

EXHIBIT E

SWIFT CREEK ACTION PLAN PERMITS AND APPLICABLE REQUIREMENTS

In accordance with WAC 173-340-710(9)(b), actions conducted under a consent decree are exempt from the procedural requirements of certain state and local laws, including the Washington State Clean Air Act (Chapter 70.94 Revised Code of Washington [RCW]), Washington State Solid Waste Management Act (Chapter 70.95 RCW), Washington State Hazardous Waste Management Act (Chapter 70.105 RCW), Washington State Construction Projects in Water Act (Chapter 75.20 RCW, recodified at Chapter 77.55 RCW), Washington State Water Pollution Control (Chapter 90.48 RCW) and Washington State Shoreline Management Act (Chapter 90.58 RCW), as well as any laws requiring or authorizing local government permits or approvals for the action. The cleanup action must still comply with the substantive requirements of the laws in accordance with WAC 173-340-710(9)(c). It is part of Ecology’s role under a consent decree to ensure compliance with the substantive requirements.

Because this exemption only applies to the above-referenced list of laws and regulations, the Swift Creek Action Plan (SCAP) must comply with both substantive and procedural requirements associated with regulations identified in a few federal and state programs, such as U.S. Army Corps of Engineers (Corps) 401 and 404 permitting processes and the Clean Water Act (CWA) Section 401 Water Quality Certification; Clean Water Act Section 402 and state NPDES processes; and state processes for forest practices and the State Environmental Policy Act. Other substantive requirements must still be met by the SCAP; at intervals listed in the Consent Decree, a report detailing compliance with substantive requirements of exempt permits will be submitted to and reviewed by Ecology. Ecology will be responsible for issuing final approval following consultation with other state and local regulators. The Corps will separately be responsible for issuing approval and incorporating Ecology’s 401 Water Quality Certification.

SWIFT CREEK ACTION PLAN SUBSTANTIVE REQUIREMENTS INCLUDING PROCEDURALLY EXEMPT PERMITS AND APPROVALS	
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<p>Clean Water Act Section 402 (33 USC 1342)</p> <p>Water Pollution Control Act (90.48 RCW; 173-220 WAC; WCC 20.80.630)</p>	<p>The National Pollutant Discharge Elimination System (NPDES) Permit program was first introduced as part of the Clean Water Act in 1972. The NPDES permit program is delegated to Washington State by the federal Environmental Protection Agency under the federal Clean Water Act, 33 USC § 1251 et seq. The goal of the permit program is to control and regulate the discharge of point source pollution into the nation’s water by issuing permits to dischargers.</p> <p>Ecology administers the federal NPDES regulations in Washington State. Pursuant to RCW 70.105D.090(2), the procedural requirements of an NPDES permit are not exempt for MTCA actions and, as such, a project-specific NPDES permit will be prepared and issued by Ecology. Municipalities, smaller communities, and rural areas within Washington State are considered dischargers and are required to obtain permit coverage and develop stormwater management plans. Whatcom County, through its development code (WCC 20.80.630(1)(d)) requires development of stormwater site plans and compliance with minimum stormwater requirements based on developed land use intensity.</p>

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	<p>Permit limits proposed in the Swift Creek Action Plan (SCAP) are not based on absolute values, but on performance goals to improve the existing water quality and to reduce environmental and human health risks. The environmental standards that apply to the Swift Creek MTCA action are included in Table 9 of the SCAP. Procedural requirements under WAC 173-220 include an application to Ecology for NPDES coverage. Procedural requirements outlined in WCC 20.80.630(1)(d), include preparation and submittal of a stormwater site plan with accompanying stormwater calculations and BMPs. Application of the stormwater manual to meet minimum requirements is, however, not required if there is a state-approved plan that effectively manages the NPDES permitting process.</p> <p>An NPDES construction stormwater general permit is required for the SCAP because there is more than 1 acre of land-disturbing activity where construction stormwater could enter Swift Creek. For each phase of the SCAP, application for coverage under the Washington State Construction Stormwater Permit will be submitted to Ecology. The Stormwater Pollution Prevention Plan that is required to be retained on-site during construction will be provided to Ecology as part of periodic reporting requirements and to meet the requirements of WCC 20.80.630 for SWPPP preparation.</p>
<p>Clean Water Act Section 404 (33 USC 1344)</p> <p>Clean Water Act Section 401 (33 USC 1342)</p> <p>Coastal Zone Management Act (16 USC 1451-1465)</p>	<p>Activities in support of the Swift Creek Action Plan (SCAP) require a permit from the Corps. Impacts associated with the SCAP outlined in the permit application will determine what type of permit is required. A dredging plan, wetland delineation, and mitigation plan must be submitted to the Corps and Ecology as part of a Joint Aquatic Resources Permit Application (JARPA). An analysis of whether the proposal may include an alternative that is less damaging to the aquatic environment must accompany the JARPA, along with an outline of avoidance steps that may have been taken in project design and planning. The SCAP is specifically tied to locations affected by chronic flooding and sediment management problems caused by a naturally-occurring landslide phenomenon; no alternative location for the SCAP would be suitable or warranted. Substantive requirements for JARPA completion also include forms for multiple property owners, multiple project locations, and contact information for adjoining property owners. Concurrent with JARPA review, the Corps will review potential impacts to historic properties and cultural resources. Ecology will review the JARPA as part of the Water Quality Certification process. Water Quality Certification for both construction and operation will be based on the water quality effluent limits included in the SCAP. Substantive requirements for Coastal Zone Management consistency evaluation include completion of a Certificate of Consistency form for submittal to Ecology.</p>
<p>State Environmental Policy Act (43.21C RCW; WAC 197-11)</p> <p>SEPA Ordinance (WCC Title 16.08)</p>	<p>For the Swift Creek Action Plan (SCAP), SEPA lead agency status has been transferred to Whatcom County by Ecology. Whatcom County completed an EIS on adoption of the Swift Creek Sediment Management Action Plan (SCSMAP) and on project actions associated with several strategies included in the SCSMAP. Whatcom County will continue the environmental review process through completion of a Supplemental EIS that will examine additional SCSMAP strategies necessary to support the SCAP.</p>
<p>Washington Forest Practices Act (76.09 RCW; 76.13 RCW; Title 222 WAC)</p>	<p>The intent of the Washington State rules is to protect public resources such as water quality and fish habitat while maintaining a viable timber industry. Activities such as harvesting timber, constructing forest roads, installing or replacing culverts or bridges, or conducting work in or over typed water requires submission of a Forest Practices Act Application/Notification (FPA/N) to the Washington State Department of</p>

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	Natural Resources (DNR). The FPA/N requires information on the proposed activity and its setting, water bodies, landforms, land use, and Native American cultural resources. An additional requirement is a statement as to potential conversion of the land to non-forestry use. A conversion to non-forestry use requires SEPA review for the conversion.
Dam Safety (90 RCW; 173-175 WAC)	Dam safety approval is provided by Ecology under WAC 173-175. Procedural requirements require an application to Ecology's Water Resources Program, inclusive of plans and specifications and a construction inspection plan for review and approval by the department.
National Flood Insurance Act / National Flood Insurance Program (NFIP) / Flood Disaster Protection Act (42 USC Chapter 50) Flood Damage Prevention Ordinance (86.12 RCW; WCC Title 17)	Swift Creek is mapped as a Zone A Special Flood Hazard Area by FEMA. Concurrent with other County permitting processes, WCC Title 17 requires a floodplain development permit in any special flood hazard area. The permitting process is primarily designed to protect structures, as Title 17 regulates buildings and insurable structures. Application materials must include a site plan with locations of water bodies and mapped elevation of the 100-year flood, along with structural floodproofing included in the building design. If, in development of a structure, a watercourse is to be altered or relocated, a conditional letter of map revision from FEMA must be requested. Review of the floodplain development permit includes verification of applicable permitting by state and federal agencies, as well as an analysis of the effects of flood carrying capacity of the watercourse affected by the proposed construction and watercourse alteration, if any.
Washington Clean Air Act (70.94 RCW) PROCEDURALLY EXEMPT	The intent of the NWCAA administration of the Washington Clean Air Act is to not allow the atmosphere to degrade below the levels set out in the Act. With application of wet methods in handling Swift Creek Sediment, the Swift Creek Action Plan is unlikely to require an air permit. If it determined that a permit is necessary, a Notice of Construction (NOC) is required for submittal to NWCAA prior to initiation of construction. A NOC requires a project narrative and project site plan, an ambient air quality impact analysis, identification of applicable air regulation, an analysis of control of toxic air pollutants under WC 173-460, completed SEPA documentation, and a Prevention of Significant Deterioration (PSD) Applicability form.
Washington Hydraulic Code (77.55 RCW; 220-660 WAC) PROCEDURALLY EXEMPT	The Washington Department of Fish and Wildlife reviews general project plans and construction plans for hydraulic projects proposed at or below the established ordinary high water mark. Chapter 220-110 WAC (Hydraulic Code Rules) and Chapter 77.55 RCW (Construction Projects in State Waters) regulate work that uses, diverts, obstructs, or changes the natural flow or bed of any of the salt or fresh waters of state and includes bed reconfiguration, all construction or other work waterward, under and over the ordinary high water line, including dry channels, and may include projects landward of the ordinary high water line (e.g., activities outside the ordinary high water line that will directly impact fish life and habitat, falling trees into streams or lakes, bridge maintenance, dike construction, etc.). The Washington Department of Fish and Wildlife (WDFW) oversees the implementation of these laws and issues a Hydraulic Project Approval (HPA) with appropriate conditions to protect these resources. The Corps permit process includes completion and submittal of a Joint Aquatic Resources Permit Application (JARPA), which is provided to WDFW for review and approval. The JARPA process typically identifies HPA substantive requirements that the Swift Creek Action Plan must comply with including Ecology coordinating closely with WDFW to ensure that the requirements of the HPA process are met.

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<p>Critical Areas Ordinance (WCC Title 16.16)</p> <p>PROCEDURALLY EXEMPT</p>	<p>WCC Title 16.16 designates and classifies critical areas with the intent of protecting the functions and values of the designated critical areas, as well as the ecological processes that sustain them. Designated critical areas within the Swift Creek Action Plan (SCAP) are wetlands and geologically hazardous areas. Swift Creek has been shown, through the Swift Creek Sediment Management Action Plan and its adopting EIS, to include no habitat; as such, fish and wildlife habitat conservation areas are not included in the SCAP for the Swift Creek South Fork and mainstem. If work conducted under the SCAP occurs on the Swift Creek North Fork or tributary streams, the substantive requirements of WCC 16.16 for habitat conservation areas would apply to those areas. Substantive requirements for the applicable portions of WCC 16.16 include a critical areas assessment with additional requirements as follows:</p> <ul style="list-style-type: none"> Wetlands: An analysis must be completed according to the Washington State adopted manual for wetland delineation. Wetlands must be rated based on categories that reflect the functions and values of the wetland. Wetland impacts must be mitigated according to the following ratios: <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 15%;">Category and Type of Wetland Impacts</th> <th style="width: 15%;">Reestablishment or Creation</th> <th style="width: 15%;">Rehabilitation Only</th> <th style="width: 15%;">Reestablishment or Creation (R/C) and Rehabilitation (RH)</th> <th style="width: 15%;">Reestablishment or Creation (R/C) and Enhancement (E)</th> <th style="width: 15%;">Enhancement Only</th> </tr> </thead> <tbody> <tr> <td>All Category IV</td> <td>1.5:1</td> <td>3:1</td> <td>1:1 R/C and 1:1 RH</td> <td>1:1 R/C and 2:1 E</td> <td>6:1</td> </tr> <tr> <td>All Category III</td> <td>2:1</td> <td>4:1</td> <td>1:1 R/C and 2:1 RH</td> <td>1:1 R/C and 4:1 E</td> <td>8:1</td> </tr> <tr> <td>All other Category II</td> <td>3:1</td> <td>6:1</td> <td>1:1 R/C and 4:1 RH</td> <td>1:1 R/C and 8:1 E</td> <td>12:1</td> </tr> <tr> <td>Category I</td> <td>No alteration allowed unless an essential public facility</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <ul style="list-style-type: none"> Geologically Hazardous Areas: A geologic hazard assessment must be conducted. Structures proposed in geologically hazardous areas such as the Swift Creek watershed, must be engineered to avoid increasing the potential hazard and protecting human health and safety. Engineered plans must be reviewed by a licensed geologist or other qualified professional to evaluate potential risk as applicable to the specific hazard. Habitat Conservation Areas: An analysis of the habitat conservation area size, condition, quality, function, and values must be 	Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only	Reestablishment or Creation (R/C) and Rehabilitation (RH)	Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only	All Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1	All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1	All other Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1	Category I	No alteration allowed unless an essential public facility				
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	conducted. Identification of impacts and opportunities to prevent impacts and/or improve habitat is required, along with identification of cumulative impacts.
WCC Title 20 (including but not limited to zoning review, administrative approvals and Major Project Permits) PROCEDURALLY EXEMPT	The purpose of Title 20 as a whole is to further the goals and policies of the Whatcom County Comprehensive Plan by providing the authority for and procedures to be followed in regulating the physical development of Whatcom County. The objective of Title 20 is to assure the highest standards of environment for living while conserving the highest degree of public health, safety, morals and welfare. The SCAP will integrate the substantive requirements of Title 20, including development standards that meet minimum county standards, with the primary goals of improving Swift Creek water quality while reducing contaminant risk to human health and the environment. Construction and safety practices, such as locating underground hazards, developing appropriate vehicular accesses and on-site routing, maintenance of safe and stable work sites, and compliance with noise limits will be built into the program.

- CFR = Code of Federal Regulations
- Corps = U.S. Army Corps of Engineers
- Ecology = Washington State Department of Ecology
- EPA = Environmental Protection Agency
- FEMA = Federal Emergency Management Agency
- NPDES = National Pollutant Discharge Elimination System
- PL = Public Law
- RCW = Revised Code of Washington
- SCAP = Swift Creek Action Plan
- USC = United States Code
- WAC = Washington Administrative Code
- WCC = Whatcom County Code
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