



**AGENDA FOR  
PORT OF ILLAHEE COMMISSION  
Wednesday, May 8TH - 6:30PM  
ZOOM MEETING #715 0997 5823 / Password: Illahee**

**1. CALL TO ORDER**

**2. CONSENT AGENDA**

1. Agenda
- \*2. The April 10th, 2024 Regular Meeting minutes
- \*3. Pay Bills with check numbers **5177** through **5186** totaling **\$12,638.38**
- \*4. Approve Electronic Transfer for Go Bond (May & November)

**3. SIGNING OF DOCUMENTS**

Determine when/how to have at least 2 Commissioners sign the documents

**4. PUBLIC COMMENT**

**5. REPORTS/UNFINISHED BUSINESS**

Aho/ 1. Grants/Waterfront Access Improvements

Piccione - Update of project permits and design

Aho 2. Illahee Store Project

- PLIA Remediations

\*3. Treasurer's Report as of April 30, 2024 General Fund **\$134,651.14** Investments **\$291,006.47**

Good Property Management (GPM) Account \$199 total: **\$425,856.61**

**Grant Status:**

**BFP RCO Total = \$851,065.00 Amount of RCO paid \$90,319.98 Remaining RCO Funds \$760,745.02**

**ALEA RCO Total= \$500,000.00 Amount of RCO paid \$73,672.45 Remaining RCO Funds\$426,327.55**

**RCFB RCO Total= \$191,000.00 Amount of RCO paid \$0 Remaining RCO Funds \$191,000.0**

**Last Month's Report Below**

3 Treasurer's Report as of March 31, 2024 General Fund \$ 97,304.58 Investments\$290,180.63

Good Property Management (GPM) Account \$199 total: **\$387,684.21**

4. Reports

Aho \*a. Website – Commissioner Hall submitted BIO

b. Properties

\*5560 Ocean View Boulevard/Rental - Backflow test

5500 Illahee Road/Rental - Anything to report?

5507 Illahee Road/Illahee Store Property - Anything to report ?

Illahee Road Lot - Anything to report ?

Rupert c. Dock/Pier – Backflow - Options

\*5. A Watershed Park – Kitsap County Parks and Recreation submitted grant on May 1,2024

Phase #1 Resolve Safety Issues

**6. NEW BUSINESS**

\*1. U.S Army Corps of Engineers letter- Tire Reef Removal

Diagram of removal steps

\*2. Department of Ecology Rule Making Announcement

Comply with the Shoreline Management Act/ Additional Requirements for local governments

**7. PUBLIC COMMENT**

**8. ADJOURN** –Regular Meeting –June 12th @ 6:30PM – via ZOOM

--Kitsap All Ports-July 29th @ 6:30PM at Port of Brownsville



Port of Illahee  
Minutes of Regular Meeting  
April 10, 2024

The Regular Port of Illahee meeting was held virtually through the ZOOM app (meeting id# 71509975823 / Password: Illahee). Notice of the virtual meeting was posted near the kiosk at the head of the pier and on the Port's website – portofillahee.com.

### CALL TO ORDER

Commission Chairman James Aho called the meeting to order at 6:35PM. Also, in attendance were Commissioner Jeffrey Rupert; Commissioner Eric Hall; Administrator Jennifer Olson; John Buesch; John Piccone; Debbie Smith and Janet Soderberg.

### CONSENT AGENDA

*The following consent agenda items were approved: April 10th Meeting Agenda; March 13, 2024 Meeting Minutes; checks numbering 5165 through 5176 totaling \$6,231.28 as outlined in the attached Voucher Approval (motion by Hall; second by Aho all in favor).*

### SIGNING OF DOCUMENTS

Commissioners plan to stop by the Port of Silverdale office to sign documents on Thursday April 11, 2024.

### PUBLIC COMMENT

None at this time.

### REPORTS/UNFINISHED BUSINESS -

#### Waterfront Improvement Project

- **USACE and WDFW Permit;** The Port is still waiting on a draft agreement from the Squamish Tribe, John Piccone with SoundWest Engineering received an email from the tribe that they have been busy and have not been able to write up the agreement yet. The tribe did mention that the Ports design is okay, John will contact the Army Corp and share the email he received from the tribe with them.
- **County SDAP Permit;** The SDAP permit application was re-submitted last month with the changes that Kitsap County had requested, when checking on status of the application an associate with SoundWest Engineering was told there is a new project manager assigned to the Ports project, it is on his to do list and will take 3 to 4 months to review.
- **Kitsap County Building and ROW Permits;** The County will require both a building permit and ROW permit. Although both of these permits are typically much faster review times, they do have procedural requirements that are complex with public projects awarded to the lowest bidder. For example, they will require certain items which only the contractor can provide but the Port will not know who the contractor is until they bid the project. If the Port doesn't have at least a preliminary approval they may be met with significant delays during construction resulting in costly change orders.





• **Site Contamination and PLIA coordination;** The plan is to have an environmental consultant working on the store site cleanup prepare a contaminated material manage plan (CMMP) for inclusion in the bid documents for the waterfront project. PLIA current does not have a cleanup schedule. John Piccone will send Commissioner Hall an email when he receives a schedule from PLIA.

• **Anticipated Schedule;** This is still unknown due to the permitting timelines:

1. Agreement drawn up by the tribe may take around 2 to 3 more months.
2. USACE Permit; Army core permit will likely take a year.

As soon as the Port has confirmation that the Tribes objection is removed and the SDAP permit is approved it will be much easier to set a schedule with confidence.

3. Send DNR (Department of Natural Resources) Harps drawings 6-8 weeks
4. HPA (Hydraulic Project Approval) Permit should have by June 2024.

**RCO Grants;** Nothing new to report

#### **Pile Replacement Project**

• **Permits;** The project is currently fully permitted.

• **Design;** Only the inspection and a preliminary design concept has been completed and the Port is waiting for confirmation from the Tribe before proceeding with the engineering design in conjunction with finalizing the float and pier renovation design.

• **Grant and Contract Status;** No grant funds have been expended to date and the grant contract is currently set to complete work by June of 2025.

• **Anticipated Schedule;** The current assumption is that this schedule will coincide with the pier and float work and occur as a single bidding and construction phase.

Treasurer's Report as of March 31, 2024 General Fund \$ 97,304.58 Investments \$ 290,180.63 Good Property Management (GPM) Account \$199 total: \$387,684.21

<b>BFP RCO Share Total = \$851,065.00</b>	<b>Remaining RCO Balance \$760,745.02</b>
<b>ALEA RCO Share Total= \$500,000.00</b>	<b>Remaining RCO Balance \$426,327.55</b>
<b>RCFB RCO Share Total= \$191,000.00</b>	<b>Remaining RCO Balance \$191,000.00</b>



## Report

**Website** - Commissioner Aho Asked Commissioners Rupert and Hall if they could send the Administrator their bios so he can post it up on the Ports website.

### Properties

5560 Oceanview Blvd-

Nothing to Report

5500 Illahee Road- Illahee Road-

Nothing to Report

5507 Illahee Road / Illahee Store Property

Nothing to Report.

Illahee Road lot

Nothing to report.

Dock/Pier

Nothing to Report

## New Business

### **A Watershed Park' Option ( Preliminary) for the Illahee Preserve Heritage Park;**

There was much discussion amongst the Commissioners regarding a Watershed Park Option for the Illahee Preserve Heritage Park. In the past the Port has been concerned about the effects of Illahee Creek having on the Ports dock and surrounding tidelands. In 2007 Department of Ecology did an intense study of the Illahee Creek to determine what needed to be done to prevent the pollution of Illahee Creek and address the excessive sedimentation and deterioration of conditions of the Ports dock. The study found many issues that needed to be addressed the most serious issue is the Port needs to begin trying to gain control of the stormwater surges plaquing Illahee Creek that were flowing through the deeply incised canyons on the north and south forks and the north tributary of Illahee Creek that were picking up sediment and transporting it along the banks of Illahee Creek, in the culvert, and ultimately out to the extended delta and into Puget Sound. The Port has and is working with Kitsap County officials with Public Work, Department of Community Development and County Parks, they are also working with the Illahee Forest Preserve (IFP), Illahee Community Club and Illahee Community in general to develop the Illahee Community Plan and the establishment of the Illahee Green Zoning, that was issued in 2008. The Culvert that Kitsap County put in the 1990's is failing. Commissioner Aho would like to work with county parks and with helping the Illahee community with backing this watershed model with support of the Port of Illahee, Illahee Preserve and the Illahee Community. Commissioner Aho will work with Kitsap County and help them write and apply for a grant, which he has done in the past, the Port of Illahee is not out any monies in backing this. Commissioner Hall mentioned that he would like to help with the grant writing if needed.

***Commissioner Aho made a motion to accept Resolution 2024-4 Illahee Creek Watershed Park Concept Support and Implementation Plans (motion by Aho; second by Hall all in favor).***





### **Fisher Plat Comments and Possible Illahee Community Plan**

Commissioner Aho was asked to comment on the proposed 'Fisher Plat' plans for Enetai with respect to what happened in Illahee when a similar high density sewered development called Timbers Edge was proposed several years ago along the steep banks of Illahee Creek. Commissioner Aho's recommendation is that the 'Fisher Plat' permit process be put on hold until those studies can be reviewed/verified and/or completed by credentialed aquifer experts.

### **Annual Report to State of Washington Auditor's Office Submitted on 3-29-24**

The administrator reported that the Port of Illahee's Annual Report was submitted to the state of Washington's Auditor's Office last month.

### **PUBLIC COMMENT**

A community member thinks the Watershed Park is a good idea for the environment, it is a continuation of what previous Port Commissioners did many years ago. He feels the Port of Illahee should show their support for the Watershed Park and the community would enjoy it.

### **ADJOURN**

*At 8:00PM the meeting adjourned (motion by Rupert; second Hall by all in favor).*

Next regular meeting May 8, 2024 @6:30pm- via Zoom

Kitsap All Ports April 29, 2024 @6:30pm

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Commissioner

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Commissioner

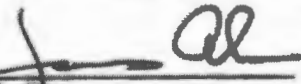
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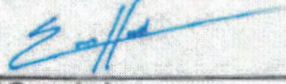
Commissioner




**INTERIM VOUCHER APPROVAL**

We, the undersigned Board of Commissioners of the Port of Ilahae, Kitsap County, Washington, do hereby certify that the merchandise and/or services hereinafter specified have been received and that the vouchers listed below are approved for payment in the amount of           \$6,231.28           and from the General Fund, this   19TH   day of   April   2024

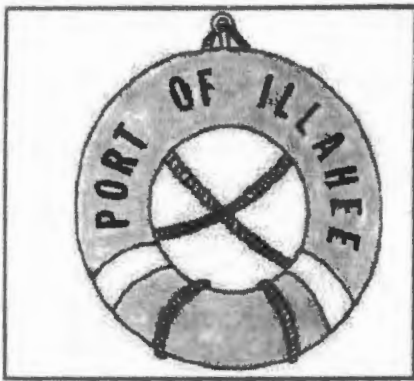
  
 Port Auditor

  
 Port Commissioner

  
 Port Commissioner

Number	Name	Amount
5165	ERIC L. Hall	256.00
5166	JAMES AHO	256.00
5167	JEFFREY S. RUPERT	256.00
5168	BANK OF AMERICA	17.03
5169	CASCADE NATURAL GAS	9.31
5170	HONEY BUCKET	135.50
5171	NORTH PERRY AVENUE WATER DISTRICT	152.11
5172	PORT OF SILVERDALE	750.00
5173	PUGET SOUND ENERGY	32.39
5174	SOUNDWEST ENGINEERING ASSOCIATES	3,084.00
5175	WASHINGTON STATE DEPARTMENT OF REVENUE	1,233.80
5176	WASTE MANAGEMENT	49.14





**PORT OF ILLAHEE**

P. O. BOX 2357  
Bremerton, WA 98310  
(360) 698-4918  
(360) 698-2402 - fax

Commissioner: Jeffrey Rupert  
Commissioner: Eric Hall  
Commissioner: Jim Aho

**AUTHORIZATION FOR ELECTRONIC TRANSFER FROM GENERAL FUND TO GO BOND FUND**

We, the undersigned Board of Commissioners of the Port of Illahee, Kitsap County, Washington, do hereby certify that the payment hereinafter specified is due and payable and that the electronic transfer listed below is approved for Transfer from General Fund to Go Bond Fund in the amount of:

\$ 6,830.40 and from the General Fund on the 8<sup>th</sup> day of May  
2024.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

I, the undersigned do hereby certify, under penalty of perjury, that the payment herein specified is due and payable, and that the claim is a just, due and unpaid obligation against the Port of Illahee; and that I am authorized to authenticate and certify to said claim.

\_\_\_\_\_  
Commissioner, Auditor

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Port Assigned Transfer #      Claimant      Amount



## Commissioner Eric Hall's Bio

Born and raised amidst the steel mills and bridges of Pittsburgh, I joined the US Air Force in 2006. In three years, I quickly rose to the rank of Staff Sergeant amid numerous destinations from Japan to Afghanistan as a Precision Measurement Equipment Laboratory technician. I left in 2014 to pursue my own path

In 2017, I was drawn by the allure of the booming tech industry in Seattle. I already had a large group of friends that lived out here and they all couldn't stop raving about the area. The vast waterways, Mt. Rainier, and mountain sports were other big factors in why I wanted to move out here.

I moved to Illahee in 2020 as a way to get out of the city and get back to my outdoor roots. During my time in the Air Force, I embraced my love of computers and programming and focused on learning as much as I could about computer programming. I've now turned that into my career and I'm fortunate that I get to work from home where my dog, Dexter, sits by my side while I work on database code at City University of Seattle.

But life isn't all algorithms for me. When I step away from the keyboard, I find solace in the simple pleasures. Exercising with my dog, snowboarding in the mountains, and traveling around the world with my girlfriend are among my favorite things to do.

I hope to be a conduit for this district's residents and raise their concerns to whoever might listen. I believe Illahee has a chance to prosper as one of the great small ports if we can build the proper infrastructure to support it. I will work tirelessly to enact that vision and provide this community with the resources to succeed.

**North Perry Avenue Water District**  
**Cross-Connection Control / Backflow Prevention Program**

05/06/2024

2921 Perry Ave Bremerton WA 98310  
Phone 1.360.373.9508 ext 211 Email: c.little@northperrywd.org

**TEST REPORT FOR BACKFLOW PREVENTER ASSEMBLIES**  
**TEST REPORTS MUST BE RECEIVED BY NPWD WITHIN 10 DAYS OF TEST COMPLETION**

Customer Name Port of Illahee Phone # 360-698-4918  
Facility Service Address 5560 Oceanview Blvd NE Contact Theresa Haaland  
Type Of Service IRRIGATION Person \_\_\_\_\_  
Type Of Assembly DOUBLE CHECK Assembly Next Test Due Date: 04/30/2025  
Manufacturer Wilkins Model 950XL Serial # 2235184 Size 3/4  
Assembly Location Rental House, Next to meter box  
Test Type ANNUAL  
Does this assembly replace an existing assembly? No If yes, old Serial # \_\_\_\_\_

Test PIN: Initial Test Date: 5/6/24 Time: 05:00 PM Static Pressure: 65.00 PSI  
Submission Date: 5/6/24

**Double Check Assembly**

Outlet Valve: TIGHT / PASSED  
1st Check Valve: 1.80 psid / PASSED  
2nd Check Valve: 2.20 psid / PASSED

Initial Tester: Jeff Mihulka / Cert# B5438

**Test Equipment**

Make: Midwest  
Model: 845-5  
Serial #: 12200333  
Calibration Date: 10/3/23  
Annual Calibration Required

**NPWD Review**

Reviewed By: Courtney Little  
Certification #: B6042  
Date: 5/6/24 7:11 PM  
Status: **APPROVED**

**Tester Information**

Certification # B5438  
Date Exp: 12/31/24  
Company: Bremerton Backflow  
Phone: (360) 405-0399  
Email: jeff@bremertonbackflow.com

**Tester Certification:** I hereby certify that all work noted here was performed by myself and the information is correct.

**Tester Name:** Jeff Mihulka

**Comments:** \_\_\_\_\_

**Re-Test Comments:** \_\_\_\_\_

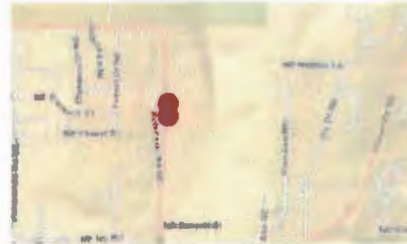
## 24-1770, Acq, Dev, Kitsap County Parks and Rec Illahee Preserve Watershed Park P1, RCO Grant Request: \$500,000

### BASICS

### FUNDING

#### Costs

Source	Funding	%
RCO	\$500,000	50%
Sponsor Match	\$500,000	50%
<b>Total</b>	<b>\$1,000,000</b>	<b>100%</b>



#### Sponsor Match Breakdown

Match Type	Funding Org	Funding Program	Amount
Appropriation - State	Washington State Department of Commerce		\$190,120
Grant - Conservation Futures	Kitsap County Board of Commissioners	Conservation Futures	\$309,880

Minimum match required  
50.00%

### DESCRIPTION

Kitsap County Parks and Recreation will use this grant to resolve safety issues with a previously unknown earthen dam (located along the South Fork of Illahee Creek and adjacent to previously acquired Park properties), and at the same time begin the process of using the property to meet community needs with plans for a 'Watershed' themed park connection to the Illahee Preserve Heritage Park.

The acquisition has multiple benefits: (1) The addition of 9.6-acres and 850 feet of stream and riparian habitat providing access and control of the South Fork of Illahee Creek. (2) The prevention of development of the property. (3) An opportunity to provide the ultimate recreational experience associated with water and forest habitat, and (4) An opportunity to tell the unique and compelling educational 'Water and Watershed' story of Illahee Creek.

On the development and restoration side: (5) The grant helps fund the installation of a relief conduit spillway in the roadway to protect the dam from overflowing and failing. (6) Satisfies Department of Ecology mandates. (7) Helps ease the Illahee Community's concerns of a catastrophic dam failure and washout of the Illahee culvert, Illahee Road, and residential properties. And (8) Allays the Port of Illahee's concerns as the Illahee Creek delta already approaches the Port's dock structures and a washout would render the facility unfunctional.

[Project Application](#)

### LOCATION



## Project Factsheet

### County, City, Water bodies

County: Kitsap

## METRICS/COSTS

### OVERALL PROJECT METRICS

#### PROJECT ACQUISITION

Acquisition Primary Purpose Habitat Restoration  
Select the primary purpose(s) for the property being acquired.

#### SITES IMPROVED

Project acres developed 1.00  
Enter the number of acres that this project will develop (to nearest 0.01 acre).

Project acres renovated 1.00  
Enter the number of acres this project will renovate (to nearest 0.01 acre).

### ACQUISITION

Worksite #: Property Name	Acres to be Acquired	Acreage Types	Cost Estimate
#1: Hattie's Pond	9.6	Lake (1.00) Riparian (1.00) Uplands (7.60)	\$632,000
#1: Hattie's Pond Roadway	0		\$0
<b>Total Acquisition Cost</b>			<b>\$632,000</b>

### ACQUISITION COST ESTIMATE DETAILS

#### Property: Hattie's Pond (Worksite #1: Hattie's Pond)

Work Type	Estimated Cost
Closing, Recording, Taxes, Title	\$2,000
Demolition	\$70,000
Land	\$525,000
Signs (Acq)	\$5,000
<b>Subtotal:</b>	<b>\$602,000</b>
<b>Administration:</b>	<b>\$30,000</b>
<b>Total Estimate For Property:</b>	<b>\$632,000</b>

## Project Factsheet

**Property: Hattie's Pond Roadway (Worksite #1: Hattie's Pond)**  
*This property is not being acquired.*

### Summary

Total Estimated Costs Without Admin:	\$602,000
Total Estimated Admin:	\$30,000
Total Estimated Acquisition Costs:	\$632,000

## DEVELOPMENT METRICS

### Worksite: Hattie's Pond (#1)

#### COSTS

Category	Work Type	Estimated Cost	Note
Parking and Roads	Roads/bridges development	\$303,000	
Permits	Obtain permits	\$5,000	
	<b>Subtotal:</b>	<b>\$308,000</b>	
Admin, Architecture, and Engineering		\$60,000	
	<b>Total Estimate For Worksite:</b>	<b>\$368,000</b>	

#### METRICS

##### PARKING AND ROADS

##### Roads/bridges development

Total cost for Roads/bridges development	\$303,000
Miles of road constructed	0.10
Number of road bridges	New: 0, Renov: 1
Select the road or bridge surfaces	Gravel
Select the road or bridge amenities	Entry gates Guardrails

##### PERMITS

##### Obtain permits

Total cost to Obtain permits	\$5,000
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##### ARCHITECTURAL & ENGINEERING

##### Architectural & Engineering (A&E)

Total cost for Architectural & Engineering (A&E)	\$60,000
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<b>Total Development Cost</b>	<b>\$368,000</b>
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## PERMITS

## Project Factsheet

Permit Name	Received	Comment
US Army Corps of Engineers	No	
Clear & Grade Permit	No	
Other Required Permits	No	Department of Ecology
Hydraulics Project Approval [HPA]	No	

## PROJECT PROPOSAL

### PROPOSAL QUESTIONS

#1: Does this application contain state, federal or other grants as part of the "sponsor match"? If "yes," name the grant(s) and date grant will be available.

Yes

A Department of Commerce grant is being used for part of the required match.



## Project Factsheet

### ATTACHMENTS

#### PHOTOS (JPG, GIF)



# 610184

# 610194

#### RELEVANT DOCUMENTS

File Type	Attach Date	Attachment Type	Title
	04/24/2024	Site Plan: Development site plan	Spillway.jpg
	04/24/2024	Map: Parcel map	9.6 ac parcel map.jpg



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
4735 EAST MARGINAL WAY SOUTH, BLDG 1202  
SEATTLE, WA 98134-2388

Regulatory Branch

April 29, 2024

Mr. Jim Aho  
Port of Illahee  
Post Office Box 2357  
Bremerton, Washington 98310

Reference: NWS-2024-30  
Port of Illahee (Tire Reef  
Removal)

Dear Mr. Aho:

We have received your application for a Department of the Army (DA) permit to remove 1-3 tire reef clumps at Illahee, Kitsap County, Washington, as depicted on the enclosed drawings dated April 11, 2024. We have reviewed the information you provided to us pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (RHA). We have determined that no action by the U.S. Army Corps of Engineers (Corps) is required for the proposed work described in your application and the enclosed drawings dated April 11, 2024.

Under Section 10 of the RHA, a Section 10 DA permit is normally required for work or structures in or affecting navigable waters of the U.S. The Puget Sound is a navigable water under Section 10 jurisdiction. However, based on our review of the impacts associated with this project, we have determined that an action by the Corps under Section 10 of the RHA is not required.

Under Section 404 of the Clean Water Act, a DA permit is normally required for the discharge of dredged or fill material (e.g., fill, excavation, or mechanized land clearing) into waters of the U.S., including wetlands. Based on the information you provided, the proposed activity will result in only incidental fallback of dredged material into the Puget Sound. Therefore, we have determined that no discharge would occur, and a Section 404 DA permit is not required.

If additional work, including excavation, dredging, filling, backfilling, or stockpiling material is required to remove a structure, a DA permit may be required and must be obtained before the activity can commence. See the enclosed *Clean Water Act and Rivers and Harbors Act Extracts and Definitions* for further information.

While a DA permit is not required, local, State, and other Federal requirements may still apply. For assistance in determining other permit requirements for the proposed project, we recommend you contact the Washington State Office of Regulatory Assistance via the internet at [www.ora.wa.gov](http://www.ora.wa.gov). A copy of this letter will be furnished to Mr. Troy Barnhart at [Troy.Barnhart@serco-na.com](mailto:Troy.Barnhart@serco-na.com). If you have any questions, please contact Ms. Sarah Albright-Garland at [sarah.l.albright@usace.army.mil](mailto:sarah.l.albright@usace.army.mil) or (206) 561-6746.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Sangreth".

*for* Daniel Krenz, Section Chief  
Regulatory Branch

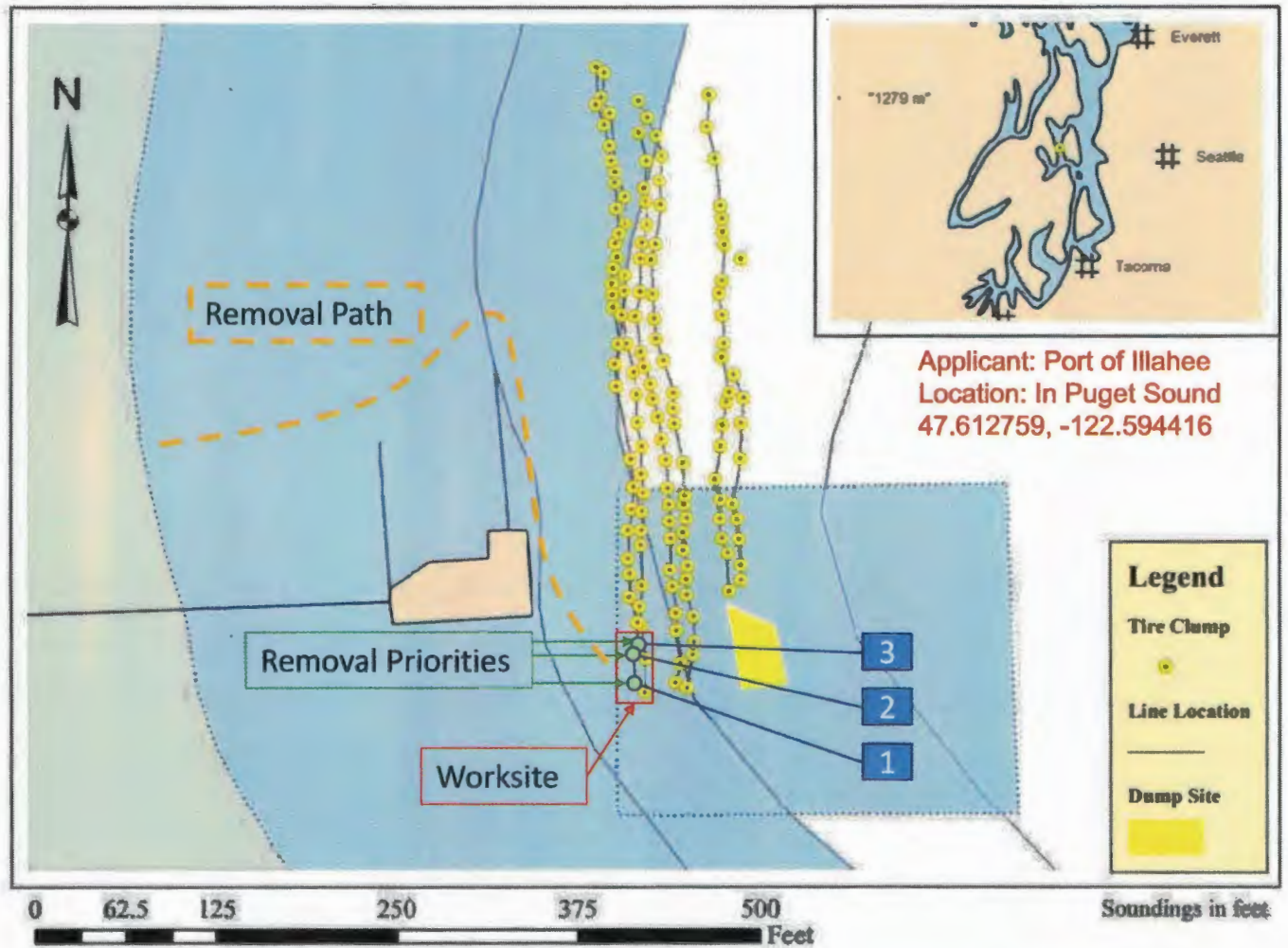
Enclosure

cc: Department of Ecology ([ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov))



## Removal Steps:

- 1) Diver team 1 secure Clump with hard rigging (Chain) and handling ropes then return to pier.
- 2) Diver team 2 Attach and inflate buoyancy bladders to break bottom suction and attain neutral buoyancy.
- 3) Shore team manually handles lines to move tire clump to as close to shoreline as possible.
- 4) Tires are moved to water line by dive teams and disposal dumpster individually by shore team.
- 5) Repeat steps as time allows for additional tire clumps.



NWS-2024-30; April 11, 2024



# Clean Water Act And Rivers and Harbors Act Extracts and Definitions

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EXTRACTS from the Clean Water Act:

1. SECTION 301 (33 U.S.C. 1311)

The discharge of any pollutant by any person shall be unlawful except as in compliance with various sections of the Clean Water Act, including Section 404.

2. SECTION 309 (33 U.S.C. 1319)

This section provides that any person who negligently violates the provisions of the Clean Water Act may be punished by a criminal penalty of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. Any person who knowingly violates this Act may be punished by a criminal penalty of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. This section also provides that any person who violates the provision of this Act may be subject to a civil penalty up to \$53,484 per day for each violation.

3. SECTION 404 (33 U.S.C. 1344)

(a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator of the Environmental Protection Agency (Administrator), in conjunction with the Secretary of the Army, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impacts of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary of the Army. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

EXTRACTS from the Rivers and Harbors Act of March 3, 1899:

1. SECTION 10

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port roadstead, haven, harbor, canal, lake, harbor of refuge, or enclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. (30 Stat. 1151; 33 U.S.C. 403)

2. SECTION 12

This section states that every person and every corporation that shall violate any of the provisions of Sections 9, 10, and 11 of this Act, or any rule or regulations made by the Secretary of the Army in pursuance of the provisions of Section 11, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States. (30 Stat. 1151; 33 U.S.C. 406)

The Alternative Fine Statute (18 U.S.C. 3571) increased the amount of fines the government may impose for criminal violations of Section 10. An individual who has been found guilty of a Class A misdemeanor that does not result in death may be fined up to \$100,000 (18 U.S.C. 3571(b)(5)), and an organization that has been found guilty of a Class A misdemeanor that does not result in death may be fined up to \$200,000 (18 U.S.C. 3571(c)(5)).



DEFINITIONS from the U.S. Army Corps of Engineers Regulatory Program:

The term "**wetlands**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (33 C.F.R. 328.3)

The term "**adjacent**" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by manmade dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands." (33 C.F.R. 328.3)

The term "**ordinary high water mark**" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area. (33 C.F.R. 328.3)

The term "**high tide line**" means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm. (33 C.F.R. 328.3)

The term "**mean high water**" in coastal areas means the average high water of the tides. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water. (33 C.F.R. 329.12)

The term "**navigable waters of the United States**" means those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. (33 C.F.R. 329.4)

The term "**discharge of dredged material**" means any addition of dredged material into, including redeposit or dredged material other than incidental fallback within, the waters of the United States. The term includes, runoff from a contained land or water disposal area, and any addition, including redeposit, of dredged or excavated material. The term dredged material means material that is excavated or dredged from waters of the United States. (33 C.F.R. 323.2)



The term “**discharge of fill material**” means the addition of fill material into waters of the United States. The term generally includes placement of fill necessary for the construction of any structure or infrastructure requiring rock, sand, dirt, or other materials for its construction. Fill material is material placed in waters of the United States where the material has the effect of replacing any portion of the waters with dry land or changing the bottom elevation of any portion of the waters. (33 C.F.R. 323.2)

The term “**structure**” means, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction. (33 C.F.R. 322.2)

The term “**work**” means, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States. (33 C.F.R. 322.2)



## Ecology Rulemaking Announcement

The Department of Ecology is beginning rulemaking to amend Chapters 173-18, 173-20, 173-22, 173-26, and 173-27 of the Washington Administrative Code (WAC). We filed the official rulemaking notice on May 2, 2024.

### Ecology is amending Chapters 173-26 and 173-27 WAC to:

- Comply with the Shoreline Management Act (Chapter 90.58 RCW) and address issues that we have identified through the review, adoption, and implementation of shoreline master programs (SMPs). These revisions will provide clarity around SMP approval/amendment procedures and permit and enforcement procedures. Additional amendments may be included for clarity.
- Add requirements for local governments to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and the environment.

Ecology is also amending Chapters 173-18 and -20 WAC to update the list of streams, rivers, and lakes in completed SMP updates and amending Chapter 173-22 WAC to clarify designations of shorelands and wetlands associated with shorelines of the state.

### Why are we doing this rulemaking?

Ecology is considering amendments to Chapters 173-22, 173-26, and 173-27 WAC pursuant to RCW 90.58.060 as part of our periodic review and update of these rules. Ecology intends to provide clarity around these WAC sections to facilitate effective shoreline planning and permit implementation, compliance, and enforcement at the local level. Amendments to Chapter 173-22 WAC will clarify definitions and designation criteria for shorelands and wetlands associated with shoreline of the state.

In addition, we will amend Chapter 173-26 WAC to implement E2SHB 1181, which amends the Shoreline Management Act (Chapter 90.58 RCW). RCW 90.58.630 requires Ecology to update its shoreline master program (SMP) guidelines to address sea level rise and storm severity in SMPs managed by local governments. Ecology will also consider amendments to Chapters 173-22 and -27 WAC to address sea level rise and storm severity.

Ecology is also amending Chapters 173-18 and -20 WAC consistent with update requirements within these rules to remove the lists of streams, rivers, and lakes for each county that has already comprehensively updated its SMP. Updated SMPs contain the accurate lists of shoreline waterbodies; we intend to update lists from these WACs for the counties that have completed SMP comprehensive updates to align lists in WAC and the SMPs.

### Environmental Justice Assessment of the Rule

We will be conducting an [Environmental Justice Assessment](#)<sup>1</sup> under Washington's Environmental Justice Law, the Healthy Environment for All Act (HEAL). We will identify and address environmental



justice issues related to the rule development process and the potential effects of the amended rules. For example, this rulemaking applies to shorelines throughout the state, so we will need to consider meaningful involvement of affected communities and barriers to involvement. In addition, this rulemaking will involve topics including climate change, public access, shoreline habitat, cultural resources, and others that may have a significant nexus with environmental justice.

## How you can stay informed about this rulemaking

- Read the [rulemaking announcement](#)<sup>2</sup> (CR-101 form) for details about this rulemaking.
- Visit the [rulemaking webpage](#)<sup>3</sup> for the Shoreline Management Act rules.
- Contact Rebecca Rothwell at [rebecca.rothwell@ecy.wa.gov](mailto:rebecca.rothwell@ecy.wa.gov) or 360-810-0025 if you have general questions or want to request a hard copy of the rule documents.

Anyone can sign up for ongoing notifications about this rulemaking through [GovDelivery](#).<sup>4</sup> If you do not wish to receive further notifications, you may unsubscribe from this list below.

## Accessibility

To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, email [Ecology's ADA Coordinator](#)<sup>5</sup> or call 360-407-6831, 711 (relay service), or 877-833-6341 (TTY).

<sup>1</sup> <https://ecology.wa.gov/about-us/who-we-are/environmental-justice/heal/environmental-justice-assessments>

<sup>2</sup> <https://ecykenpub/rulemaking-announcement-wac-173-18;-wac-173-20;-wac-173-22;-wac-173-26;-wac-173-27>

<sup>3</sup> <https://Ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-26-27-Shoreline-Management-Act>

<sup>4</sup> [https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_324](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_324)

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