

Swift Creek
Sediment Management Action Plan (SCSMAP)
And SCSMAP Phase 1 Project Plan
Draft Environmental Impact Statement

Appendix E

Swift Creek Project Implementation
Regulatory Structure

| Laws and Regulations Applicable to SCSMAP Implementation Phase 1 Projects and Future Projects | | | |
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| Statutes, Regulations, Ordinances | Description | Phase 1 Projects | Future Projects |
| Federal | | | |
| <ul style="list-style-type: none"> Clean Water Act | | | |
| <ul style="list-style-type: none"> - Section 401 | Section 401 requires the State to certify that any project that may result in any discharge into navigable waters, such as dredging, will comply with effluent limitations required under the statute. State water quality certification under Section 401 is granted by Ecology. The Corps issues the permit once state certification is granted. State water quality standards are governed by Chapter 173-201 WAC. | ✓ | ✓ |
| <ul style="list-style-type: none"> - Section 402 | Section 402 establishes requirements for point-source discharge permits for pollutant discharges into navigable waters of the United States. In general, point-source discharges must be conditioned not to exceed the effluent limitation set forth in the statute. Section 402 also requires the EPA to review and grant permits for any discharge of designated pollutants. Through the NPDES Program, EPA regulates the direct discharge of pollutants to surface waters by requiring the adherence to relevant effluent standards and technology-based pollutant controls as well as ambient water quality standards. | ✓ | ✓ |
| <ul style="list-style-type: none"> - Section 404 | Section 404 governs discharges of dredged material into waters of the United States, including all waters landward of the baseline of the territorial sea. EPA and the Corps each administer specific aspects of Section 404. The Corps has the primary responsibility for issuing permits. A Section 404 permit is required to address dredged material removal and dredged material disposal in a nearshore environment. EPA has the role in developing environmental guidelines (in conjunction with the Corps) for evaluating permit applications and is the responsible permitting agency for Comprehensive Environmental Response Compensation and Liability Act designated sites. | ✓ | ✓ |
| <ul style="list-style-type: none"> National Flood Insurance Act / National Flood Insurance Program (NFIP) / Flood Disaster Protection Act | The federal National Flood Insurance Act (1968) initiated the National Flood Insurance Program (NFIP). The purpose of this program was to make affordable flood insurance available to communities that adopt comprehensive floodplain management regulations. Whatcom County is a participant in the NFIP, providing eligibility for government funded flood disaster relief. The NFIP is administered by FEMA through the Federal Insurance Administration office. | ✓ | ✓ |
| <ul style="list-style-type: none"> National Environmental Policy Act (NEPA) (42 USC 4321 et seq.) | The NEPA establishes and sets forth the national policy for environmental protection and preservation. The Council on Environmental Quality (CEQ) provides executive guidance on federal responsibility, implementation and specific requirements for documentation. Federal agencies must comply with NEPA pursuant to CEQ policies (40 CFR Parts 1500). | only actions initiated, funded or permitted under federal jurisdiction by a federal agency | only actions initiated, funded or permitted under federal jurisdiction by a federal agency |
| <ul style="list-style-type: none"> Fish and Wildlife Coordination Act of 1934 (16 USC 661 et seq.) | Requires federal agencies to consult with the USFWS and state fish and wildlife agencies when “waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted.....or otherwise controlled or modified” by permit or license. | ✓ conducted by federal agency | ✓ conducted by federal agency |
| <ul style="list-style-type: none"> Comprehensive | Congress enacted CERCLA, commonly known as Superfund, on December 11, 1980. This | asbestos related | asbestos related |

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| Environmental Response Compensation and Liability Act (CERCLA) (42 USC 9601) | law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. In addition, CERCLA established national policy for environmental investigations and cleanups and detailed procedures for identification and remediation of sites listed on the National Priorities Lists. The National Oil and Hazardous Substances Pollution Contingency Plan, more commonly called the National Contingency Plan or NCP (42 USC 9605), is the federal government's plan for responding to both oil spills and hazardous substance releases. The NCP is the primary guidance document for CERCLA response actions. Provisions of CERCLA and the NCP are interconnected, and in the case of Swift Creek sediment, CERCLA provides authority to the federal government to remove or mitigate a site in case of a release or threat of a release of hazardous substances or pollutants into the environment that might affect the public health or welfare. The federal government is also authorized to initiate hazardous substance removals in the event of a release that might impact human or animal populations, contamination of drinking water, or sensitive areas. Under CERCLA, EPA oversees and directs site investigations and cleanups. | control review watershed must be officially designated and ranked as a federal cleanup site | control review watershed must be officially designated and ranked as a federal cleanup site |
| • Safe Drinking Water Act of 1974, Chapter 6A (42 USC 300 et seq.) | Sets national primary drinking water standards. The act includes the designation of sole source aquifers. The 1996 amendment identifies source water protection. | | ✓ sediment storage |
| • Endangered Species Act of 1973 (16 USC 35) | Establishes criteria for determining threatened and endangered plant and animal species. Its goals include species conservation, ecosystem conservation, and species recovery. It is administered by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). Requires preparation of a Biological Assessment for effects determination on federally listed plant, wildlife, and fish species. | ✓ | ✓ |
| • Protection of Wetlands (Presidential Executive Order 11990, May 1977) | Requires federal agencies to minimize the loss or degradation of wetlands and enhance their natural value. Projects with federal funding are subject to this order. | ✓ | ✓ |
| • Magnuson-Stevens Fishery Conservation and Management Act (1976) (16 USC 1800) | Grants the NMFS the legislative authority to regulate the fisheries of the United States. It also established eight Regional Fisheries Management Councils that developed fishery management plans to govern their management activities and submitted them to the NMFS for approval. In 1996, this act was amended to emphasize the sustainability of the nation's fisheries and create a new habitat conservation approach, which established the designation of essential fish habitat. | within the Endangered Species Act review | within the Endangered Species Act review |
| • Clean Air Act (42 USC 741 et seq.) | Emissions produced by construction and operation of the proposed project facilities must meet standards of the Clean Air Act and the amendments of 1970. In Washington, the authority for ensuring compliance with this act is delegated to Ecology. | Actions coordinated with the Northwest Clean Air Agency | Actions coordinated with the Northwest Clean Air Agency |
| • Resource Conservation and | Regulates the disposal of hazardous wastes. | ✓ | ✓ |

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| Recovery Act (42 USC 692 et seq.) | | | |
| <ul style="list-style-type: none"> Toxic Substances Control Act (15 USC 2601) | Gives authority to the EPA to regulate substances that present unreasonable risks to public health and the environment. | ✓ | ✓ |
| <u>Washington State</u> | | | |
| <ul style="list-style-type: none"> Floodplain Statutes (Chapter 86.16 RCW) | Washington State's floodplain program integrates federal, state and local regulatory programs in a comprehensive strategy to reduce flood damages. The State floodplain program requires that local jurisdictions adopt a flood damage prevention ordinance based on minimum standards contained in the NFIP. Local jurisdictions with a flood damage prevention ordinance in place provide an avenue for property owners in flood-prone areas eligibility for federal insurance. Ecology administers the State floodplain management program and provides both financial and technical assistance to local jurisdictions for flood and watershed management activities. Through the Flood Control Accounts Assistance Program, Ecology provides financial assistance | ✓ | ✓ |
| <ul style="list-style-type: none"> Flood Control Management Act of 1935 (89 RCW) | Regulates: (1) state flood control jurisdictions, which include flood control districts, counties, and zone districts, (2) flood control management, (3) flood control contributions, (4) cooperation with federal agencies on flood control, and (5) state participation in flood control maintenance. | ✓ | ✓ |
| <ul style="list-style-type: none"> Water Pollution Control Act (90.48 RCW) | Regulates various source control activities related to sediment management. By enacting the Water Pollution Control Act and associated regulations (173-220 WAC), Washington State meets federal requirements to issue NPDES permits. Whatcom County applies NPDES permit requirements through its Development Standards. NPDES permitting may be applicable to Swift Creek dredging activities to manage sediment dewatering water during the sediment stockpiling process. | ✓ | ✓ |
| <ul style="list-style-type: none"> Model Toxics Control Act (70-105D RCW; 173-340 WAC) | MTCA identifies potential areas for cleanup and defines the methods for investigating sites, site cleanup standards, and site goals. Ecology is responsible for administering the standard and listing the sites that contain hazardous materials that pose a potential threat to human health and the environment. MTCA establishes cleanup standards and requirements for the cleanup of sites contaminated with hazardous substances. The regulation applies to all media: air, water, soil and sediment. MTCA has a reporting requirement for the release or potential release of hazardous substances that may threaten human health or the environment, and requires investigation by Ecology within 90 days of a report. If an initial investigation confirms contamination is present, and cleanup necessary, the property is entered on Ecology's Site Management Information System. All confirmed sites are ranked and placed on the State Hazardous Sites List. MTCA establishes strict liability for cleanup. | asbestos related control review watershed must be officially designated and ranked as a state cleanup site | asbestos related control review watershed must be officially designated and ranked as a state cleanup site |
| <ul style="list-style-type: none"> Washington Sediment Management Standards (90.105D RCW, 173-204) | MTCA provides legal authority to establish criteria set forth in Washington's Sediment Management Standards (SMS). The SMS are developed and enforced by Ecology under the provisions in the Water Pollution Control Act and MTCA. Sediment Management | ✓ | ✓ |

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| WAC) | Standards were approved by EPA as part of the water quality standards of the state of Washington pursuant to Section 303 of the Clean Water Act. These standards establish sediment quality criteria for freshwater, estuarine, and marine sediments. The SMS define two criteria: the lower Sediment Quality Standard (SQS) below which no adverse effects are expected and above which minor adverse effects are expected, and the higher Cleanup Screening level (CSL or also called the minimum cleanup level - MCUL) above which adverse biological effects are expected. The SMS also define the procedure for site rankings and requirement for sediment cleanups (WAC 173-204-570 and 580). | | |
| <ul style="list-style-type: none"> Ground Water Quality Standards (90.48 RCW; 173-200 WAC) | Establishes water quality standards for groundwater and applies to all groundwaters of the state that occur in a saturated zone or stratum beneath the surface of land or below a surface water body. This antidegradation policy requires that all beneficial uses of groundwater be maintained and protected. | ✓ | ✓ |
| <ul style="list-style-type: none"> Surface Water Quality Standards (90.48 RCW; 201 A WAC) | Establishes water quality standards for surface waters of the State of Washington that are consistent with public health and public enjoyment of the waters and the propagation and protection of fish, shellfish, and wildlife. | ✓ | ✓ |
| <ul style="list-style-type: none"> Shoreline Management Act (90.58 RCW) | This act requires the proponent of any substantial development within 200 feet of the high water mark of the shoreline to obtain permits if the proposed development or action interferes with the normal use of the shoreline. Permits in the case of Swift Creek are granted by Whatcom County under the Shoreline Management rules include in Whatcom County Code (WCC) Title 23. | Sumas River and Lower Breckenridge | Sumas River and Lower Breckenridge |
| <ul style="list-style-type: none"> Growth Management Act (36.70A RCW) | This statute, combined with Article 11 of the Washington State Constitution, mandates that local jurisdictions adopt ordinances that classify, designate, and regulate land use in order to protect critical areas. | ✓ | ✓ |
| <ul style="list-style-type: none"> Washington Hydraulic Code (90.48 RCW; 220-110 WAC) | The Washington Hydraulic Code includes requirements relating to any activity that would use, divert, obstruct, or change the natural flow or bed of any of the marine or fresh waters of the State. 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. Proposals are evaluated for the protection of fish and aquatic life and compliance with the State Environmental Policy Act (SEPA). | ✓ | ✓ |
| <ul style="list-style-type: none"> State Environmental Policy Act (43.21C RCW, WAC 197-11) | SEPA establishes the State's environmental policy for protection and preservation of the environment. Approval through the SEPA process is necessary prior to the issuance of the permits needed for sediment management activities. | ✓ | ✓ |
| <ul style="list-style-type: none"> Underground Utilities (19.122 RCW) | States that an excavator must provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service. | ✓ | ✓ |
| <ul style="list-style-type: none"> Archaeological Sites and Resources Protection Act (27.53 RCW) | The Archaeological Sites and Resources Protection Act protects archaeological resources on both public and private lands in the state from unauthorized excavation or disturbance. A permit from the State Historic Preservation Officer is required to excavate or affect an archaeological site. The act requires the Department of Archaeology and Historic Preservation (DAHP) to consult with the affected Native American tribe before issuing an | historic property on Goodwin Road south of proposed setback levee; proposed actions would have | ✓ |

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| | excavation permit and gives DAHP the ability to issue civil penalties for violations. DAHP can also deny a permit based on past performance. | no direct effect; may offer protection to the property | |
| Whatcom County | | | |
| <ul style="list-style-type: none"> Comprehensive Plan (February 2012) | The purpose of the Comprehensive Plan is to establish a framework of goals, policies and action items for the more detailed growth planning and implementation actions which will occur in the near future in designated urban growth areas and in the county's rural areas. Address environmental elements in particular: floodplain, alluvial fan, landslide hazards, wetlands, water resources; and consistency with land use and resource lands (agricultural, forest and mineral) planning. | ✓ | ✓ |
| <ul style="list-style-type: none"> Zoning Ordinance (WCC Title 20) | Zoning ordinance is adopted pursuant to the provisions of Chapter 36.70 RCW which empowers a county to enact a zoning ordinance and provide for its administration, enforcement and amendment. The Zoning Ordinance will 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, through coordinating the execution of both public and private projects with respect to all subject matters utilized for developing and servicing land. The objective of this title is to assure the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation; and to assure maximum economies in order to conserve the highest degree of public health, safety, morals and welfare. | ✓ | ✓ |
| <ul style="list-style-type: none"> Shoreline Management Program (WCC Title 23) | WCC Title 23 regulates shoreline development to ensure compliance with the goals of environmental protection, maximum beneficial land use, view protection, water use and access. Included in this program are requests for dredging activities. Swift Creek is not within Washington State jurisdiction, but the Sumas River is a listed shoreline stream. While the management strategies are intended to manage Swift Creek only, any management activity that would extend to or impact the Sumas River would fall under the shoreline management regulations. | Sumas River only | Sumas River only |
| <ul style="list-style-type: none"> Flood Damage Prevention Ordinance (86.12 RCW) | Provides local counties with the authority to levy taxes and take actions to prevent flood damage. Actions within this statute include adoption of comprehensive flood hazard management plans for individual watersheds or drainage basins located within a county and use restrictions in flood-prone areas. If a comprehensive flood hazard management plan were to be developed for the Swift Creek watershed, Whatcom County would consider application of regulations and standards of the Whatcom County Flood Damage Prevention Ordinance, policies included in the Comprehensive Plan, and designations within the Zoning Ordinance to fully develop floodplain uses and restrictions for the plan. | ✓ | ✓ |
| <ul style="list-style-type: none"> Critical Areas Ordinance (WCC Title 16.16) | Whatcom County Critical Areas Ordinance (CAO) regulates development of aquatic areas such as streams and wetlands. In addition to streams and wetlands associated with Swift Creek projects, Whatcom County's CAO categorizes the Swift Creek watershed as a geologically hazardous area. | ✓ | ✓ |
| <ul style="list-style-type: none"> SEPA Ordinance (WCC Title | SEPA establishes the State's environmental policy for protection and preservation of the | ✓ | ✓ |

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| 16.08) | environment. Approval through the SEPA process is necessary prior to the issuance of the permits needed for sediment management activities. Whatcom County adopts the State SEPA rules with additional SEPA procedures and policies detailed in this ordinance. | | |
| <u>International</u> | | | |
| <ul style="list-style-type: none"> Environmental Cooperation Agreement - State of Washington and the Province of British Columbia | Environmental Cooperation Council is jointly managed by the Governor of Washington State and the Premier of British Columbia. Provide attention to and management of cross-border issues such as flooding, groundwater quality, and air quality in shared environments. | ✓ | ✓ |

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

USC = United States Code

WAC = Washington Administrative Code