DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

RECEIVED
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ESA

REPLY TO
ATTENTION OF

Regulatory Branch

APR 13 2012

City of Bellingham
Public Works Department
Mr. Rory Routhe
210 Lottie Street
Bellingham, Washington 98225

Reference: NWS-2011-628
Bellingham Public
Works Dept.

Dear Mr. Routhe:

We have reviewed your application to place fill in 0.14 of an acre of wetlands adjacent to an unnamed tributary of Bellingham Bay to facilitate expansion of existing sewage treatment plant facilities at Bellingham, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 39, Commercial and Institutional Developments (Federal Register February 21, 2012, Vol. 77, No. 34), authorizes your proposal as depicted on the enclosed drawings dated June 2011.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 39, Terms and Conditions* and the following special conditions:

a. The permittee must install and maintain sediment and erosion controls during construction at the site until all disturbed soils have been revegetated or otherwise stabilized.

b. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the document titled, "*Post Point Wastewater Treatment Plant Improvements, Biological Evaluation*," dated June 2011, in their entirety. The U.S. Fish and Wildlife Service (USFWS) concurred with a finding of "may affect, not likely to adversely affect" based on this document on March 6, 2012 (USFWS Reference Number 01EWFW00-2012-I-0027). The National Marine Fisheries Service (NMFS) concurred with a finding of "may affect, not likely to adversely affect" based on this document on February 28, 2012 (NMFS Reference Number 2011/05608). Both agencies will be informed of this permit issuance. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers (Corps) permit. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.

c. The permittee shall implement and abide by the mitigation plan, "*Post Point Wastewater Treatment Plant Improvements, Wetland and Wildlife Mitigation Plan,*" dated June 2011. Mitigation shall be constructed before or concurrent with the work authorized by the permit.

d. A status report on the implementation of the authorized work and on the construction of the mitigation shall be submitted annually to the Corps, Seattle District, Regulatory Branch by October 31st each year until mitigation construction is complete as determined by the Corps. This report must prominently display the reference number NWS-2011-628.

e. An as-built mitigation construction report and as-built drawings of the mitigation area(s) shall be submitted upon completion of mitigation construction, in lieu of the status report described in Special Condition "d." This report must be submitted to the Corps, Seattle District, Regulatory Branch for review and approval and must prominently display the reference number NWS-2011-628. The year mitigation construction is completed, as determined by the Corps, represents Year 0 for mitigation monitoring.

f. Mitigation monitoring reports shall be submitted annually for 5 years to the Corps, Seattle District, Regulatory Branch by December 31st of each monitoring year. Year one monitoring will occur at least one year after completion of the mitigation site as determined by the Corps. All reports must prominently display the reference number NWS-2011-628.

g. The wetland and buffer areas created and enhanced as compensatory mitigation for work authorized by this permit, shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purposes of enhancing or restoring the mitigation associated with this project. In addition, a description of the mitigation area identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this recorded documentation must be provided to the Corps, Seattle District, Regulatory Branch within 60 days from the date of permit issuance and prior to construction.

h. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions "c" through "g" will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps, Seattle District, Regulatory Branch.

We have reviewed your project pursuant to the requirements of the ESA, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please note that Seattle District Nationwide Permit Regional General Condition 6, Cultural Resources and Human Burials, found in the *Nationwide Permit Terms and Conditions* enclosure, details procedures should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

We are unable to determine whether or not your project requires individual Water Quality Certification (WQC) and a Coastal Zone Management (CZM) consistency determination response from the Washington State Department of Ecology (Ecology). Before you may proceed with the work authorized by this NWP, you must contact Ecology regarding these requirements at: Washington Department of Ecology, Federal Permit Coordinator, P.O. Box 47600, Olympia, Washington, 98504-7660. Telephone: (360) 407-6068. Email: ecyrefedpermits@ecy.wa.gov.

If more than 180 days pass from when you provide Ecology a copy of this letter and request your individual WQC and CZM consistency determination concurrence review, your requirement to obtain an individual WQC and CZM consistency determination response becomes waived. You may then proceed to construction.

Our verification of this NWP authorization is valid for two years from the date of this letter unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date, please contact us to discuss the status of your authorization. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all State and local permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit* form. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey form. This form and information about our program is available on our website at: http://www.nws.usace.army.mil/ select "Regulatory/Permits" and the "Forms".

A copy of this letter with enclosures will be furnished to Ms. Lizzie Zemke of ESA-Northwest Biological Resources at 5309 Shilshole Avenue Northwest, Suite 200, Seattle,

Washington 98107. If you have any questions, please contact me at (360) 734-3156 or via email at randel.j.perry@usace.army.mil.

Sincerely,

Randel Perry, Project Manager
North Puget Sound Section

Enclosures