

CHAPTER 5

PERMITS AND POLICIES

Implementing a bank stabilization project requires a thorough understanding of the regulations that may affect such a project. Regulatory requirements, policy interpretations, and scientific knowledge relating to the riverine environment are continually evolving. Before the 1970's, when most of King County's major river projects were designed and constructed, only limited floodplain and natural resource protection regulations existed. In recent years, the variety of regulations has increased to provide greater resource protection from projects proposed in and along rivers.

This chapter discusses the regulatory aspects of implementing proposed projects. It includes an overview of King County, Washington State and federal permits, discusses conflicting regulatory policies of different agencies and reviews regulatory issues associated with public funding and assistance programs.

The designer should be aware of the permit requirements and the current interpretations of policies that can affect project design and funding. This chapter is not a substitute for reading the published regulations; it simply paraphrases and summarizes these regulations. Before initiating a project, review the appropriate regulations and contact the regulatory agencies for the latest policy interpretations and permit requirements. A listing of agency and tribal contacts is provided in Appendix B. Communication with these agencies should be initiated early during project planning and should continue throughout the design, installation, post-construction monitoring and long-term maintenance phases of the project.

All local, state, and federal agencies should consult with tribal governments when considering projects on tribal lands or when proposing projects on non-tribal lands that may affect treaty-reserved resources or areas. Several tribes in the King County area, including the Tulalip Tribes, the Muckleshoot Indian Tribe, and the Puyallup Tribe of Indians, have lands and continuing treaty interests in natural resources.

5.1 AN OVERVIEW OF PERMITS

A summary of the local, state and federal permits that may be required for riverine projects within King County is presented in Table 5.1. The interrelated permit reviews that exist between various regulatory agencies should be noted. Shoreline permits and State Environmental Policy Act (SEPA) processes, for example, are listed in Table 5.1 under both "Local" and "State" jurisdiction. These are state regulations administered by the local agency, in this case, King County. Each Shoreline permit application and SEPA checklist requires a review by the state or Tribal agencies prior to the final permit approval by the local agency. Similarly, a Hydraulic Project Approval (HPA) can only be approved by the Washington Departments of Fisheries and Wildlife after SEPA requirements are satisfied.

Interdependent permits also exist between some state and federal regulations. The Section 10 and Section 404 permits require a Coastal Zone Management Consistency Determination and a 401 Water Quality Certification from the Washington Department of Ecology (Ecology) prior to permit approval by the U.S. Army Corps of Engineers (Corps). HPA and Shoreline permits may also be required in conjunction with Corps permits.

From the timelines listed in Table 5.1, it is obvious that the time required to obtain all required project approvals can be lengthy. The types of permits required and the length of the review process varies with the complexity of the project and the environmental sensitivity of the site. The lengthy timelines emphasize the fact that permit processing is a significant element in the overall project schedule. Projects developed with an awareness of current regulations can minimize the time required for obtaining permits. As an additional aid, the following sections provide further information about the permits summarized in Table 5.1.

Table 5.1 A listing of permits and their general processing timelines for King County, Washington State and federal agencies.

JURISDICTION	PERMIT	TIMELINE
LOCAL ¹		
King County Dept. of Development and Environmental Services	Clearing/Grading permit	1-12 months
	Sensitive Areas Ordinance (SAO) Variance/Public Exception	3-6 months
	"Local" Shorelines Substantial Development Permit (SDP)	3-6 months
	"Local" Shorelines Conditional Use Permit (CUP)	6-9 months (9-12 months if public hearing is required)
	"Local" Shoreline Variance	6-9 months (9-12 months if public hearing is required)
	"Local" Shoreline Exemption	1-2 months (public hearing required)
	"Local" State Environmental Policy Act (SEPA) Checklist	If DNS or MDNS, 1-12 months (3 month average). If DS, an EIS is required; then 3 months-3 years (18 month average).
STATE		
Various state agencies	SEPA determination & checklist, or EIS review by state and Tribal agencies	If DNS or MDNS, then 1-12 months (3 month average). If DS an EIS is required; then 3 months-3 years (18 month average).
Dept. of Ecology	Shoreline SDP	30 days
	Shoreline CUP	60 days
	Shoreline Variance	60 days
	Coastal Zone Management Certification/Determination	45 days for federal activities; 6 months for other permits
	401 Water Quality Certification	Processed in conjunction with Corps Section 10/404 permits.
Depts. of Fisheries and Wildlife	Hydraulic Project Approval	Up to 45 days from completion of the SEPA review process and receipt of a completed application.
Dept. of Natural Resources	Aquatic Land Use Authorization	3-6 month
FEDERAL		
Corps of Engineers	Section 404 Permit Section 10 Permit	Letter of permission, 20 days. Nationwide, 20 days. Individual, at least 6 months.
Environmental Protection Agency	401 Water Quality Certification	Processed in conjunction with Corps Section 10/404 permits.

¹ Permits for incorporated cities within King County are not included.

5.2 KING COUNTY REGULATIONS

Local governments often have permits--or are responsible for implementing state and federal requirements--that affect bank stabilization projects. This section, and Sections 5.3 through 5.5, summarize the regulations and permits required for projects in unincorporated King County.

Permits for bank stabilization projects proposed for King County rivers and streams are obtained from the Department of Development and Environmental Services (DDES). Specifically, two divisions within the DDES review project proposals: the Land Use Services Division (LUSD) and the Environmental Division (ED). The LUSD is responsible for administering the 1990 King County Sensitive Areas Ordinance (SAO) and the 1978 King County Shoreline Master Program. The ED is responsible for administering requirements of the 1983 State Environmental Policy Act (SEPA). These regulations (the SAO, Shoreline Master Program and SEPA) are described in detail below. The SEPA process is discussed in Section 5.5.

5.2.1 SENSITIVE AREAS ORDINANCE (SAO)

The SAO (King County Code 21.54) regulates activities in environmentally sensitive areas such as floodplains, streams, wetlands, steep slopes and buffer zones. Maps of sensitive areas in King County, published as the Sensitive Areas Map Folios, are available through the Environmental Division. This revised ordinance, adopted in September 1990, is generally more restrictive than other associated local, state or federal regulations. As a result, attention to the requirements of the SAO is very important in avoiding delays in permitting.

The SAO contains regulations that will affect most bank stabilization projects. For example, the ordinance states that projects within the 100-year floodplain must not cause any increase in the elevation of the 100-year flood. This "zero-rise" requirement means, in effect, that projects constructed in the 100-year floodplain must not im-

pede flood waters. Similarly, the ordinance prohibits filling in the floodplain unless "compensatory storage" is created for the flood storage lost through filling. This new, excavated storage volume must be equivalent to the amount of floodplain filling and also connected hydraulically to the filled area.

With some exceptions (e.g. enhancement), the SAO also prohibits alterations to wetlands, streams, and their buffer zones. Approved alterations to wetlands and their buffers require a mitigation plan. Other special studies including habitat value, hydrology, erosion and deposition, and/or water quality studies may also be required.

Buffers width requirements for wetlands and streams vary from 25 to 100 feet depending on the class of wetland or stream. Buffers for steep slope and landslide hazard areas are a minimum of 50 feet. These widths may be reduced if adequate protection is demonstrated through a special study.

5.2.2 SHORELINE MASTER PROGRAM

King County adopted its most recent Shoreline Master Program in 1978 to comply with the Washington State Shoreline Management Act (SMA). The SMA (Revised Code of Washington [RCW] 90.58) was adopted in 1971 to protect shorelines of the state (shores of large lakes, the marine areas of Puget Sound, and other major waterways). Shorelines of the state include rivers and streams that have a mean annual flow of 20 cubic feet per second or greater, and lakes 20 acres or more in size. King County jurisdiction over shorelines of the state includes those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark. This includes the 100-year floodplain and associated wetlands.

The SMA requires cities and counties to adopt local shoreline master programs that include policies and regulations for land use in shoreline areas. Under the County's Shoreline Master Program, shorelines of the state are designated as "Urban," "Rural," "Conservancy," and "Natural." The restrictiveness of the shoreline regulations depends on the designation placed on the area. For ex-

ample, regulations for Natural areas are more restrictive than those for Urban areas.

King County cannot issue a permit that is contrary to the goals, policies, and regulations of its Shoreline Master Program. The requirements of the Shoreline Master Program must be considered when issuing permits required by the County's SAO. For this reason, the permit processes for implementing the SAO and the Shoreline Master Program are closely related. These permits (i.e., Clearing/Grading and Shorelines) are discussed in Sections 5.2 and 5.3 below.

5.3 KING COUNTY CLEARING/ GRADING PERMIT

Prior to initiating the County permit process, it is important to understand the relationship between the Clearing/Grading and Shoreline Permits. Because shorelines of the state are environmentally sensitive areas, these two permits have a coordinated review process. Permit applications are reviewed by the Grading, Sensitive Areas and the Shorelines Units in the Land Use Services Division.

The Clearing/Grading Permit is required for any land-use activity would include cutting or removing vegetation and/or excavating, filling, removing of earth material within a sensitive area. This permit is the mechanism through which conditions are applied to ensure compliance with the SAO, SEPA, and other applicable ordinances. Because the Clearing/Grading Permit application initiates the review process, it is described first and followed by a description of the types of Shoreline Permits.

The review process begins when the applicant contacts the Grading Unit to request a pre-application meeting. The purpose of this meeting is to acquaint the County staff with the proposed project, to provide evidence that will justify a particular type of review, and to establish the permit process for the proposed project. At this initial step in the process, the applicant is alerted to any problems that may be encountered in gaining approval of the proposal.

The permit process will vary depending on the type of project being proposed. The County review staff will determine what permit process will apply to the proposed project and what types of information (such as a stream survey, wetland report, shorelines plan, or mitigation plan) will be required.

When contacting the Grading Unit to schedule the pre-application meeting, the applicant should request:

- a pre-application review application with a fee schedule;
- the names of the County staff assigned to the review, and
- attendance at the pre-application meeting by sensitive areas, grading, and shorelines staff responsible for the review.

The pre-application meeting should occur a minimum of one to three months prior to permit submittal. At the meeting, the project applicant should:

- establish contact with the responsible County review staff;
- provide copies of preliminary design drawings and a written description of the project rationale;
- request information on any additional submittal requirements and the review sequence;
- schedule field visits as necessary;
- determine the shorelines designation (i.e. Urban, Rural, Conservancy or Natural) at the Zoning Counter.

After the applicant has compiled the information requested, the project will be reviewed for compliance with the County regulations. The review time can vary considerably depending upon the project size and complexity, and the number of reviewers involved. Incorporating the requirements of the SAO and Shoreline Master Program early in the design process can greatly minimize the County's review and processing time.

The Grading Unit staff processes project applications in the following order:

- Exemptions (as defined in King County Code [KCC] 21.54)
 - a. From the grading code.
 - b. From the sensitive areas code.
- Permits
 - a. Emergency Exception; mitigation is required.
 - b. Public Agency Exception; mitigation and a public hearing are required.
 - c. Approved Alterations; limited mitigation may be required.

A maintenance exception from the Clearing/Grading Permit is provided under King County Code 16.82.050 for routine clearing or grading activities performed by a public agency for maintenance of publicly owned facilities (such as flood control or other surface water management facilities). For emergencies that threaten public health, safety and welfare, exemptions can be granted under the SAO (KCC 21.54.030) through an administrative ruling by the Director of the DDES. A project exempt under KCC 21.54.030, however, may not be exempt from clearing and grading requirements under the Grading Code (KCC 16.82).

If no issues related to requirements of Shoreline Master Program exist, a public agency exception or SAO variance for any alterations that do not conform to the requirements of King County Code 21.54 is granted.

5.4 KING COUNTY SHORELINE PERMITS

Permits issued under the Shoreline Master Program include the Shorelines Substantial Development Permit (SDP) and the Shorelines Conditional Use Permit (CUP). These permits ensure that development in shoreline areas conforms with the King County Shoreline Master Program and the goals and policies of the SMA. In addition, the Shoreline Master Program allows for a Shoreline Variance and a Shoreline Exemption in certain special circumstances. All of these permits are described below.

5.4.1 SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT (SDP)

The SDP is required for any “substantial development” occurring within 200 feet of a shoreline of the state. Substantial development includes any development with a total cost or fair market value of at least \$2500, or any development which materially interferes with the normal public use of the water or shoreline. “Development” includes construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act at any water level.

Because SDPs are issued by local governments, the review time varies with the local process. For King County, the processing time ranges between 3 to 6 months. The minimum time required by state regulation before construction may begin is 72 days from the date that a complete SDP application is submitted to the local government. Permit fees, which are set by local government, vary widely.

SDPs are subject to appeal by applicants, government agencies, or the public. Appeals must occur within 30 days of the date of filing of the permit with Ecology. Appeals are heard by the State Shorelines Hearings Board.

Activities that are exempt from the SDP process include:

- development with a the total cost or fair market value of less than \$2500;
- maintenance and repair of existing lawfully established structures;
- construction of a protective bulkhead on property occupied by a single-family residence;
- construction and practices necessary for farming, agricultural, and ranching activities; and
- construction by the owner, lessee, or contract purchaser of a single-family

residence (and private dock) less than \$2,500 in fair market value for his/her own use.

Emergency construction necessary to protect property from damage by the elements is exempt from the requirement for an SDP. An “emergency” is defined in Washington Administrative Code [WAC] 173.14.040(d) as “an unanticipated and imminent threat to public health, safety, or environment which requires immediate action within a time too short to allow compliance with the procedural requirements of the Shoreline Management Act.”

5.4.2 SHORELINE CONDITIONAL USE PERMIT (CUP)

A CUP provides more control and flexibility in implementing the policies and regulations of the local Shoreline Master Program and SMA. CUPs generally involve uses and activities over-water and other environmentally sensitive shoreline resources. As a result, they typically receive a higher level of review by King County and the State Department of Ecology.

A CUP is required for uses and activities classified or set forth in the applicable SDP. A CUP may be authorized if the applicant can demonstrate that the proposed use is:

- consistent with the local Shoreline Master Program and Shoreline Management Act;
- will not interfere with the normal public use of the shoreline;
- will be compatible with other uses in the area;
- will not cause unreasonable adverse effects to the environment; and
- will not cause substantial detrimental effect to the public interest.

Uses not classified in the Shoreline Management Program may also be authorized through issuance of a CUP, provided that, in addition to the above criteria, extraordinary circumstances exist which preclude reasonable use of the property in a manner consistent with the SMP. Consideration of

the cumulative impacts of granting additional similar requests is required before a Conditional Use Permit can be approved.

Uses and activities classified in the local SMP as requiring a CUP must obtain approval of a CUP even if the fair market value of the development is less than \$2,500. CUPs are issued by local governments, subject to Ecology approval. King County processes CUP in 6 to 9 months. If a public hearing is required, the processing time may extend to 12 months. The minimum time period required by state regulation before construction can begin is 90 days from the date that a complete application is submitted to local government.

CUPs are subject to appeal by applicants, government agencies, and the public. Such appeals are heard by the State Shorelines Hearings Board. Appeals must be filed within 30 days of the date of final action by Ecology. Permit fees, which are set by local governments, vary widely.

5.4.3 SHORELINE VARIANCE

A Shoreline Variance is intended to grant relief from specific bulk, dimensional or performance standards set forth in the local Shoreline Master Program. This variance applies where there are extraordinary or unique circumstances with the property such that strict implementation of the standards will impose unnecessary hardship on the applicant or thwart the policies of the Shoreline Management Act. Irregular lot shapes, sizes, natural features, or unique conditions specifically related to the property are typical problems that may justify a variance. Activities permitted by the variance can only occur in a manner that the public interest shall suffer no substantial detrimental effect.

The burden of proof is on the applicant to demonstrate the following:

- strict application of the standards precludes or significantly interferes with a reasonable use of the property;
- a hardship exists that is the result of unique conditions related to the property and not from the applicant’s own actions;

- the project design is compatible with and will not adversely affect neighboring uses of the shoreline environment;
- the variance does not constitute a grant of special privilege and is the minimum variance necessary to afford relief and will have no substantial detrimental effect on the public interest.

Variance requests for projects located waterward of the ordinary high water mark, must also demonstrate that the public rights of navigation and use of the shoreline will not be adversely affected. The cumulative impacts of additional similar actions must also be considered.

Variations are not meant to allow an otherwise prohibited use. Economic status, deed restrictions, lack of planning or construction foresight, or other actions by the applicant which create a need for a variance are not valid justifications for granting variances.

Shoreline variances are issued by King County and are subject to Ecology approval. Variations may be appealed by applicants, government agencies, and the public within 30 days of final action by Ecology. Such appeals are heard by the State Shorelines Hearings Board. No provisions have been established for issuing a variance during emergency conditions.

The time involved in obtaining a variance depends on the local review process. For King County, a variance can be processed in 6 to 9 months. As with the CUP, a public hearing may be required for a Shoreline variance, potentially extending the processing time to 12 months. The minimum time required by state regulation before construction can begin is 90 days from the date that a complete application is submitted to local government. Fees for a variance, which are set by local government, vary widely.

5.4.4 SHORELINE EXEMPTION

An exemption from Shorelines permits is allowed under WAC Chapter 173.14.040 for projects involving normal maintenance or repair of an existing, legal structure. The King County pro-

cessing time for this exemption is approximately 1 to 2 months. A public hearing is required before an exemption can be issued.

5.5 STATE ENVIRONMENTAL POLICY ACT (SEPA)

The SEPA (RCW 43.21; WAC Chapter 197-11) requires that the state and local governments consider the environmental impacts of certain public and private projects. The goal of SEPA is to protect the environment from significant adverse impacts due to development or other land-use actions.

The SEPA does not require specific permits. Rather, it requires that a specific process be followed to identify environmental impacts of a proposed project. Based on information on the project and its likely environmental effects, the County's Environmental Division will make a series of decisions. These decisions include if the project can proceed as proposed, if modifications are necessary to mitigate impacts, or if additional information and analysis is necessary before a decision can be made. Public review and comment periods are required. SEPA rarely results in a project being rejected entirely; rather, it seeks to modify the proposal in ways that lessen its effect on the environmental.

Compliance with the SEPA process can affect the approval of other permits. A project requiring a Shorelines permit or a HPA (discussed later in Section 5.6) must comply with the SEPA process. Because most bank stabilization projects will require one or both of these permits, it will also be subject to SEPA.

SEPA mandates that a lead agency (e.g. the King County Environmental Division) determine if a proposed project will "significantly affect the quality of the environment." This determination, which is based on responses to a standardized checklist, is called a "threshold determination." The project applicant begins the SEPA process by submitting the completed checklist to the lead agency for a threshold determination.

If the proposed project will have a minimal environmental impact, the agency issues a deter-

mination of non-significance (DNS). If the project has an environmental impact but the impact can be mitigated through other actions, a mitigated determination of significance (MDNS) is issued. Projects likely to have a significant impact receive a determination of significance (DS). These projects undergo more extensive review which is documented in an environmental impact statement.

In the 1983 amendments to SEPA, new language adopted under RCW 43.21C.060 allows agencies to consider mitigation measures when making threshold determinations. A MDNS may be granted if the applicant clarifies or changes the proposed project, and adequate mitigation measures for project impacts are possible. The SEPA rules state that if a “proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared.”

Processing time for a SEPA determination depends on the lead agency and the amount of analysis required for the proposal. If a DNS or MDNS is issued, the process may be completed in as little as 30 days. If an environmental impact statement (EIS) is required, the process may take a year or more. The lead agency may establish filing fees and may charge the applicant for preparation of an environmental document.

SEPA contains provisions for emergency exemptions. Projects are exempt from SEPA if they “must be undertaken immediately...to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.”

5.6 STATE PERMITS

The following section describes state permit requirements. For more detailed information, please refer to *Commonly Required Environmental Permits for Washington State* (Wash. Dept. Ecology 1990).

5.6.1 HYDRAULIC PROJECT APPROVAL (HPA)

The HPA is required by any person or government agency seeking to perform any work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. It is intended to protect fish life in waters of the state.

The Washington Departments of Fisheries (WDF) and Wildlife (WDW) jointly administer the State Hydraulic Code (RCW 75.20.100 and 75.20.103). Applications are coordinated so that applicants only deal with one agency. WDF typically takes the lead for marine and freshwater areas that support anadromous salmonids. WDW takes the lead for all other state waters.

The Hydraulic Code requires WDF or WDW to grant or deny approval within 45 calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of SEPA. Compliance with SEPA is required prior to the issuance of an HPA. State laws require that the agencies strive to process hydraulic project applications in less than 30 days. There is no fee for this permit.

The 45-day requirement may be suspended under certain conditions for Forest Practice Applications (FPAs), or Section 10 and Section 404 public notices circulated by the Corps. The latter two permits also serve as official applications for HPAs. When FPAs serve as HPA applications, more information regarding instream modifications is usually required before an approval can be issued. Also, the 45-day requirement can be suspended by WDF/WDW if additional information is requested from the applicant.

For repair of streambank and other damage caused by flood events, Engrossed Substitute Senate Bill (ESSB) 5411, commonly called the 1991 Flood Bill, requires a coordination meeting between the applicant and appropriate state, local, or county permitting or authorizing agencies within 15 days of receipt of a complete application. Denial or approval of the project occurs within 30 days of receipt of a complete application.

The Hydraulic Code states that in case of emergency, verbal approval shall be granted by WDW or WDF immediately upon request for

emergency work to repair existing structures, move obstructions, restore banks, or protect property that is subject to immediate danger by weather, flow, or other natural conditions or for driving across a stream during an emergency. The agencies provide a 24-hour hotline for emergency needs (See Appendix B). Emergency HPAs allow necessary work to proceed immediately, with project impacts and needed mitigation to be identified after the emergency has passed.

5.6.2 COASTAL ZONE MANAGEMENT (CZM) CERTIFICATION OR DETERMINATION

The CZM Determination which is required of federal activities, decides if the activity is consistent, to the maximum extent possible, with the Coastal Zone Management Program (CZMP). The CZM Certification which applies to private applicants, certifies full consistency with the CZMP. The certification and determination were originally authorized under the 1972 U.S. Coastal Zone Management Act. The Act was reauthorized in 1990 with amendments.

The applicant provides Ecology with a description of the project and its coastal zone effects. In addition, the project must be in compliance with other regulatory requirements, including:

- the local Shoreline Master Program (i.e. it must obtain a Shorelines Permit if the activity is located in a “shoreline of the state”);
- SEPA;
- the state water quality standards; and
- the state clean air requirements.

Ecology’s Environmental Review Section provides review and determination for projects being undertaken by the Corps. The Shorelands Program reviews projects from all other federal agencies. There is no fee for either the Determination or Certification.

5.6.3 401 WATER QUALITY CERTIFICATION (WQC)

Similar to the CZM Certification, the 401 Water Quality Certification is provided by Ecology for the federal agency. Under the Federal Clean Water Act, Section 401 and Chapter 173-225 WAC, this certification is required for a federal license or permit to conduct any activity that may result in any discharge into surface waters. The proposed activity must comply with the discharge requirements of federal law and meet the aquatic protection requirements of state law. No fee is required for the certification. This permit is processed in conjunction with Corps Section 10 and 404 permit applications.

5.6.4 TEMPORARY WATER QUALITY MODIFICATION (WQM) PERMIT

If construction activities unavoidably violate state water quality criteria on a short term basis, the project will require a WQM from the Department of Ecology. This modification to water quality standards may be required before Ecology can issue a WQC. There is no fee for a WQM.

5.6.5 AQUATIC LAND USE AUTHORIZATION

This authorization (WAC 332-30-122) may be required if a proposed project requires transitory movement through navigable waters (e.g., mooring a barge). The applicant should contact the State Department of Natural Resources directly for a determination of navigable areas. Authorization will not occur until all other permits required for the project are issued. The time to obtain the authorization may range between three to six months, depending on the project location and length of project time. If the activity is a permanent project rather than a transitory activity, DNR may require a lease for use of the project area.

5.7 FEDERAL PERMITS

The two Federal permits most often required for bank stabilization projects are the Section 404 permit for discharge of dredge and fill material, and the Section 10 permit for work in navigable waters. Both of these permits are issued by the Corps. While individual permit applications may be required, work can be authorized by letters-of-permission, nationwide permits, or regional permits. The following is a general summation of the Corps Regulatory Program and should not be considered as definitive guidance. The Corps Regulatory Branch at the Seattle District Office should be contacted for specific information.

5.7.1 SECTION 404 PERMIT

The purpose of this permit, which is required under Section 404 of the Federal Clean Water Act, is to restore and maintain the chemical, physical, and biological integrity of the nation's waters through the control of discharges of dredged or fill material. Activities requiring a Section 404 permit include discharge of dredged material, fills, groins, breakwaters, road fills, riprap and jetties. Many other activities such as ditching, drainage and vegetation removal may also be regulated under Section 404.

Letters of Permission (LOPs) are given for minor or routine work with minimum impacts. Nationwide Permits (NWP) are those that have already been issued to the public at large. There are forty types of NWP. (The reader is referred to the Code of Federal Regulations, Appendix A to Part 330, for a complete listing.) Three nationwide permits commonly related to bank stabilization projects are NWP 3 - Maintenance, NWP 13 - Bank Stabilization, and NWP 26 - Headwaters and Isolated Waters Discharges. The following information on these permits is taken from the Corps Special Public Notice on Nationwide Permits-Regional Conditions, State of Washington, dated February 11, 1992.

The NWP 3 authorizes the repair, rehabilitation, or replacement of those structures destroyed by storms, floods, fire or other discrete events.

These activities must commence or be under contract to commence within two years of the date of the destruction of or damage to the structure.

NWP 13 allows bank stabilization activities necessary for erosion prevention provided:

- no material is placed in excess of the minimum needed for erosion protection;
- the bank stabilization activity is less than 500 feet in length;
- the activity will not exceed an average of one-half cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or high tide line;
- no material is placed in any special aquatic site, including wetlands;
- no material is of the type or is placed in any location or in any manner so as to impair surface water flow into or out of any wetland areas;
- no material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and
- the activity is part of a single and complete project.

Under the CFRs, the Corps has discretionary authority to require mitigation for any adverse impacts to streams, wetlands, or other water bodies.

A NWP 26 allows filling up to one acre in isolated wetlands or adjacent wetlands that are above the headwaters. A headwater is defined as a stream with a mean annual flow of less than five cubic feet per second. For activities affecting greater than one acre of isolated or headwater wetlands, the Corps must be notified. Under the NWP program notification procedures, the Corps contacts the appropriate resource agencies, such as the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Ecology and other agencies. After a 30-day review, the Corps decides whether the NWP applies or an individual permit is required.

Under the NWP 26, if the fill or area of adverse modification is:

- one acre or less, no notification is required providing that the project complies with the regional or national conditions of the Nationwide permits.
- between one to 2 acres of fill or adverse modification, notification is required by the Corps.
- greater than two acres, an individual permit is required.

Fills of any size in wetlands below the headwaters, (i.e. waters whose mean annual flow equals or exceeds five cubic feet per second) would require Individual permits.

Routine processing time for a NWPs is about 30 days. An individual permit may take six months or more. The fees for these permits are \$10 for a non-commercial activity and \$100 for a commercial activity.

5.7.2 SECTION 10 PERMIT

This permit, which is authorized under Section 10 of the U.S. Rivers and Harbors Act, is required for any structures or work in navigable waters of the U.S. Examples of projects requiring Section 10 permits include utility lines, marinas, piers, wharves, floats, intake pipes, outfall pipes, pilings, bulkheads, boat ramps, dredging, dolphins, and fills. Navigable waters are those waters of the U.S. subject to the ebb and flow of the tide shoreward of the mean high water mark and/or which are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce, and their adjacent wetlands. The purpose of these permits is to protect the integrity of navigation channels and the quality of waters of the U.S. (i.e., wetlands to the territorial seas).

These permits are issued by the U.S. Army Corps of Engineers District offices. Processing for a standard permit may be six months or longer. Letters of permission (LOPs) and nationwide permits (NWPs) usually take 30 days. Fees for these

permits are currently \$10 for non-commercial activity and \$100 for commercial activity.

5.8 CONFLICTS IN REGULATORY REQUIREMENTS

Conflicts can arise when two or more agencies involved with a proposed project have opposing regulatory requirements. Conflicts occur when there are differences in program goals or when contradictory design requirements are linked to project funding. For example, the goal of protecting environmentally sensitive areas may not, in some cases, be compatible with providing public access. Similarly, projects funded by federal assistance programs must use design criteria that, in some cases, conflict with local or state regulatory requirements. The designer should be aware of these situations and how they can affect the final design or funding a bank stabilization project.

5.8.1 CONTRADICTION PROGRAM GOALS

Intergovernmental Agreements

Sometimes, conflict between two agencies or governments is resolved by intergovernmental agreements. These agreements or adjudications may result in specific requirements for proposed projects or maintenance practices. One example is a 1985 agreement between the Puyallup Tribe of Indians and Pierce County for vegetation management in a portion of the Puyallup River drainage basin. The agreement was the result of a dispute over the protection of fish and wildlife resources versus the removal of riparian vegetation for flood control purposes. The agreement, named the Puyallup River Vegetation Management Program, provides standards for the management of riparian vegetation. The document recognizes that scientific approaches concerning vegetation management are evolving and therefore allows future modification of the guidelines to incorporate necessary management changes.

When a river is a jurisdictional boundary between counties, a Joint County Flood Control Agreement can be used to cooperatively implement river projects that effect both jurisdictions. This type of agreement, used to form an Inter-county River Improvement District (ICRID), currently exists between King and Pierce counties for the White River.

Intra-agency Programs

As discussed earlier, the King County SAO applies to all of the streams and rivers that are designated as shorelines of the state under the King County Shoreline Master Program. These two County regulations have different goals that may result in conflicting requirements. For example, the Shoreline Management Program addresses physical and visual access to shorelines. Conversely, the SAO seeks to protect the same sensitive areas from significant impacts caused by activities such as recreation or view clearing along shorelines.

The SAO also seeks to protect streams and floodplains from adverse environmental impacts, but also to “meet the requirements of the National Flood Insurance Program [NFIP] and maintain King County as an eligible community for federal flood insurance benefits.” Specific requirements of the NFIP and the related Corps standards for flood protection may not always be compatible with regulations for natural resource protection.

5.8.2 DESIGN CRITERIA RELATED TO PUBLIC FUNDING AND ASSISTANCE PROGRAMS

Many local agencies rely on public assistance programs for repairing flood control facilities. Implementation of state permit provisions to protect fish and wildlife resources may not be eligible for federal reimbursement. For example, Corps standards for flood control protection often conflict with state HPA requirements. A typical HPA condition for placing rock to maintain existing levees is to re-establish bank vegetation for fish

and wildlife habitat. To be eligible for federal funding, these same maintenance projects must meet the Corps and Federal Emergency Management Agency criteria to remove or limit the size of vegetative growth. Often, this places the local agency in the difficult position of choosing between abiding by state provisions to obtain the permit or foregoing federal assistance needed to implement the project.

The Corps, WDF and Ecology are currently developing a memorandum of understanding (MOU) to clarify areas of concern involving resource management and flood control. This MOU will develop new standards for vegetation on levees. The directive to develop this MOU is provided by the 1991 Flood Bill (ESSB 5411) Section 19. This legislation seeks to allow eligibility for federal funding while adhering to the state HPA requirements.

Examples of federal funding opportunities for construction or repair of flood control projects are described below.

U.S. Public Law 84-99

Rehabilitation assistance of non-federally constructed flood control projects is provided under Public Law 84-99. For facilities eligible for PL 84-99 funding, the local sponsor is responsible for 20 percent of the cost of repair. This percentage may be in the form of funding, materials, equipment, or services. The local sponsor is also entirely responsible for acquiring the necessary land rights and performing subsequent maintenance in accordance with Corps standards.

The Corps performs an evaluation of the existing facilities using prescribed criteria. This evaluation documents the condition of the facility prior to a flood event. Based on the evaluation, the facility will be judged acceptable, minimally acceptable, or unacceptable for rehabilitation assistance. Results of the evaluation are reported to the local agency responsible for maintenance of the facility. The local agency is given the opportunity to perform any necessary maintenance on the “minimally acceptable” and “unacceptable” fa-

cilities in order to upgrade their evaluation to “acceptable.”

The rating guide used to conduct evaluations includes inspection items relating to maintenance of vegetation on the facility. The guide specifically evaluates “unwanted levee growth,” referring to allowable tree diameters and brush cover. For an “acceptable” rating, no large brush or trees can exist in the levee section, and grass cover must be well maintained. A “minimally acceptable” rating is given if trees of 2-inch diameter or smaller and brush cover are present that, in the evaluator’s opinion, do not threaten the levee integrity. The facility is deemed “unacceptable” if trees, weeds and brush exist to an extent that they impair the evaluator’s observation of the underlying levee.

The guide also includes criteria to evaluate the level of protection offered by the facility. An “acceptable” levee will contain a flood greater than a 10-year event with three feet of freeboard. A levee is “minimally acceptable” if it can contain a five- to 10-year flow with one to three feet of freeboard. An “unacceptable” rating results for levees lacking five-year protection with at least one foot of freeboard, or that are less than three feet in height. For the rating guide criteria and a complete explanation of the PL 84-99 guidelines, the reader is referred to the Corps documentation (ER 500-1-1).

U.S. Public Law 93-288

This legislation provides funding by the FEMA for the repair of flood control facilities that are damaged in a presidentially declared disaster. As a requirement of the Stafford Act, the Public Assistance Project Administration provides financial assistance for repair work identified on Damage Survey Reports (DSRs). DSRs are prepared by an inspection team representing FEMA, the state, and the local agency responsible for maintenance of the damaged facility. DSRs are usually completed immediately after the disaster and include a scope of work and estimated cost of work eligible under PL 93-288 requirements.

Projects are split by cost and category. “Large” projects are over \$35,000 and “small” projects are

under \$35,000. Projects can also be split into “improved” or “alternate” projects. Improved projects include not only restoring the pre-disaster function of the damaged facility but also improving the facility’s flood protection capabilities. Improved projects receive federal funding up to the approved estimate of eligible costs. If the local agency determines that restoring the facility will not benefit the public welfare, the funds authorized for that repair can be applied to an alternate project. Alternate projects receive 90 percent of the federal share of the funding originally authorized for the repairs. These funds may be used to repair or expand other facilities, construct new facilities, or to fund hazard mitigation measures that reduce the risk of future damages either at the damage site or elsewhere. Revegetation for fish and wildlife habitat, which is often a condition of the HPA approval, is a project component that has been considered ineligible for funding under PL 93-288.

Section 205 of the Federal Flood Control Act of 1948

The Corps Section 205 program funds the construction of new projects and the rehabilitation of existing facilities. Under this Section, the local jurisdiction must provide a portion of the funding and participate as the “local sponsor” in the 205 process. A Corps funded reconnaissance study is followed by a detailed feasibility study in which costs are equally shared by the Corps and the local sponsor. Once the feasibility study is approved by the Corps, detailed design and construction can begin with a maximum of 75 percent federal funding.

Innovative projects that differ from traditional Corps designs can require additional reviews and approvals. Conflicts between local and federal design standards must be reconciled in the 205 process. Until these standards are agreed upon, innovative project such as those using vegetative methods, may be delayed.

National Flood Insurance Program (NFIP)

The NFIP was established by the National Flood Insurance Act of 1968 to provide flood insurance protection to property owners in flood-prone areas. Several floodplain management requirements must be met for a community, such as a county or city, to qualify for federal flood insurance. These criteria are specified in the Code of Federal Regulations (CFRs) for three types of designated hazard areas: flood-prone, mudslide, and flood-related erosion-prone areas.

For flood-prone areas, a participating community must “prohibit encroachments, including fill... within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge.” The base flood discharge is defined as the 100-year flow event. FEMA, however, also requires that a levee have three feet of freeboard for area to be considered protected from the 100-year flood. Most existing freeboard-deficient levees lying within designated floodways do not fully contain the base flood. Establishment or improvement of the levee freeboard may therefore require placing fill in the designated floodway, potentially increasing base flood water surface elevations. For the local community to remain eligible for federal insurance, it must prohibit such an action.

A further complication exists if a levee freeboard improvement project is developed under Section 205. Although the freeboard is required by the NFIP, the Corps will not provide funding for that portion of the project related to constructing the additional freeboard. Federal agencies are under directives, however, to resolve this discrepancy.

As the above discussion illustrates, many contradictory regulations currently exist. In some cases, this contradiction can be addressed by developing projects designed to meet multiple objectives of federal and state regulatory and funding programs. In other cases, interagency differences need reconciliation. As guidelines such as this document are implemented and gain support through proven environmental and economic benefits, existing regulations may change. Until such

time, careful attention must be given to the requirements of existing regulations. Creative design approaches will be essential to construct and maintain stabilization projects that conform to applicable regulatory requirements.

RECOMMENDED SOURCES FOR ADDITIONAL INFORMATION

Washington State Department of Ecology. 1990.
Commonly Required Environmental
Permits For Washington State. Rpt. 90-29.
Olympia, Wash.

Washington State Department of Ecology. 1984.
State Environmental Policy Act Rules.
Chapter 197-11, Washington
Administrative Code. Olympia, Wash.

Seattle Audubon Society. 1991. A Citizen's
Guide to SEPA: How to Participate in the
Process. Seattle, Wash.