

**SEPA Comment Response Matrix
Boulevard Overwater Walkway Project**

Comment No.	Comment	Response
Comments by the Lummi Nation in Response to SEPA MDNS – Letter dated 8/30/10		
1	The proposed walkway will preclude the exercise of treaty rights by excluding fishing in an area of approximately 25 acres.	The City of Bellingham (City) is committed to working with the Lummi Tribe to address impacts to treaty rights as a result of the project. The Federal Highway Administration (FHWA), as the lead federal agency for National Environmental Policy Act (NEPA) compliance, will consult with the Lummi Tribe and determine appropriate mitigation for project impacts, including impacts to treaty rights. A meeting is planned between FHWA, Washington State Department of Transportation (WSDOT), and the Lummi Tribe for November 13, 2010, to further discuss these matters.
2	The area is actively fished and shellfished by Lummi tribal members, and therefore the Corps cannot issue a permit under <i>Northwest Seafarms v. US Army COE</i> .	The project does not require a U.S. Army Corps of Engineers (Corps) permit under the terms of a 1977 Memorandum of Agreement between the Corps and the U.S. Coast Guard (see attached Corps letter dated August 12, 2010). The City is aware of the Lummi Tribe’s usual and accustomed fish and shellfish harvest rights and will work with the Tribe through FHWA to address potential project impacts.
3	Cumulative effects issues are not adequately addressed in the review documents provided.	<p>The anticipated cumulative effects from the project were addressed in the SEPA and Shoreline Conditional Use Permit documentation submitted to the City. The construction-related, built project, and mitigation effects were included in this documentation and represent the total of effects stemming from the project.</p> <p>Additionally, cumulative effects for the project will be further addressed under the NEPA and Endangered Species Act (ESA) processes lead by FHWA, National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS), in compliance with all applicable policies and guidance. The lead agencies will consult with the Lummi Tribe under both the NEPA and ESA processes.</p>

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4	Environmental Justice issues are not addressed in the review document provided.	Environmental Justice for the project will be addressed under NEPA and ESA processes lead by FHWA and WSDOT Highways and Local Programs Division (HLP), in compliance with the WSDOT Environmental Procedures Manual, the HLP Local Agency Guidelines, and other applicable guidance. The lead agencies will consult with tribes on Environmental Justice issues under both processes.
5	All practicable measures to avoid impacts to tribal fisheries have not been taken. <ul style="list-style-type: none"> - Design should be modified to avoid or minimize impacts to tribal fishing areas. Compensatory mitigation is needed for unavoidable impacts.	The design of the proposed walkway was determined through a series of public processes. Various alternatives were considered and the resulting project is the preferred alternative for the community. Modifications were made during the design process to minimize impacts to eelgrass beds, nearshore areas, and associated juvenile salmon habitats. FHWA will continue to consult with the Lummi Tribe regarding appropriate mitigation during the NEPA process.
Comments by the WDFW in Response to the HPA Application – Letter dated 8/23/10		
6	Written notice of SEPA compliance must be submitted.	SEPA was not completed at the time of the Washington State Department of Fish and Wildlife’s (WDFW’s) letter, but the Mitigated Determination of Non-Significance (MDNS) has since been issued by the City and provided to WDFW.
7	The work window is not consistent with the work window that WDFW implements in Bellingham Bay.	The duration of the in-water work window for the project has been updated per WDFW’s letter. WDFW’s in-water work window coupled with the Corps’ in-water work window results in an in-water work window from September 1 to October 14. This revised in-water work window was discussed with WDFW and is expected to be a condition of WDFW’s Hydraulic Project Approval (HPA).
8	The eelgrass monitoring and mitigation plan should use a viable reference site to be consistent with WDFW guidelines.	The eelgrass monitoring plan has been updated per WDFW request and will be provided to WDFW for final approval. Approval of the eelgrass monitoring and mitigation plan is expected to be a condition of WDFW’s HPA.

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9	Eelgrass adjacent to the north trestle appears to be within the shadow footprint of the new trestle and should be monitored.	The eelgrass monitoring plan has been updated per WDFW request and will be provided to WDFW for final approval. Approval of the eelgrass monitoring and mitigation plan is expected to be a condition of WDFW's HPA.
10	Monitoring transects should be perpendicular to the trestle to be more representative of trestle impacts across depth contours.	The eelgrass monitoring plan has been updated per WDFW request and will be provided to WDFW for final approval. Approval of the eelgrass monitoring and mitigation plan is expected to be a condition of WDFW's Hydraulic Project Approval (HPA).
11	Specific mitigation sites and actions need to be identified in case eelgrass diminishes.	The eelgrass monitoring plan has been updated per WDFW request and will be provided to WDFW for final approval. Approval of the eelgrass monitoring and mitigation plan is expected to be a condition of WDFW's HPA.
Comments by ReSources in Response to SEPA MDNS – Letter dated 10/23/10		
12	The walkway is not needed because there is a parallel trail on land.	<p>The existing South Bay Trail provides access from Boulevard Park to downtown Bellingham. Water access via the South Bay Trail requires users to navigate two at-grade railroad crossings and backtrack approximately 1.1 miles to access the new waterfront park at the Cornwall Landfill site.</p> <p>Additionally, access from the South Bay Trail via Wharf Street has steep slopes that do not meet Americans with Disabilities Act (ADA) requirements. Wharf Street may potentially close. The new proposed overwater walkway and trail will provide access from Boulevard Park to the new development at the former Georgia Pacific site, does not require navigation across at-grade crossings, and will be ADA accessible.</p> <p>The two trails are separated by a significant vertical grade, have different termini, and could potentially serve different user groups. Therefore, each trail has independent utility.</p>
13	Impacts are not necessarily unavoidable if the project is defined correctly. The stated project purpose is not appropriate: "We would put forth that the purpose of a pedestrian/ bicycle park trail is to	The Boulevard Overwater Walkway Project will provide visual and physical access to the waterfront and a trail connection to planned waterfront development in response to public demand. The need for a connection between Boulevard Park and Cornwall Landing has been identified in the

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	safely allow bikers and walkers to get from point A to point B, with minimum interference with motorized vehicles and in a pleasing setting. Its purpose is not to be overwater, per se.”	City’s Parks, Recreation, and Open Space Plan (2002, 2008), Waterfront Futures Group and Vision Framework (2004), Waterfront District Development Plan (2006), and Shoreline Master Program Update (2007). All of these plans included public participation. While pedestrian and bicycle safety are of utmost importance to the City, the purpose of the project is to provide water access to the public.
14	A cumulative impacts analysis is required for a conditional use permit, and no such analysis has been done.	The anticipated cumulative effects from the project were addressed in the SEPA and Shoreline Conditional Use Permit documentation submitted to the City. The construction-related, built project, and mitigation effects were included in this documentation and represent the total of effects stemming from the project.
15	Proposed mitigation is insufficient to impacts. - Mitigation for temporary construction impacts should be included. Proposed mitigation for permanent impacts are insufficient, based on WDFW Aquatic Habitat Guidelines and the 2006 white paper. The City should include a restoration project near the impact site.	Project mitigation will be conducted in compliance with applicable local, state, and federal requirements. Best management practices (BMPs) and conservation measures will be employed to mitigate for temporary construction impacts. The City will continue to work with WDFW and other applicable regulatory agencies to ensure that the project provides adequate mitigation for project impacts. WDFW has been consulted and is expected to issue an HPA for the project that addresses required mitigation for project impacts.
16	Impacts to eelgrass have not been adequately considered.	Eelgrass and macroalgae baseline studies have or will be performed for the project in accordance with WDFW and Washington Department of Natural Resources (WDNR) requirements. The City will adhere to requirements imposed by these agencies as part of the HPA and Aquatic Lease issued for the project. These agencies will require, at a minimum, that the project result in no net loss of eelgrass.
17	The eelgrass reference site is inappropriate because it is within the shadow of the overwater structure. A different site should be chosen.	The final eelgrass reference site to be used for the project will be reviewed and approved by WDFW as part of the eelgrass monitoring and mitigation plan. Approval of the eelgrass monitoring and mitigation plan is expected to be a condition of WDFW’s HPA.

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18	The Lummi Tribe's concerns should be addressed.	Comment noted.
19	Information is missing, including: <ul style="list-style-type: none"> • The WDFW requested update to the eelgrass survey and mitigation report • The shoreline and erosion transportation and evaluation study 	The shoreline erosion transportation and evaluation study will be completed by the time of the shoreline permit hearing. The City is currently negotiating a contract with the design consultant for this work. The eelgrass survey and mitigation report has been revised.
20	"We find there are too many unanswered questions and that the mitigation is too weak for us to support this project without a full EIS and subsequent mitigation."	Comment noted.
Comment by the U.S. Army Corps of Engineers in Response to Permit Application NWS-2010-928 – Letter dated 8/12/10		
21	The project is a bridge across navigable waters, and is therefore regulated by the Coast Guard rather than the Corps. The work needs no authorization from the Corps.	Comment noted.
Comments by Wendy Harris in response to SEPA MDNS – Email dated 8/30/10		
22	Lummi Nation Treaty Rights: As reflected in the attached letter, the Lummi Nation asserts that this development will impair their ability to access approximately 25 acres of land used for fishing rights that are protected under Treaty. It is my understanding that the City is proceeding with its permitting and SEPA process although this matter is not resolved. Expensive litigation to determine whether the City violated tribal treaty rights is not in the public's interest.	Comments raised by the Lummi Tribe in a letter dated August 30, 2010, are previously addressed in this response to comments. The City is committed to working with the Lummi Tribe to address impacts to treaty rights as a result of the project. The FHWA, as the lead federal agency for NEPA compliance, will consult with the Lummi Tribe and determine appropriate mitigation for project impacts, including impacts to treaty rights.
23	Public Navigation: Under the Public Trust Doctrine and the Shoreline Management Act, one of the government's roles is to protect the public's right to navigation, including navigation over aquatic lands	The City will obtain all needed permits and approvals to construct the overwater walkway: <ul style="list-style-type: none"> • WDNR will require a state Aquatic Lease for the project and can impose conditions upon the project to ensure the essence of the Public Trust

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	<p>managed by the DNR. Although studies by the City indicate that part of the structure will be built within navigable waters, this impact is not addressed or, analyzed, avoided or mitigated. This impact is corroborated by the attached letter from the Army Corps. Of Engineers, deeming the project a “bridge”, which is defined as a structure over navigable waters that may interfere with the passage of boats.</p>	<p>Doctrine is met for use of affected public lands. The City will adhere to the requirements of the WDNR Aquatic Lease.</p> <ul style="list-style-type: none"> • The City will require a Shoreline Conditional Use Permit and can impose conditions upon the project to ensure the intent and conditions of the Shoreline Management Act are met. • The U.S. Coast Guard will regulate the project as a bridge and require a Bridge Permit under the terms of a 1977 Memorandum of Agreement between the Corps and the U.S. Coast Guard (see attached Corps letter of August 12, 2010). Federal law prohibits the construction of any bridge across navigable waters without prior authorization from the U.S Coast Guard. <p>The permits and approvals required for the project will address the protection of the public’s right to navigation.</p>
24	<p>SEPA Threshold Decision Made Without Adequate Information: The SEPA process ensures that a project is not built unless there is adequate protection against environmental degradation. For this reason, DOE recommends that all studies be completed before a threshold decision is made. However, the City issued the MDNS before it completed revised studies that were required by WDFW, and instead included the studies as the asserted mitigation. Additionally, the City issued the MDNS before it completed a staff report and cumulative impact analysis that is required as part of the conditional use permit process that is being processed simultaneously with the SEPA review. Since it is known that the most harmful impacts from overwater structures results from cumulative impacts, there was no reason that the City rushed to a SEPA threshold decision before obtaining the</p>	<p>The City of Bellingham, as the SEPA lead agency for the project, can rely on the expertise of other agencies to address specific issues related to a particular agencies expertise. The project and associated mitigation has been thoroughly discussed with WDFW, updates have been made to the mitigation plan as requested by WDFW, and WDFW will have ultimate authority as to whether to issue an HPA for the project. It is expected that the City will require a HPA to be issued by WDFW prior to project construction commencing as a condition of project approval.</p> <p>The anticipated cumulative effects from the project were addressed in the SEPA and Shoreline Conditional Use Permit documentation submitted to the City of Bellingham. The construction related effects, effects from the built project, and mitigation effects were in included in this documentation and represent the total of effects stemming from the project.</p>

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	results of the cumulative impact analysis.	
25	For the above reasons, I request that the City rescind the SEPA determination and re-issue its threshold determination after the issues and information discussed above are resolved.	Comment noted.
26	I believe this action is also appropriate based on fiscal concerns. Given the City's current financial problems, there are less expensive and less environmentally damaging alternatives to public shoreline access. As People for Puget Sound pointed out in their comments on the waterfront redevelopment draft, an elevated land-based shoreline trail along Cornwall, connecting to the S. Bay trail, would protect the environment and the taxpayer's purses.	Comment noted.