Appendix I-4

Section 7 Consultation Letters

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

6/24/2024

Kim Kratz, Assistant Regional Administrator
Oregon/Washington Coastal Area Office
NOAA Fisheries West Coast Region
U.S. Department of Commerce

Re: Bureau of Indian Affairs' Request for National Marine Fisheries Service ***Informal*** Consultation under Section 7 of the Endangered Species Act on the Nisqually Indian Tribe Fee-to-Trust and Quiemuth Village Mixed Use Project

Dear Kim Kratz:

In accordance with *50 CFR § 402.13 Informal consultation*, the Bureau of Indian Affairs (BIA), Northwest Region, is requesting to initiate informal Section 7 Endangered Species consultation for the proposed Nisqually Indian Tribe (Tribe) Fee-to-Trust and Quiemuth Village Mixed Use Project. With this letter, we are submitting for your review the attached *Aquatic Biological Assessment: Nisqually Quiemuth Mixed-Use Fee-to-Trust Project* (BA), dated June 2024.

We have determined the proposed actions may affect, but are not likely to adversely affect, the following species: Steelhead Trout (*Oncorhynchus mykiss),* Chinook Salmon (*Oncorhyncus tshawytscha*), and their associated Critical Habitats. We seek your concurrence with our determinations.

The attached BA provides a detailed description of the proposed federal action and effects to listed species, which is summarized with additional information herein:

1) **Description of the proposed action (including any measures intended to avoid, minimize, or offset effects of the action on listed species and critical habitat).**

   Purpose: Proposal is for BIAs approval of fee-to-trust conversion into federal trust status (Proposed Action) and the subsequent development of the site with mixed use development and related facilities. The Tribe has proposed two alternative site plans for the Proposed Project, a Commercial-Heavy Alternative that would develop the entire Project Site and a Recreation-Heavy Alternative that would develop most of the Project Site except for approximately 19.03-acres of the mixed conifer-hardwood forest in the northern portion of the Project Site. To be conservative, this consultation is based on the analysis of the Commercial-Heavy Alternative as it has the biggest development footprint.

Duration and Timing: Construction activities associated with the Proposed Action are anticipated to commence in 2026. Although buildout of the site will likely take place over a time span of three to eight years, depending on market conditions and other factors, it is conservatively assumed construction of the site will occur over a period of 24 months consistent with the Environmental Assessment. Additional detail regarding the proposed grading and drainage plan and water supply /wastewater treatment facilities is provided Attachment A: Stormwater and Grading Strategies (Aquatic BA).

Location: The project site is approximately 174-acres located in the City of Lacey, Thurston County, Washington. The project site is located directly north of Interstate 5 (I-5), and west of the Marvin Road / I-5 interchange. The property is adjacent to a 1-acre parcel currently in federal trust for the Tribe, which is developed with the Nisqually Markets Tobacco Outlet store.

Specific Components of the Action and how they will be carried out: The Proposed Action includes the transfer of the approximately 174-acre proposed trust property into federal trust status. Following the acquisition of the Project Site into trust, the Tribe proposes to develop the following components within the Action Area under the Commercial-Heavy Alternative (Figure 3, BA):

- Approximately 929,500 square feet of commercial retail, including grocers, retail and dining;
- Approximately 7.4 acres of recreational facilities, including a golf entertainment facility, bowling center, and movie theater;
- A 4-story, 200 room hotel;
- 320 units of housing, including high density multi-family apartments and onsite live/work housing;
- A 28-acre travel center, to include 26 diesel and gasoline fuel pumps;
- Approximately 4,655 parking spaces provided by several surface parking areas; and
- Infrastructure, including electrical, natural gas, water supply, wastewater treatment and/or collection facilities, and stormwater drainage, treatment, and infiltration facilities (note that offsite infrastructure is described and analyzed in Section 4.5 of the BA).

Conservation measures part of the Proposed Action to avoid or minimize potential adverse impacts to the environment, critical habitat, essential fish habitat, and federally listed fish species are discussed in Section 4.5 of the BA.

Maps, Drawings, or Schematics of the Action: Proposed site plans are attached in the Figures Section of the BA along with the Stormwater and Grading Strategies**.**

Any other available information related to the nature and scope of the proposed action relevant to its effects on listed species or designated critical habitat: Not Applicable.

2) **A map or description of all areas to be affected directly or indirectly by the Federal action, and not merely the immediate area involved in the action (*i.e.,* the action area as defined at §402.02).**

The 174-acre property is directly north of Interstate 5 (I-5), and west of the Marvin Road / I-5 interchange in the City of Lacey, Thurston County, Washington. The Action Area is depicted in Figures 1-6 attached to the BA.

3) **Information obtained by or in the possession of the Federal agency and any applicant on the listed species and designated critical habitat in the action area (as required by paragraph (c)(1)(ii) of this section), including available information such as the presence, abundance, density, or periodic occurrence of listed species and the condition and location of the species' habitat, including any critical habitat.**

Two terrestrial habitat types were identified within the Action Area: ruderal/disturbed and mixed conifer – hardwood forest. There are no aquatic habitats identified within the Action Area. There are several riverine habitats located within the watershed of the Action Area that support significant fish species. The Action Area is located within the Woodland Creek Drainage Basin. The nearest flowing water features to the Action Area are an unnamed stream system approximately 0.13 miles northwest, Woodland Creek approximately 3,500 feet west, which provides fish habitat for steelhead and Chinook Salmon, and McAllister Creek approximately 1.7 miles east of the Action Area. McAllister Creek flows into the nearby Nisqually Flats that are part of the Billy Frank Jr. Nisqually National Wildlife Refuge. In addition, the Nisqually River is approximately 2.08 miles east of the Action Area and terminates into the Nisqually Flats that eventually drains into the Puget Sound, and provides fish habitat for Chinook salmon, coho salmon, and Puget Sound pink salmon. There are no surface water features in the Action Area itself. Surface water features in close proximity to the Action Area can be seen in Figure 12 attached to the BA.

There is no designated critical habitat for federally listed species within the Action Area, nor are there any surface waters or aquatic habitats within the Action Area. Critical habitat was identified approximately 3,500 feet west of the Action Area in Woodland Creek for the threatened Steelhead. This Creek runs from Long Lake into Henderson Inlet. McAllister Creek, approximately 1.7 miles to the east of the Action Area, which leads to the Nisqually Reach contains critical habitat for the following species, the threatened Chinook Salmon and threatened steelhead; however, the Action Area is not within the drainage watershed of McAllister Creek (Figure 9 in BA).

4) A description of the effects of the action and an analysis of any cumulative effects.

The Proposed Action has the potential to impact groundwater and surface water levels using approximately 363,129 gallons per day (gpd) of water (or 226,750 gpd if reclaimed water is used) for the proposed development. The Action Area is located within the Woodland Creek Watershed and effects to groundwater could impact flows in Woodland Creek. As described in Section 4.2 of the Aquatic BA, the Proposed Action could result in indirect effects to off-site water quantity in Woodland Creek from the use of groundwater under the Commercial-Heavy Alternative for water supply. With the conservation measures listed in Section 4.5 of the Aquatic BA, and bioretention and infiltration facilities incorporated into project design, the Proposed Action may affect but is not likely to adversely affect federally listed Chinook salmon, steelhead, coho salmon, and their designated critical habitats.

5) A summary of any relevant information provided by the applicant, if available.

Not Applicable.

6) Any other relevant available information on the effects of the proposed action on listed species or designated critical habitat, including any relevant reports such as environmental impact statements and environmental assessments.

The Stormwater and Grading Strategies are provided in Attachment A of the BA.

With the submittal of this letter and attached BA, the BIA is requesting concurrence on our determinations. The BIA staff contact is Regional Wildlife Biologist, Stefanie Kramer, Stefanie.kramer@bia.gov. Thank you for your continued assistance.

Sincerely,

Janine B. Van Dusen
Superintendent
BIA Puget Sound Agency

Attachment:

(1) *Aquatic Biological Assessment: Nisqually Quiemuth Mixed-Use Fee-to-Trust Project* (BA), dated June 2024

cc:

Brian Haug, BIA Regional Scientist
Stefanie Kramer, BIA Regional Wildlife Biologist

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

6/24/2024

Brad Thompson
State Supervisor, Ecological Services
U.S. Fish and Wildlife Service, Washington Office
510 Desmond Drive SE, Suite 102
Lacey, Oregon 98503

Re: Bureau of Indian Affairs' Request for United States Fish and Wildlife Service ***Informal*** Consultation under Section 7 of the Endangered Species Act on the Nisqually Indian Tribe Fee-to-Trust and Quiemuth Village Mixed Use Project

Dear Brad Thompson:

In accordance with *50 CFR § 402.13 Informal consultation*, the Bureau of Indian Affairs (BIA), Northwest Region, is requesting to initiate informal Section 7 Endangered Species consultation for the proposed Nisqually Indian Tribe (Tribe) Fee-to-Trust and Quiemuth Village Mixed Use Project. With this letter, we are submitting for your review the attached *Aquatic Biological Assessment* (Aquatic BA), and the *Terrestrial Biological Assessment* (Terrestrial BA), for the *Nisqually Quiemuth Mixed-Use Fee-to-Trust Project*, both dated June 2024.

We have determined the proposed actions may affect, but are not likely to adversely affect, the following species: Yelm pocket gopher (*Thomomys mazama yelmensis*), streaked horned lark *(Eremophila alpestris strigata),* bull trout (*Salvelinus confluentus*), and bull trout critical habitat. We seek your concurrence with our determinations.

The attached BA provides a detailed description of the proposed federal action and effects to listed species, which is summarized with additional information herein:

1) **Description of the proposed action (including any measures intended to avoid, minimize, or offset effects of the action on listed species and critical habitat).**

   Purpose: Proposal is for BIA's approval of fee-to-trust conversion into federal trust status (Proposed Action) and the subsequent development of the site with a mixed-use development and related facilities. The Tribe has proposed two alternative site plans for the Proposed Project: 1) Commercial-Heavy Alternative that would develop the entire Project Site, and 2) Recreation-Heavy Alternative that would develop most of the Project Site except for approximately 19.03-acres of the mixed conifer-hardwood forest in the northern portion of the Project Site. To be conservative, this consultation is based on the analysis of the Commercial-Heavy Alternative as it has the biggest development footprint.

Duration and Timing: Construction activities associated with the Proposed Action are anticipated to commence in 2026 Although buildout of the site will likely take place over a time span of three to eight years, depending on market conditions and other factors, it is conservatively assumed construction of the site will occur over a period of 24 months consistent with the Environmental Assessment. Additional detail regarding the proposed grading and drainage plan and water supply /wastewater treatment facilities is provided in Attachment A: Stormwater and Grading Strategies (Aquatic BA).

Location: The project site is approximately 174-acres located in the City of Lacey, Thurston County, Washington. The project site is located directly north of Interstate 5 (I-5), and west of the Marvin Road / I-5 interchange. The property is adjacent to a 1-acre parcel currently in federal trust for the Tribe, which is developed with the Nisqually Markets Tobacco Outlet store. Two terrestrial habitat types were identified within the project site: ruderal/disturbed and mixed conifer – hardwood forest.

Specific Components of the Action and how they will be carried out: The Proposed Action includes the transfer of the approximately 174-acre proposed trust property into federal trust status. Following the acquisition of the Project Site into trust, the Tribe proposes to develop the following components within the Action Area under the Commercial-Heavy Alternative (Figure 3, BA):

- Approximately 929,500 square feet of commercial retail, including grocers, retail and dining;
- Approximately 7.4 acres of recreational facilities, including a golf entertainment facility, bowling center, and movie theater;
- A 4-story, 200 room hotel;
- 320 units of housing, including high density multi-family apartments and onsite live/work housing;
- A 28-acre travel center, to include 26 diesel and gasoline fuel pumps;
- Approximately 4,655 parking spaces provided by several surface parking areas; and
- Infrastructure, including electrical, natural gas, water supply, wastewater treatment and/or collection facilities, and stormwater drainage, treatment, and infiltration facilities (note that offsite infrastructure is described and analyzed in Section 4.5 of the BA).

Conservation measures part of the Proposed Action to avoid or minimize potential adverse impacts to the environment, critical habitat, and federally listed species are discussed in Section 4.5 of the Aquatic and Terrestrial BAs.

Maps, Drawings, or Schematics of the Action: Proposed site plans are attached in the Figures Section of the BA along with the Stormwater and Grading Strategies**.**

Any other available information related to the nature and scope of the proposed action relevant to its effects on listed species or designated critical habitat: Not Applicable.

2) A map or description of all areas to be affected directly or indirectly by the Federal action, and not merely the immediate area involved in the action (*i.e.,* the action area as defined at §402.02).

The 174-acre property is directly north of Interstate 5 (I-5), and west of the Marvin Road / I-5 interchange in the City of Lacey, Thurston County, Washington. The Action Area is depicted in Figures 1-6 attached to the BAs.

3) Information obtained by or in the possession of the Federal agency and any applicant on the listed species and designated critical habitat in the action area (as required by paragraph (c)(1)(ii) of this section), including available information such as the presence, abundance, density, or periodic occurrence of listed species and the condition and location of the species' habitat, including any critical habitat.

Yelm Pocket Gopher

There are no recent documented occurrences of Mazama pocket gophers within one mile of the Action Area. No pocket gophers, mounds or burrows indicating the presence of pocket gophers were observed at the time of survey of the Action Area. Although the Action Area has the correct habitat and soil types for pocket gopher species, the I-5 roadway creates a barrier that separates both sides of the roadway and inhibits gophers from passing. Therefore, the likelihood of gophers being in the project area is very low as discussed in Section 3.6.1 of the Terrestrial BA.

Streak Horned Lark

Streak horned lark may occur in the open grassy areas of the Action Area, primarily in ruderal habitat. Grasses are short and there are areas of bare and sparsely vegetated ground suitable for nesting. Overall, habitat quality is marginal due to site disturbance, limited native vegetation, and ongoing human activity.

Bull Trout

There are no aquatic habitats identified within the Action Area. Additionally, there is no designated critical habitat within the Action Area, nor are there any surface waters or aquatic habitats within the Action Area. The Action Area is located within the Woodland Creek Drainage Basin. There are several riverine habitats located within the watershed that support significant fish species. The nearest flowing water features to the Action Area are an unnamed stream system approximately 0.13 miles northwest, Woodland Creek approximately 3,500 feet west, and McAllister Creek approximately 1.7 miles east of the Action Area. The Nisqually Reach, within Puget Sound, occurs approximately 2.6 miles east of the Action Area and is designated critical habitat for bull trout (Aquatic BA, Figure 9).

4) A description of the effects of the action and an analysis of any cumulative effects.

Yelm Pocket Gopher

Although unlikely, if the Yelm pocket gophers were to be present at the time of construction of the Proposed Action, construction-related activities have the potential to cause mortality. Potential adverse effects would be discountable with the implementation of the avoidance and minimization measures discussed below in Section 4.5 of the Terrestrial BA. With implementation of these measures, the Proposed Action may affect, but is not likely to adversely affect the Yelm pocket gophers.

Streak Horned Lark

If the streaked horned lark were to be present in the area of impact at the time of construction of the Proposed Action, construction-related activities have the potential to cause mortality or nest abandonment**.** Potential adverse effects would be discountable with the implementation of the avoidance and minimization measures discussed below in Section 4.5 of the Terrestrial BA. With the implementation of these measures, the Proposed Action may affect, but is not likely to adversely affect the streaked horned lark.

Bull Trout

The Proposed Action has the potential to impact groundwater and surface water levels using approximately 363,129 gallons per day (gpd) of water (or 226,750 gpd if reclaimed water is used) for the proposed development. As described in Section 4.2 of the Aquatic BA, the Proposed Action could result in indirect effects to off-site water quantity in Woodland Creek from the use of groundwater under the Commercial-Heavy Alternative for water supply. Potential adverse effects would be insignificant with bioretention, and infiltration facilities incorporated into project design, and the conservation measures listed in Section 4.5 of the Aquatic BA. With the implementation of these measures, the Proposed Action may affect, but is not likely to adversely affect bull trout and their designated critical habitat.

5) A summary of any relevant information provided by the applicant, if available.

Not Applicable.

6) Any other relevant available information on the effects of the proposed action on listed species or designated critical habitat, including any relevant reports such as environmental impact statements and environmental assessments.

The Stormwater and Grading Strategies are provided in the Aquatic BA.

With the submittal of this letter and attached BA, the BIA is requesting concurrence on our determinations. The BIA staff contact is Regional Wildlife Biologist, Stefanie Kramer, Stefanie.kramer@bia.gov. Thank you for your continued assistance.

Sincerely,

Janine B. Van Dusen
Superintendent
BIA Puget Sound Agency

Attachment:

(1) *Aquatic Biological Assessment: Nisqually Quiemuth Mixed-Use Fee-to-Trust Project* (BA), dated June 2024
(2) *Terrestrial Biological Assessment: Nisqually Quiemuth Mixed-Use Fee-to-Trust Project* (BA), dated June 2024

cc:

Brian Haug, BIA Regional Scientist
Stefanie Kramer, BIA Regional Wildlife Biologist

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OR 97232-1274

Refer to NMFS No:
WCRO-2024-01421

June 13, 2025

Janine B. Van Dusen
Superintendent
Bureau of Indian Affairs, Puget Sound Agency
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Nisqually Indian Tribe Fee-to-Trust and Quiemuth Village Mixed Use Project.

Dear Ms. Van Dusen:

This letter responds to your June 24, 2024, request for concurrence from the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the subject action. Your request qualified for our expedited review and concurrence because it contained all required information on your proposed action and its potential effects to ESA-listed species and designated critical habitat.

Updates to the regulations governing interagency consultation (50 CFR part 402) were effective on May 6, 2024 (89 Fed. Reg. 24268). We are applying the updated regulations to this consultation. The 2024 regulatory changes, like those from 2019, were intended to improve and clarify the consultation process, and, with one exception from 2024 (offsetting reasonable and prudent measures), were not intended to result in changes to the Services' existing practice in implementing section 7(a)(2) of the Act. 84 Fed. Reg. at 45015; 89 Fed. Reg. at 24268. We have considered the prior rules and affirm that the substantive analysis and conclusions articulated in this letter of concurrence would not have been any different under the 2019 regulations or pre-2019 regulations.

We reviewed Bureau of Indian Affairs' (BIA) consultation request document and related materials. The proposed action is described in Section 1.3 of the Biological Assessment (BA). The applicant proposes to infiltrate all stormwater. The feasibility of this approach is supported by an analysis of soil conditions, including laboratory analysis of soil samples, data from groundwater test pits and historical boring and well logs described in Section 1.3.1 of the BA and in Appendix A. Detailed analysis of the wastewater (sewage) treatment options were provided in a supplemental 92-page technical memorandum dated February 28, 2025. Based on our knowledge, expertise, and your action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed species and/or designated critical habitat.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available at the Environmental Consultation Organizer (https://www.fisheries.noaa.gov/resource/tool-app/environmental-consultation-organizer-eco).

Reinitiation of consultation is required and shall be requested by the BIA, where discretionary federal involvement or control over the action has been retained or is authorized by law and (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA consultation.

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. In this case, NMFS concluded the action would not adversely affect EFH. Thus, consultation under the MSA is not required for this action.

Please direct questions regarding this letter to Phyllis Meyers, Biologist, in Lacey, Washington at Phyllis.meyers@noaa.gov.

Sincerely,

David M Price

David Price
Supervisor, South Washington Coast
Oregon Washington Coastal Office

cc: Tobia Mogavero, BIA

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington Ecological Services
1009 College St. SE, Suite 215
Lacey, Washington 98503

In Reply Refer to:
FWS/R1/2023-0054110

September 17, 2024

Stefanie Kramer, Biologist
Bureau of Indian Affairs
911 NE 11th Ave.
Portland, Oregon 97232

Dear Ms. Kramer :

Subject: Nisqually Indian Tribe Fee-to-Trust and Quiemuth Village Mixed Use Project

This letter is in response to your June 24, 2024, request for our concurrence with your determination that the proposed action in Lacey, Thurston County, Washington, "may affect, but is not likely to adversely affect" federally listed species. We received your letter and terrestrial and aquatic biological assessments providing information in support of "may affect, not likely to adversely affect" determinations, on June 24, 2024.

Specifically, you requested informal consultation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.) (ESA) for the following federally listed species:

- Yelm pocket gopher (YPG; *Thomomys mazama yelmensis*)
- Streaked horned lark (SHLA; *Eremophila alpestris strigata*)

The Bureau of Indian Affairs (BIA) (biological evaluations provided by Acorn Environmental) has determined the proposed action will have "no effect" on additional listed species and designated critical habitat. The determination of "no effect" to listed resources rests with the action agency. The U.S. Fish and Wildlife Service (USFWS) has no regulatory or statutory authority for concurring with "no effect" determinations, and no consultation with the USFWS is required. We recommend the action agency document their analysis on effects to listed species and maintain that documentation as part of the project file.

Based on the information you provided, best available science, and complete and successful implementation of agreed-upon conservation measures, we concur with your determination that the effects of the proposed action "may affect, but are not likely to adversely affect" YPG or SHLA.

Project Description

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior's (Department) land acquisition policy as articulated in the Department's trust land regulations at 25 CFR Part 151, and the need for the Department to act on the Tribe's application as established by the Department's regulations at 25 CFR § 151.10(h). The proposed action is a commercial use complex on a 174-acre (ac) (70.4-hectare (ha)) Fee-to-Trust parcel of land, as well as some off-site areas proposed for better access improvement for the Nisqually Indian Tribe (Tribe). The components of the proposed action are broken down below:

- Approximately 929,500 square feet (sf; 21.3 ac or 8.6 ha) of commercial retail, including grocers, retail, and dining;
- Approximately 7.4 ac (3 ha) of recreational facilities, including a golf entertainment facility, bowling center, and movie theater;
- A 4-story, 200-room hotel;
- 320 units of housing, including high density multi-family apartments and onsite live/work housing;
- A 28 ac (11.3 ha) travel center, to include 26 diesel and gasoline fuel pumps; and,
- Approximately 4,655 parking spaces provided by several surface parking areas and infrastructure, including electrical, natural gas, water supply, wastewater treatment and/or collection facilities, and stormwater drainage, treatment, and infiltration facilities.

Off-site areas being affected are below:

- An extension of Main Street NE from its current end point in the east to join a new onsite roadway that will connect Gateway Boulevard NE and Main Street NE in the west and a new intersection on Maine Street NE in the eastern part of the Action Area that would join a proposed onsite roadway to connect to Access 3. Access 3 is an existing limited access right-in/right-out entrance located at the intersection of Marvin Rd NE and Nisqually Markets Tobacco Outlet on the southeastern corner of the Action Area. All access improvements would take place within land owned by the Tribe, or dedicated rights-of-way held by the City of Lacey.

Construction activities associated with the proposed action would commence in 2026, with an estimated three-to-eight-year timeline for completion.

EFFECTS TO YELM POCKET GOPHER

Although the project will occur on soil types known to be used by YPG (Spanaway gravelly sandy loam, 0-3 percent slopes; Alderwood gravelly sandy loam 8-15 percent slopes; and Everett very gravelly sandy loam, 8-15 percent slopes), YPG are extremely unlikely to be directly affected by the proposed project for the following reasons:

- Screening by the USFWS in 2016 found no gopher mounds; and,
- Despite dozens of pocket gopher screenings conducted by Thurston County and USFWS personnel from 2014-2022, no pocket gophers have ever been documented north of Interstate 5 (I-5). The nearest known occurrence of YPG to the proposed project area is 1.25 miles (2 kilometers) south of I-5. I-5 creates a physical dispersal barrier that would preclude YPGs south of I-5 from colonizing habitat on the north side of I-5, where the proposed project area occurs.

EFFECTS TO STREAKED HORNED LARK

SHLA are extremely unlikely to be affected by the proposed project for the following reasons:

- The project area is currently unlikely to support nesting SHLA because little to no nesting habitat occurs on the site; SHLA nesting habitat areas in the Puget Lowlands region typically consist of more than 300 ac (121.4 ha) of contiguous low-statured, sparse grasslands, with few to no shrubs, and no trees (Anderson and Pearson 2015, pp. 15), although they may be as small as 90 ac (36.4 ha). The western portion of this site is too shrubby and forested to support nesting SHLA, while the non-forest/non-shrub areas within the eastern portion of this sites are too small and/or devoid of any vegetation to support nesting SHLA.

Concurrence

Since the proposed project is extremely unlikely to affect SHLA and YPG, all effects are discountable, and we concur that the project is not likely to adversely affect SHLA and YPG. This concludes consultation pursuant to the regulations implementing the ESA. Our review and concurrence with your effect determinations is based on the implementation of the action as described. It is the responsibility of the Federal action agency to ensure that the actions they authorize or carry out are in compliance with the regulatory permit and ESA. If a permittee or the Federal action agency deviates from the measures outlined in a permit or project description, the Federal action agency has an obligation to reinitiate consultation and comply with section 7(d).

This action should be re-analyzed and re-initiation may be necessary if: 1) new information reveals effects of the action that may affect listed species or critical habitat in a manner, or to an extent, not considered in this consultation; 2) the action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this consultation; and/or, 3) a new species is listed or critical habitat is designated that may be affected by this action.

This letter constitutes a complete response by the USFWS to your request for informal consultation. A complete record of this consultation is on file at the Washington Fish and Wildlife Office, in Lacey, Washington. If you have any questions about this letter or our shared responsibilities under the ESA, please contact the consulting biologist identified below.

USFWS Consultation Biologist: Jose Angel Carranza
Email: jose_carranza@fws.gov

Sincerely,

for Brad Thompson, State Supervisor
Washington Fish and Wildlife Office

acorn environmental
5170 Golden Foothill Parkway
El Dorado Hills, CA 95762
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Technical Memorandum: Nisqually Quiemuth Mixed-Use Fee-to-Trust Project

February 28, 2025

Introduction

The Nisqually Indian Tribe (Tribe) has submitted a fee-to-trust request to the Bureau of Indian Affairs (BIA) to acquire into federal trust approximately 174 acres of land located in Lacey, Washington (Project Site) for the purpose of a mixed-use development project (Proposed Project). The Proposed Project consists of over 900,000 sf of commercial uses and 320 residential units. Commercial land uses would include big box stores, a grocer, retail and dining, a golf entertainment facility, a car dealership, a hotel, gas station, and a family entertainment center with a theater and bowling alley. Residential land uses would include apartments and a live-work cultural village with housing, retail, and office spaces.

An Aquatic Biological Assessment (BA) was prepared in June of 2024 to address the effects of the Proposed Project on fish species listed as endangered or threatened under the Endangered Species Act (ESA) and Essential Fish Habitat designated under the Magnuson-Stevens Fishery Conservation and Management Act. On June 24, 2024, the BIA submitted a request to the National Marine Fisheries Service (NMFS) for informal consultation under Section 7 of the Endangered Species Act. The BA determined that the Proposed Project may affect, but is not likely to adversely affect, steelhead trout (*Oncorhynchus mykiss*), Chinook salmon (*Oncorhyncus tshawytscha*), and their associated Critical Habitats.

Since submittal of the consultation request, NMFS has requested additional information related to wastewater collection, treatment, and disposal. The purpose of this technical memorandum is to provide supplementary information to further address the effects of the Proposed Project on steelhead trout (*Oncorhynchus mykiss*), Chinook salmon (*Oncorhyncus tshawytscha*), and their associated Critical Habitats as it relates to wastewater collection, treatment, and disposal.

Proposed Project Wastewater Treatment Options

A Preliminary Water Supply and Wastewater study was prepared and included as **Attachment A**. Of the alternatives under consideration, Alternative 2 would generate the highest amount of wastewater at 246,862 gallons per day (gpd) (equivalent to 0.25 million gpd). The BA assessed two wastewater treatment options: a municipal connection to the City of Lacey services, or an on-site wastewater treatment and disposal facility. Section 1.3.2 of the BA summarized these options. NMFS requested additional information on both of these options. Therefore, both options are described in greater detail below.

Option 1: Off-Site Wastewater Treatment

Under Wastewater Treatment Option 1, off-site wastewater services would be provided by connecting to existing sewer lines operated by the City and the Lacey, Olympia, Tumwater, Thurston (LOTT) Clean Water Alliance that convey wastewater to either the Budd Inlet Treatment Plant or Martin Way Reclaimed Water Plant.

WWTPs

Currently, the LOTT Clean Water Alliance provides wastewater treatment services to the City of Lacey. According to the LOTT Clean Water Alliance's Capital Improvement Plan, LOTT's main treatment plant is the Budd Inlet Treatment Plant. LOTT also operates two treatment plants which are capable of producing a total of 3 MGD of Class A Reclaimed Water. One of these facilities is collocated with the Budd Inlet Treatment Plant (BITP) in Olympia, while the other is south of the Quiemuth Village site on Martin Way East in Lacey. The water reclamation plants currently discharge to the Hawks Prairie Ponds and to the Woodland Creek Groundwater Recharge facility and do not discharge to surface waters that provide fish habitat.

The total treatment plant capacity for the LOTT Clean Water Alliance is 20 MGD with approximately 14 MGD currently being used. Capital planning for LOTT includes projections from the City of Lacey, which indicate that the Quiemuth Village project site will develop as a mixed-use site and discharge to the LOTT system through the City of Lacey's collection system. This planning document assumes a total flow from the Quiemuth Village site and other tribe owned property of approximately 712,000 gpd. This far exceeds the projected wastewater flow of approximately 246,862 gpd from the Quiemuth Village Proposed Project. Flows from the Proposed Project would represent less than 4% of the remaining capacity within the LOTT Clean Water system. No treatment system upgrades would be necessary to accommodate the Proposed Project sewage flows.

The BITP has a multi-step treatment process as outlined below (LOTT, n.d.):

1. Headworks: includes escalator screens and grit channels to remove larger pollutants such as trash, sand, gravel, and grit. Storage tanks in the headworks manage flow from heavy rains.
2. Primary Clarifiers: clears solids that either float to the surface or settle to the bottom.
3. First anoxic basins: Re-used flow from Step 5 below mixes with flow from Step 2 to promote bacterial removal of nitrogen compounds, thus converting nitrates into harmless nitrogen gas.
4. First aeration basins: Flow is aerated to promote bacterial removal of pollutants and convert ammonia to nitrate to be treated via anoxic basins.
5. Splitter box: Approximately 80 percent of this flow is returned to Step 3, the remaining 20 percent moves onto a second set of anoxic and aeration basins described as Step 6.
6. Second anoxic and final aeration basins: a second round of anoxic basins provide a secondary round of anaerobic removal of nitrates. The secondary round of aeration further allows for aerobic bacterial removal of pollutants and ensures sufficient dissolved oxygen for future steps and eventual discharge.
7. Secondary clarifiers: Flow is slowed again to allow bacteria to settle for collection and re-use in previous steps. Solid wastes are removed as described in Step 10.
8. UV disinfection: Flow from Step 7 is exposed to UV light. This prevents bacteria not collected in Step 7 from re-producing in the final discharge. Flows from this point are called final effluent.
9. Final effluent pumping: Up to one million gallons of the final effluent is diverted to a reclaimed water plant for additional treatment through sand filters and chlorination for eventual re-use to

the community for non-potable uses such as landscape irrigation. The balance of effluent (approximately 11 million gallons per day) is discharged into Budd Inlet (Puget Sound).

10. Solid waste produced in the above steps are thickened and pumped to digesters where the majority is converted to methane by anaerobic bacteria. Remaining biosolids are hauled off-site for use as farmland soil amendments and fertilizer.

The BITP is monitored 24/7 and subject to daily monitoring in its on-site state-certified lab (LOTT, n.d.). Discharge is subject to the BITP's NPDES Waste Discharge Permit (**Attachment B**). General permit conditions include submittal of a monthly Discharge Monitoring Report. The NPDES permit sets parameters for the following, as detailed in **Attachment B**:

- Biochemical oxygen demand
- Total suspended solids
- Total inorganic nitrogen
- pH
- Fecal coliform bacteria
- Total ammonia

All of these metrics must be measured on a 3-week continuous schedule for influent and either a daily or three week continuous schedule for effluent, depending on the parameter. As noted above, the BITP operates a state-certified lab that performs daily water quality testing. Per the NPDES Permit, the outfalls have a chronic mixing zone and an acute mixing zone. The larger chronic zone encapsulates a 213-foot radius circle from the center of each discharge port. The concentration of pollutants at the edge and beyond this circle must meet both aquatic life and human health criteria. The acute mixing zone has a correlating 21.3-foot radius circle at and beyond which acute aquatic life criteria must be met.

It is noted that the Washington Department of Ecology recently released the Budd Inlet Total Maximum Daily Load (TMDL) Water Quality Improvement Plan. Per this plan, the Budd Inlet waterbody exceeds water quality standards, specifically for dissolved oxygen (WADOE, 2022). The BITP discharge was determined to contribute 3 percent of oxygen depletion realized at Budd Inlet (LOTT, 2023). While larger-scale projects unrelated to LOTT are anticipated to address the major contributors to oxygen depletion, it is possible that LOTT's dissolved oxygen thresholds will become more stringent.

The Washington Department of Ecology also released a new Nutrient General Permit for discharges to the Puget Sound, with thresholds differing from the LOTT's NPDES permit. These additional thresholds would require LOTT to operate its existing nitrogen removal systems to be operated more frequently.

The infrastructure that would serve the project site was designed to accommodate a 2040 growth buildout horizon. The estimated flow from the project site used in the City's general sewer plan is greater than the project estimates; therefore, the proposed project is fully covered under the City's sewer plan and no additional infrastructure needs are triggered by the proposed development (**Attachment A**). Therefore, under a cumulative scenario considering the Proposed Project and projected growth, it is anticipated that sufficient capacity will remain, and that LOTT will not require additional permitting for unplanned wastewater discharge volumes.

The Martin Way Reclaimed Water Plant treats wastewater to the State's Class A standards. None of the treated wastewater is discharged to surface waters. Rather, treated wastewater is sent to the Woodland Creek Groundwater Recharge Facility or the Hawks Prairie Ponds and Recharge Basins for use in groundwater recharge.

Sewer Collection System

The City currently maintains a 24-inch sewer line adjacent to the western boundary of the Project Site and LOTT manages a 24-inch sewer line that intersects Main Street NE and the eastern part of the Project Site. In addition, there are 12-inch and 10-inch sewer lines along Gateway Boulevard NE that intersect the western portion of the Project Site. Wastewater Treatment Option 1 would connect to the LOTT sewer main that intersects Main Street NE, to the City sewer line adjacent to the Project Site on its northwestern border, and to the City sewer lines in Gateway Boulevard. These connections would not require building off-site sewer lines as they are located either adjacent to or within the Project Site itself.

The existing sewer lines are of a sufficient size to accept wastewater from the Proposed Project; however, specific downstream improvements could be required. Upgrades already planned by the City would be made to Pump Station #49 during construction of the Proposed Project to increase its capacity to accommodate wastewater generated by the Proposed Project. According to the City, the pump station was originally constructed with these upgrades in mind, and therefore would only require minimal improvements to pumps and electrical equipment. For the sewer line that intersects the eastern portion of the Project Site, downstream sewer lines along Martin Way East (south of the Project Site) may require upgrades depending on the timing of other development projects in the area. These areas are shown on **Figure 1**.

Option 2: On-Site Wastewater Treatment

Wastewater Treatment Plant

Under Wastewater Treatment Option 2, an on-site wastewater treatment plant (WWTP) would be constructed in the southeastern portion of the Project Site to treat the wastewater generated by the Proposed Project. The proposed WWTP would utilize a membrane bioreactor (MBR) plant with ultraviolet radiation (UV) treatment of the membrane filtrate and would be operated by certified personnel. This system would allow the WWTP to treat the wastewater to USEPA reuse standards, be consistent with Washington State Department of Ecology (WDOE) Class A effluent standards, and facilitate both surface/subsurface discharge as well as reclaimed water use. The proposed on-site WWTP would consist of the systems shown in **Table 1**.

Due to the topography of the Project Site, the majority of wastewater generated under the Proposed Project can be served by gravity sewer lines. The remaining portion of the wastewater that cannot be conveyed via gravity will be routed to a sewage lift station which would include a foul air collection and scrubbing system to control odors. In addition, the lift station would be a duplex system with backup power to improve reliability. This backup power can be supplied by an emergency standby diesel-powered generator.

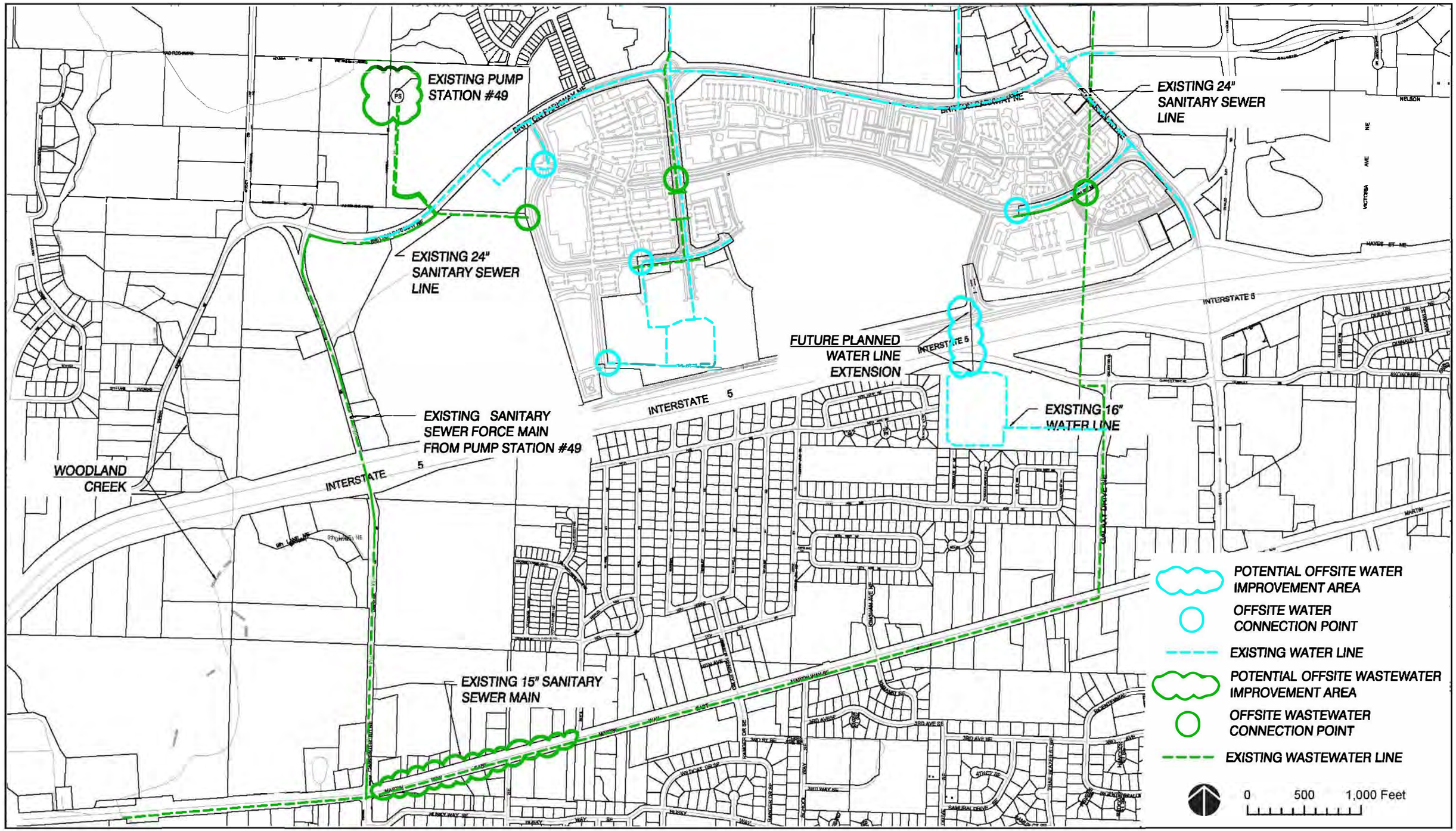

FIGURE 1

OFF SITE WATER AND WASTEWATER OPTION

Table 1: On-Site WWTP

Systems for Treating On-Site Wastewater	
Headworks	Consists of flow measurement and screening systems
Covered Holding or Equalization Basins (anoxic zone)	Designed to stabilize peak flows to the MBR tanks.
Aerated Tanks	Converts ammonia to nitrates.
Disinfection facilities	Provides substantial disinfection and deactivation for wastewater prior to surface disposal or reclaimed water uses using UV[1]
Biosolids stabilization basin	Stabilizes, thickens, and processes biosolids
Supernatants recycle pump station	Pumps supernatant into the reclaimed water storage or into the infiltration areas
Operations building	Houses the plant controls and blowers, office, and laboratory facilities and also acts as a chemical storage and handling facility
Reclaimed Water Storage Reservoir	One or more reservoirs would be constructed to store reclaimed water for toilet flushing, landscape irrigation, and emergency fire flow and fire sprinklers on the Project Site

Disposal of Treated Wastewater

Treated wastewater not needed for the reclaimed water system would be discharged in one of the following ways:

- On-site Ponds and Infiltration Basins: A reclaimed water pond facility would be developed on the Project Site that consists of approximately 7.5 acres of ponds and approximately 0.4 acres of infiltration basins. The ponds would be designed as water features within the Project Site or as standalone ponds and would allow for both infiltration and evaporation. The infiltration basins would be placed under a parking lot to avoid potential impacts to landscaping or other uses.
- On-site Groundwater Injection Well: One or more Class V injection wells would be developed on the Project Site. The wells would inject treated effluent under pressure to a depth above the underlying aquifer where it would continue to be treated as it moved through the vadose zone and into the aquifer. The injection well would be regulated by the USEPA under their Underground Injection Control program. The injection point for the effluent would be placed as far as practicable from the potable water well to ensure maximum filtration.

In addition to treated effluent, approximately 1,800 gpd of biosolids would be produced by the wastewater treatment process on average (peak would produce up to 3,650 gpd). When bi-annual cleaning is required for the treated biosolids, the biosolids would go through a thickening process before being dried and subsequently delivered to a municipal solid waste landfill or a dedicated sludge disposal site.

[1] Prior to storing the disinfected effluent, chlorine would be added to maintain disinfected levels

Environmental Review

Option 1: Off-Site Wastewater Treatment

Indirect Effects from Surface Water Discharge

Under the off-site wastewater treatment option, wastewater would be treated at the Budd Inlet Treatment Plant or the Reclamation Plant on Martin Way (**Attachment A**). In 1996, LOTT issued a Wastewater Resource Management Plan Final Programmatic EIS, which set forth wastewater management standards for all of LOTT and its infrastructure. In 1998, LOTT prepared the associated Wastewater Resource Management Plan along with a Final Supplemental EIS. The Budd Inlet Treatment Plant is also operated pursuant to a National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit (**Attachment B**). Therefore, impacts associated with the operation of LOTT infrastructure, including impacts to fish and wildlife resources, has already been subject to environmental review and are subject to operational constraints.

Wastewater from the Project Site would flow through the Martin Way lift station, which transfers wastewater to both the BITP and the Martin Way Reclamation Plant. Given the proximity of the Project Site to the Martin Way Reclamation Plant, it is expected that a majority of wastewater flows would be directed to this facility. The Martin Way Reclamation Plant does not discharge wastewater to surface waters. Therefore, flows treated at the Martin Way Reclamation Plant would not impact federally-listed fish species.

Flows that are directed to the BITP would ultimately be discharged in Budd Inlet. As discussed above, the Washington Department of Ecology has issued additional thresholds for discharges to the Puget Sound, and additional limitations on dissolved oxygen thresholds may be required in the future to assist the Washington Department of Ecology in meeting newly enumerated water quality standards in Budd Inlet (WADOE, 2022; LOTT, 2023. The new thresholds requirements of the Puget Sound can be met by the BITP through increasing use of its existing nitrogen-reduction system and would not require expansion of infrastructure. LOTT's nutrient (specifically nitrogen) removal system was recently upgraded in 2023 and increases the BITP capacity and quality of discharge (LOTT, 2025). Further, LOTT has not exceeded its dissolved oxygen thresholds to date. LOTT has received several awards for its achievements from the National Association of Clean Water Agencies, including the National Environmental Achievement Award, and the Peak Performance Award (LOTT, 2024). The municipal wastewater flows generated by the Proposed Project would not alter the quality of effluent discharged by the WWTP, and would represent a very minor increase in discharge relative to current discharge rates. Although only a portion of wastewater flows would be treated at the BTIP, assuming that all wastewater from the project would be directed to the BTIP, the resulting increase in flows would be approximately 1.7 percent. As discussed above, only a portion of the project's wastewater flows would be directed to the BITP. Therefore, the increase in flows would be less than 1.7 percent. Additionally the Proposed Project would not trigger an expansion of LOTT's WWTP and permitted discharge amounts. Therefore, wastewater generated by the Proposed Project, Option 1: Off-Site Wastewater Treatment, would result in no effect to fish and EFH.

Indirect Effects from Inflow and Infiltration

One of the specific concerns raised by NMFS was the potential for inflow and infiltration (I&I) to be realized along wastewater lines servicing the Proposed Project under the off-site wastewater option. The LOTT and its associated partner cities are jointly responsible for ongoing maintenance and management of I&I observed within wastewater infrastructure, depending on what infrastructure is affected and where. The most recent planning document related to the LOTT wastewater infrastructure is the Wastewater

Resource Management 2050 Master Plan, which was developed in 2023 (LOTT, 2023). This plan specifically addresses I&I. In 2003, LOTT developed a flow monitoring program that tracks all I&I within the totality of the LOTT system. This program helps LOTT prioritize maintenance and repair actions. Lott has further prepared a Collection System Management Program to further address I&I. Under these monitoring conditions, the totality of the system is evaluated once every seven years. Since monitoring began, I&I throughout the system has been reduced by more than 8 million gallons per day compared to I&I levels in 1997. For the Budd Inlet Treatment Plant system specifically, I&I modelling was conducted as part of the Budd Inlet Treatment Plant Master Plan (LOTT, 2006). LOTT expects new or upgraded pipes to experience reduced I&I compared to historical pipelines. Therefore, I&I is considered a baseline condition that is actively managed by LOTT and has been greatly reduced through monitoring and management. As system maintenance is the responsibility of LOTT and its associated partner cities and is beyond the control of the Tribe and BIA, the BA does not consider system maintenance related to I&I as a component of the Proposed Project. It is noted that the Tribe would negotiate a service agreement with the City of Lacey and LOTT and would pay a fair share of costs for services. As with other fees for service collected by the City and LOTT, fees paid by the Tribe would partially be used for maintenance of infrastructure.

Option 2: On-Site Wastewater Treatment

The on-site wastewater treatment option was evaluated in the Environmental Assessment prepared for the Proposed Project. This wastewater treatment option does not involve discharge to surface waters or other disposal methods where contaminants may enter habitat suitable for fishes. Therefore, this option was determined to have no effect on federally-listed fishes and was not evaluated further. Based on conversations with NMFS, no further information is requested at this time beyond the expanded description of the on-site wastewater treatment option provided above.

Conclusion

This memorandum is respectfully submitted to NMFS for review. The BA submitted to NMFS determined that the Proposed Action may affect but is not likely to adversely affect federally listed bull trout, Chinook salmon, steelhead, coho salmon, and pink salmon related to use of groundwater and potential water quality impacts associated with stormwater runoff. Related to wastewater treatment and disposal, the BA determined that there would be no effect to Critical Habitat or Essential Fish Habitat. The information herein is supplementary to the analysis provided in the BA, and supports the determinations as made in the BA that the generation of wastewater by the Proposed Action would result in no effect to federally listed fish and EFH.

References

LOTT, 2025. Nutrient Removal Upgrade. Available online at: https://www.lottcleanwater.org/nutrient-removal-upgrade/. Accessed February 2025.

LOTT, 2024. Our Awards. Available online at: https://www.lottcleanwater.org/what-is-lott/. Accessed February 2025.

LOTT, 2023. Wastewater Resource Management 2050 Master Plan. Available online at: https://www.lottcleanwater.org/wp-content/uploads/2023/04/master-plan-2050.pdf. Accessed December 2024.

LOTT, 2022. Your Guide to Class A Reclaimed Water. Available online at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.lottcleanwater.org/wp-content/uploads/2022/12/class-a-reclaimed-water-guide.pdf. Accessed February 2025.

LOTT, 2006. Budd Inlet Treatment Plant Master Plan. Available online at: https://www.lottcleanwater.org/documents/budd-inlet-treatment-plant-master-plan/. Accessed December 2024.

LOTT, n.d. Your Guide to the Budd Inlet Treatment Plant. Available online at: https://www.lottcleanwater.org/wp-content/uploads/2022/12/budd-inlet-treatment-plant-guide.pdf. Accessed December 2024.

Washington Department of Ecology (WADOE), 2022. Budd Inlet Dissolved Oxygen Total Maximum Daily Load Water Quality Improvement Report and Implementation Plan. Available online at: https://apps.ecology.wa.gov/publications/documents/2210012.pdf. Accessed February 2025.

Attachment A – Preliminary Water Supply and Wastewater Study

The Water Supply and Wastewater Feasibility Study can be found as Appendix C of the Final EA

Attachment B – Budd Inlet Treatment Plant NPDES Permit

The Nation Pollution Discharge Elimination System Waste Discharge Permit NO. WA0037061 is available online:

https://www.lottcleanwater.org/wp-content/uploads/2022/12/budd-inlet-treatment-plant-npdes-permit.pdf