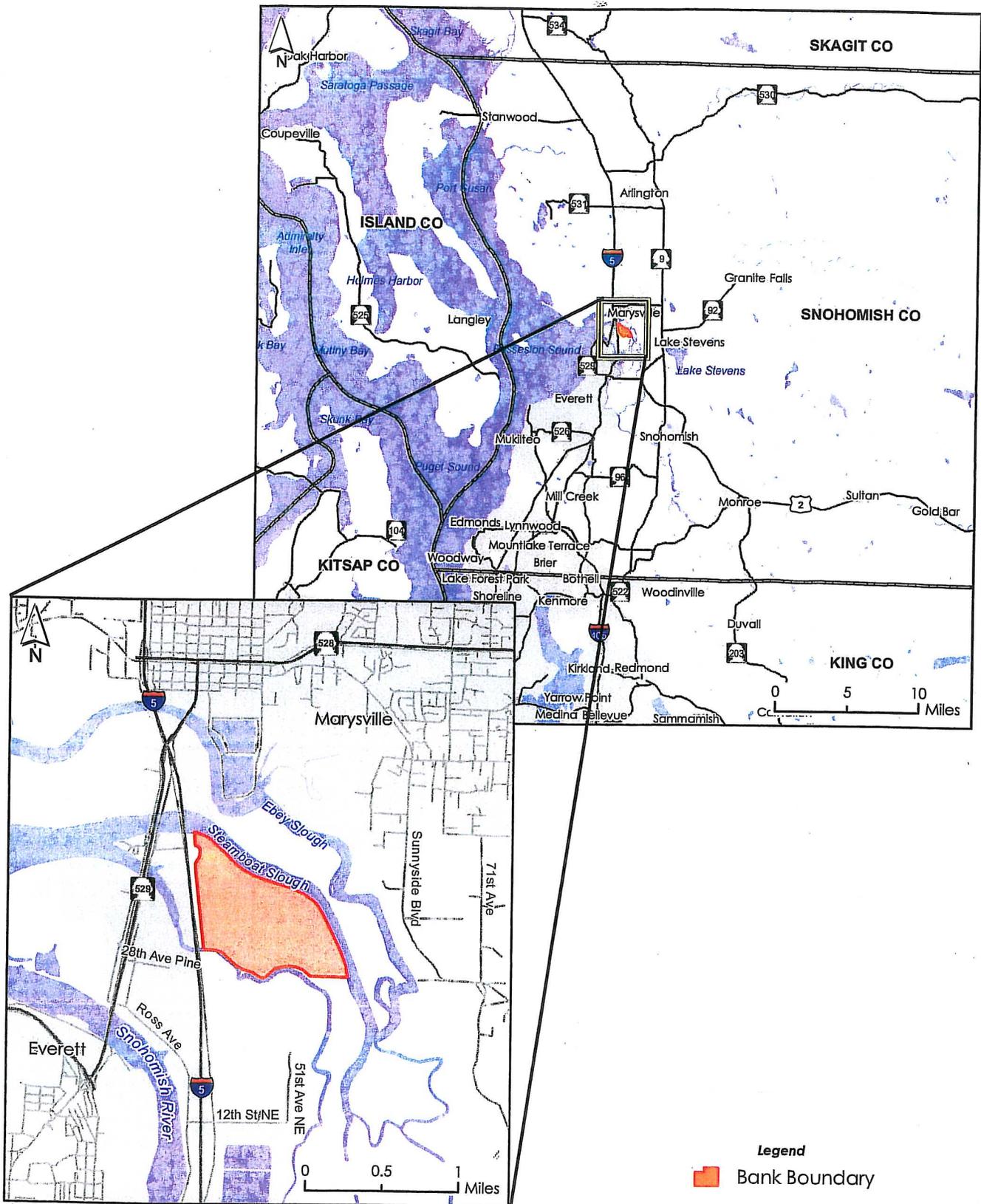
The District Engineer invites responses to this public notice from Native American Nations or tribal governments; federal, state, and local agencies; historical and archeological societies; and other parties likely to have knowledge of or concerns with historic properties in the area. This public notice initiates consultation under Section 106 of the National Historic Preservation Act (36 CFR 800.4[a][3]), with any Tribe that has information or concerns with historic properties in the proposed permit area.

EVALUATION – The Corps and Ecology are soliciting comments from interested parties, including public; federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to identify project aspects that need to be addressed during the mitigation bank review process and development of the MBI. Public comments will assist in developing facts upon which to base a decision by the IRT as to whether or not to authorize the proposed mitigation bank. For accuracy and completeness of the record, all comments should be submitted in writing with sufficient detail to furnish a clear understanding of the reasons for that support or opposition.

COMMENT AND REVIEW PERIOD – Conventional mail or e-mail comments on this proposal will be accepted and made part of the record and will be considered in determining whether it would be in the public interest to authorize this proposal. E-mail comments must originate from the author's e-mail account and must include, on the subject line of the e-mail message, the reference number NWS-2009-890-SO. All e-mail comments should be sent to [gail.m.terzi@usace.army.mil](mailto:gail.m.terzi@usace.army.mil) at the Corps and [brad.murphy@ecy.wa.gov](mailto:brad.murphy@ecy.wa.gov) at Ecology. Conventional mail comments should be sent to either of the addresses at the top of this public notice. Both conventional mail or e-mail comments must include "Blue Heron Slough Conservation and Mitigation Bank, NWS-2009-890-SO" and the commenter's name, address, and phone number. All comments, whether conventional mail or e-mail must be received, no later than the expiration date of this public notice to ensure consideration.

Blue Heron Slough Conservation and Mitigation Bank  
NWS-2009-890-SO

Encl: Figures (4)



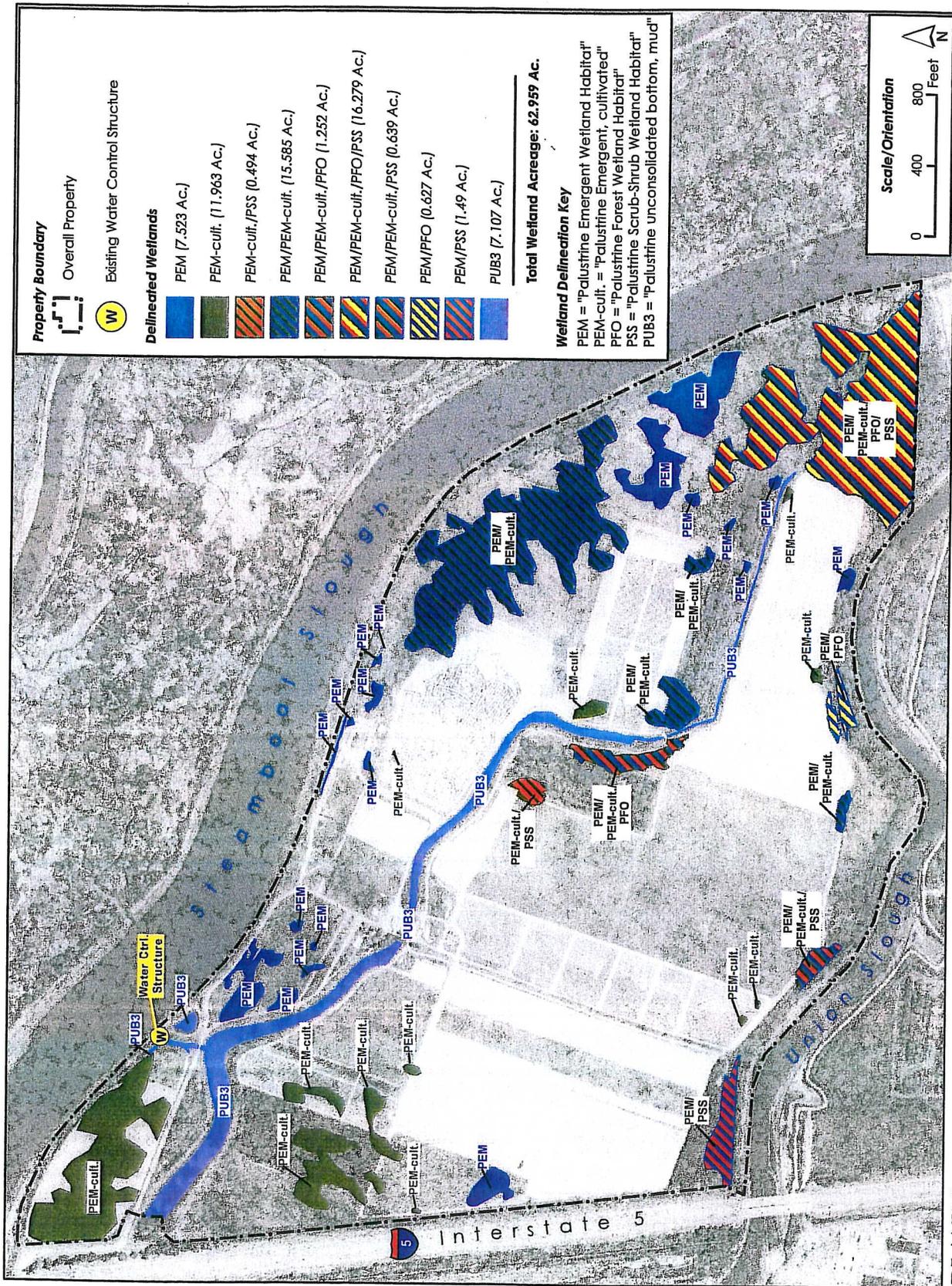
**WILDLANDS**

Blue Heron Slough Prospectus

Reference: 200900890	At: North Spencer Island
Proposed: Mitigation Bank	County: Unincorporated Snohomish
Date: January 2010	State: WA
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Figure 1  
Regional Vicinity



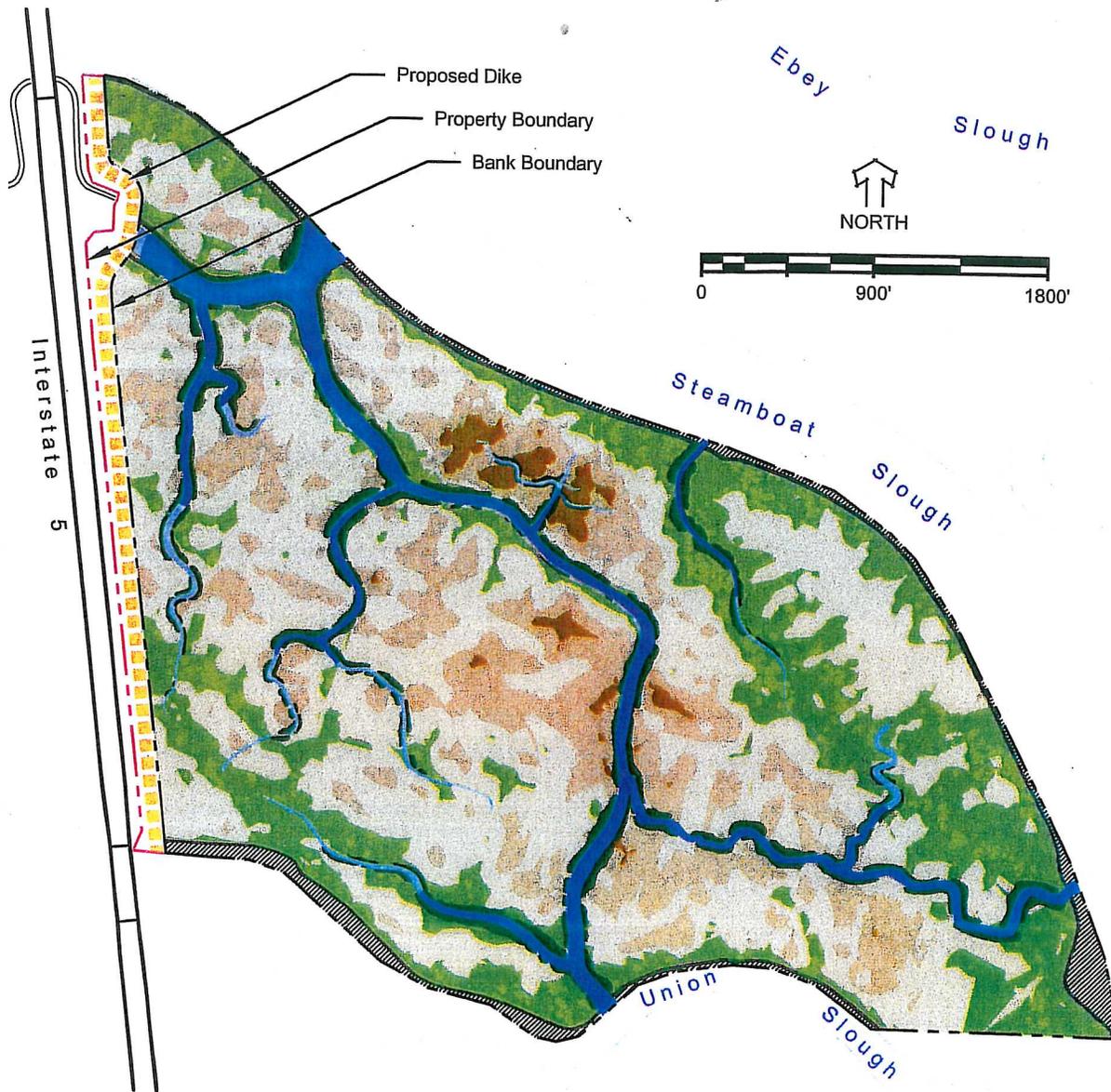


**WILDLANDS**

Blue Heron Slough Prospectus

Figure 4  
 Wetland Delineation

Reference: 200900890	At: North Spencer Island
Proposed: Mitigation Bank	County: Unincorporated Snohomish
Date: January 2010	State: WA
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**LEGEND**

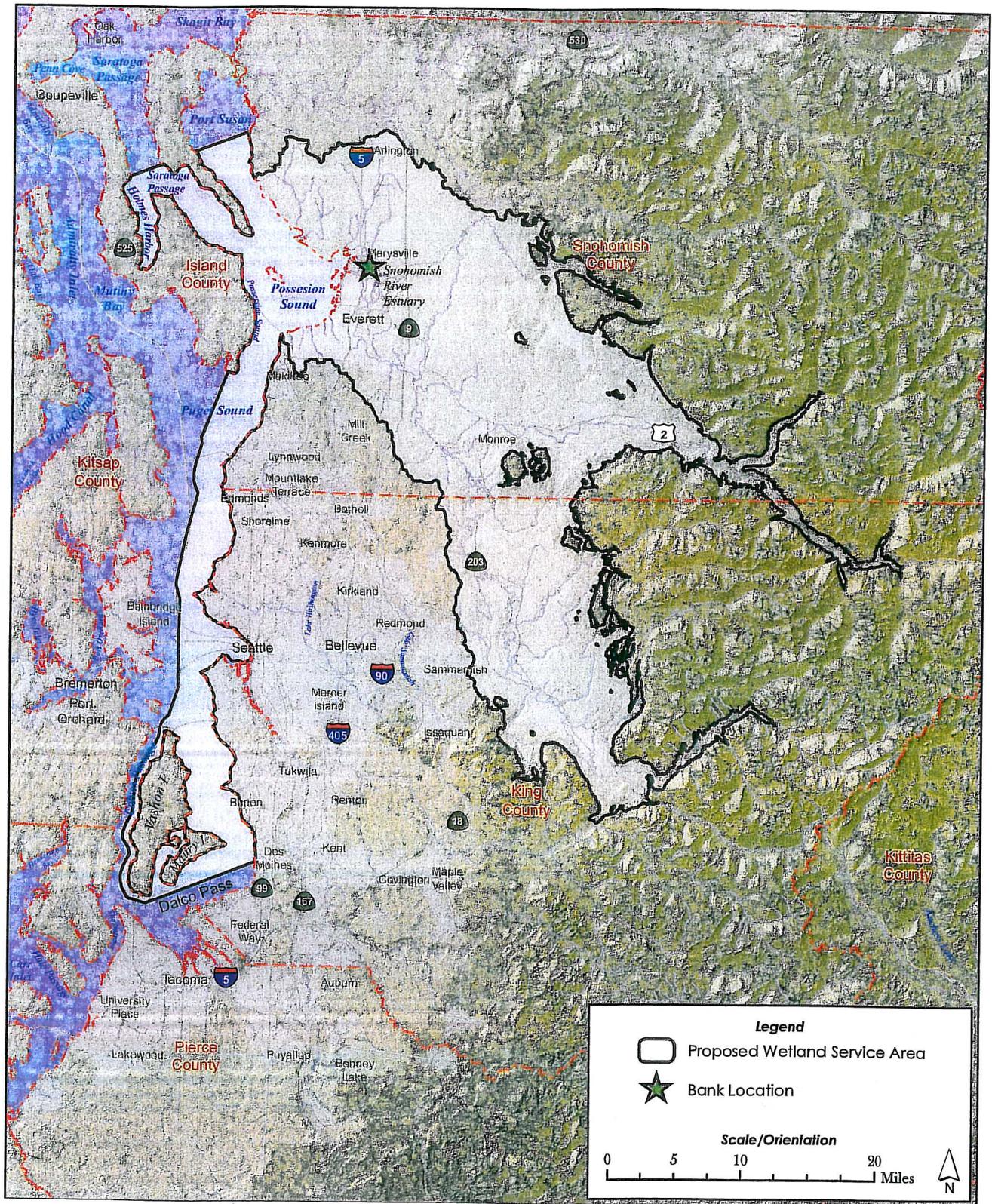
DATUM	NAVD 88	Everett Tidal	Acres	Habitat Types
	Above 8.85'	Above 11.11'	21.7	PSS/FO = Palustrine, Scrub-Shrub/Forest
	7.99' to 8.85'	10.25' to 11.11'	0.9	E2EM = Estuarine, Intertidal, Emergent (upper tidal marsh)
	4.67' to 7.99'	6.93' to 10.25'	80.3	E2EM = Estuarine, Intertidal, Emergent (upper tidal marsh)
	3.67' to 4.67'	5.93' to 6.93'	139.9	E2EM = Estuarine, Intertidal, Emergent (lower tidal marsh)
	2.67' to 3.67'	4.93' to 5.93'	63.8	E2US = Estuarine, Intertidal, Unconsolidated Shore, mud
	0.54' to 2.67'	2.80' to 4.93'	5.3	E2US = Estuarine, Intertidal, Unconsolidated Shore, mud
	-2.26' to 0.54'	0' to 2.80'	3.5	E1UB3 = Estuarine, Subtidal, Unconsolidated Bottom, mud
	-6.25' to -2.26'	-2.74' to 0	19.8	E1UB3 = Estuarine, Subtidal, Unconsolidated Bottom, mud
	varies	varies	8.8	Enhanced Riparian

**WILDLANDS**

Blue Heron Slough Prospectus

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Figure 6  
Site Design 



**WILDLANDS**

Blue Heron Slough Prospectus

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<b>Proposed:</b> Mitigation Bank	<b>County:</b> Unincorporated Snohomish
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Figure 7b  
Proposed Wetland Service Area

