



Fact Sheet

The U.S. Environmental Protection Agency (EPA)
Proposes to Issue a National Pollutant Discharge Elimination System (NPDES)
Permit for Municipal Stormwater Discharges into Surface Waters on Tribal Trust
Lands within the 1873 Survey Area of the Puyallup Reservation to the
Washington State Department of Transportation (WSDOT)

Public Comment Start Date: **August 25, 2026**

Public Comment Expiration Date: **October 9, 2026**

THE EPA PROPOSES TO ISSUE A NPDES STORMWATER PERMIT FROM CERTAIN OUTFALLS TO TRIBAL WATERS

Pursuant to the provisions of the Clean Water Act (CWA), the EPA is reproposing a draft NPDES permit that places conditions on the discharge of pollutants in stormwater discharges to surface waters of the Puyallup Tribe of Indians (Tribe) from the municipal separate storm sewer system (MS4) outfalls that are owned and/or operated by the Washington State Department of Transportation (WSDOT), and are located on land held in trust by the federal government for the Tribe, its members, or other federally recognized tribes in the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington, and/or directly discharge to surface waters of the Tribe.

Permit requirements are based on CWA § 402(p), 33 U.S.C. § 1342(p), and the regulations for municipal stormwater discharge permits (40 CFR §§ 122.26, 122.30-35, and 123.35; see also 55 Federal Register [FR] 48063 [Nov. 16, 1990], 64 FR 68722 [December 8, 1999], and 81 FR 89320 [December 9, 2016]).

The EPA requests comments on the revised draft permit discussed here. Although the EPA accepted comments on prior drafts (in calendar years 2021 and 2022, respectively) a final permit has not yet been issued for administrative reasons. Since then, the EPA significantly revised the draft permit based on public input and consideration of new information regarding appropriate stormwater management techniques to protect water quality. Previous comments on prior draft permits will not be considered because the EPA has taken those comments into consideration in revising the draft permit.

This Fact Sheet (FS) includes:

- information on procedures for public comment, public hearing, and appeal, and
- explanation of the permit terms and conditions.

CWA § 401 CERTIFICATION

The EPA is requesting that the Puyallup Tribe provide a CWA Certification for the revised WSDOT MS4 permit #WAS028743 under CWA § 401. Comments regarding the Tribe's intent to certify these permits should be directed to Char Naylor, Water Quality Manager, Puyallup Tribe of Indians, at Char.Naylor@PuyallupTribe-nsn.gov.

CWA § 401(A)(2) REVIEW

CWA § 401(a)(2) requires that, upon receipt of an application and CWA §401 certification, the EPA notify "any other" State or Tribe if the EPA determines that the discharge may affect the quality of the other State or Tribe's waters.

As stated above, the Puyallup Tribe of Indians is the certifying authority and is accepting comment regarding the intent to certify this permit. After the EPA receives a final certification from the Tribe, the EPA will determine whether the discharges may affect the quality of the waters of the State of Washington, as required by CWA § 401(a)(2).

PUBLIC COMMENT

Prior to issuing the final permit, the EPA will consider and respond to all comments received during this comment period.

Persons wishing to comment on, or request a Public Hearing for, the draft permit may do so in writing by the expiration date of the Public Comment period. A request for a Public Hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for Public Hearings must be in writing and should be submitted to the EPA as described below.

By the expiration date of the public comment period, all written comments and requests must be submitted to EPAR10WD-NPDES@epa.gov with the subject line "Comments on Draft NPDES Permit #WAS026743 – WSDOT MS4."

After the Public Notice expires, and all comments have been considered, the EPA will make a final decision regarding permit issuance. If no substantive comments are received, the tentative conditions in the draft permit will become final, and the permit will become effective upon issuance. If substantive comments are received, the EPA will address the comments and issue the permit. The final permit will become effective no less than 30 days after the issuance date, unless an appeal is submitted to the Environmental Appeals Board within 30 days pursuant to 40 CFR § 124.19.

DOCUMENTS ARE AVAILABLE FOR REVIEW

The draft NPDES permit, this FS and other information can be downloaded from the internet at <https://www.epa.gov/npdes-permits/about-region-10s-npdes-permit-program>. The draft version of the Administrative Record for the permit action discussed in this FS contains the documents listed in the Reference section. The Administrative Record(s) or documents from it are available electronically upon request by emailing EPAR10WD-NPDES@epa.gov.

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ACRONYMS

AKART	All Known, Available & Reasonable Methods of Prevention, Control, & Treatment
BE	Biological Evaluation
BiOp	Biological Opinion
BMP	Best Management Practices
CFR	Code of Federal Regulations
CSTW	Constructed Stormwater Treatment Wetland
CWA	Clean Water Act
DO	Dissolved Oxygen
EFH	Essential Fish Habitat
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FR	Federal Register
GP	General Permit
HOV	High Occupancy Vehicle
HRM	Highway Runoff Manual
HUC	Hydrologic Unit Code
LA	Load Allocation
LCSA	Land Claims Settlement Agreement of 1988
MEP	Maximum Extent Practicable
µg/L	Micrograms per liter
mg/L	Milligrams per liter
mL	Milliliters
ML	Minimum Level
MMFD	Modified Media Filter Drain
MOA	Memorandum of Agreement
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MS4	Municipal Separate Storm Sewer System
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
QAPP	Quality Assurance Project Plan
RCW	Revised Code of Washington
SR	State Route
SWMP	Stormwater Management Program
SWMMWW	Stormwater Management Manual for Western Washington
TAS	Treatment as a State
TMDL	Total Maximum Daily Load
TSS	Total Suspended Solids
USC	United States Code
USFWS	United States Fish and Wildlife Service
WAC	Washington Administrative Code
WD	Water Division
WLA	Wasteload Allocation
WSDOT	Washington State Department of Transportation
WQS	Water Quality Standards

I. Background Information

A. Introduction

This fact sheet (FS) provides information on the draft National Pollutant Discharge Elimination System (NPDES) permit for discharges to surface waters of the Puyallup Tribe of Indians (Tribe) in urban western Washington from the identified municipal separate storm sewer system (MS4) outfalls that are owned and/or operated by the Washington State Department of Transportation (WSDOT).

The U.S. Environmental Protection Agency Region 10 (EPA) is the NPDES permitting authority because the identified MS4 outfalls discharge to waters that are subject to both federal and Tribal CWA jurisdiction within the boundaries of the 1873 Survey Area of the Puyallup Reservation. The EPA developed the draft permit pursuant to the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., and applicable NPDES regulations at 40 CFR §§ 122.26 and 122.30-37. The EPA describes the specific MS4 discharges and the basis for the draft permit's terms and conditions in this FS.

Stormwater is the surface runoff that results from rain and snowmelt. Urban development alters the landscape's natural infiltration, and human activity generates pollutants that accumulate on paved or impervious surfaces. Uncontrolled pollutants and flow associated with stormwater discharges from urban areas contribute to water quality impairment (Shaver, 2007; EPA, 1990).

A municipal separate storm sewer system, or MS4, is broadly defined in federal CWA regulations as any publicly owned conveyance or system of conveyances used for collecting and conveying stormwater that discharges to waters of the United States. MS4s are designed for conveying only stormwater runoff, and are not part of a combined sewer system, nor are they connected to any publicly owned treatment works. MS4s are systems that include roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and/or storm drains. A MS4 is considered regulated by the CWA's National Pollutant Discharge Elimination System, or NPDES, permit program, and the MS4 operator must obtain a NPDES permit to discharge, when located in an urban area with a population greater than 50,000 people based on the latest Decennial Census. 40 CFR §§ 122.26(a)(1)(iv), (a)(3), (b)(7-8), and (b)(16).

In April 2021, the EPA proposed for public comment three draft MS4 permits to authorize the discharge of pollutants in municipal stormwater discharges into Tribal waters from outfalls owned and/or operated by the Washington State Department of Transportation (WSDOT), City of Tacoma, and Pierce County, respectively. After consideration of comments received, and the incorporation of the water quality certification conditions provided by the Puyallup Tribe under CWA §401, the EPA revised and repropose each of the three permits for a second public comment period in July 2022.

Since the end of the EPA's second public comment period on September 19, 2022, the EPA made substantive changes to both the WSDOT and Tacoma MS4 permits based on comments received. Final permits have not yet been issued because Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) consultation with the

U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) (collectively referred to here as “the Services”) has not yet been completed.^{1,2}

Given the substantive revisions that have been made to the draft permit, the EPA is re-proposing the draft WSDOT MS4 permit for public comment to highlight the significant changes based on the following factors:

- Comments and input from the Puyallup Tribe’s Water Quality Program.
- Comments received during the April 2021 and July 2022 public comment periods.
- Consideration of MS4 permit requirements imposed by the Washington Department of Ecology (Ecology) for WSDOT in urban areas where WSDOT’s other MS4 outfalls discharge into State of Washington’s receiving waters, including the *Draft 2026 WSDOT Municipal Stormwater General Permit* that Ecology proposed for public comment on its website on July 1, 2026, for a 51-day comment period ending on August 21, 2026.
- Consideration of changes relevant to the way that the EPA-issued NPDES permits must be written based on a March 2025 U.S. Supreme Court decision.
- The EPA’s decisions resulting from its consultation-related discussions with USFWS and NMFS pursuant to the ESA and the MSA related to the EPA’s evaluation of potential effects on threatened and endangered species and critical habitat in the area(s) near the MS4 discharges.

B. Statutory and Regulatory Background

CWA § 402(p), 33 U.S.C. § 1342(p), and the NPDES stormwater regulations, establish the permit requirements for regulated MS4 discharges. CWA § 402(p)(3)(B), 33 U.S.C § 1342(p)(3)(B), requires that an NPDES permit for MS4 discharges must:

- (1) effectively prohibit non-precipitation related flows from entering the MS4, and
- (2) require controls necessary to reduce pollutants in municipal stormwater discharges to the maximum extent practicable (MEP), including management practices, control techniques, and system design and engineering methods, and/or other such provisions determined to be appropriate by the NPDES permitting authority.

In 1990, the EPA developed the initial stormwater permitting regulations directed by the CWA. The Phase I stormwater regulations require, among other things, that NPDES permits be issued for stormwater discharges from “medium” and “large” MS4s located in densely populated

¹ In April 2026, the EPA granted Pierce County’s request to withdraw its MS4 permit application and agrees that Pierce County does not need an EPA-issued permit. In comments to EPA dated September 19, 2022, Pierce County stated its subsequent field work showed the MS4 outfalls identified in its 2013 application were either annexed to a local city or are confirmed to be stream reaches rather than MS4 interconnections. As such, Pierce County does not have any MS4 discharges to waters of the Puyallup Tribe. In March 2026, Pierce County submitted a formal request to the EPA to withdraw its NPDES permit application and confirmed it does not own and/or operate outfalls discharging to Tribal waters.

² On June 23, 2026, the EPA re-proposed the draft Tacoma MS4 permit, Permit # WAS026689, for public comment; see: <https://www.epa.gov/npdes-permits/draft-npdes-stormwater-permit-city-tacoma-ms4-washington>.

Urban Areas as defined by the 1990 Decennial Census conducted by the U.S. Census Bureau (EPA, 1990).

At the time, WSDOT owned and/or operated a “medium” MS4 under the federal Phase I NPDES regulations; a medium MS4 is defined as any MS4 located within an incorporated place, or located in a county with unincorporated urbanized areas, with populations greater than 100,000 but less than 250,000 according to the 1990 Decennial Census. See 40 CFR §§122.26 (a)(3) and (b)(7); see additional details below in Section I.D (*Permit History*), and Section II (*Permit Application and MS4 Outfall Information*) of this FS.

Maximum Extent Practicable, or MEP, is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. Neither the CWA nor the federal stormwater regulations provide a precise definition of MEP to provide maximum flexibility in MS4 permitting (EPA, 1990; EPA, 1996).

The EPA described an iterative process of imposing the MS4 standard through NPDES permits, including requirements necessary to reduce pollutants to the MEP, over consecutive permit terms, as follows: (1) the NPDES permitting authority first defines clear, specific, and measurable NPDES permit requirements; (2) the MS4 permittees implement the required actions as part of a comprehensive program; and (3) the NPDES permitting authority and MS4 permittees evaluate the effectiveness of selected Best Management Practices (BMPs) used to date, including current water quality conditions and other relevant information (EPA, 1990; 1996; 2016a).

All MS4 permits must include terms and conditions that are “clear, specific, and measurable,” and that may consist of narrative, numeric, and/or other types of requirements. Examples of such provisions include implementation of specific tasks or practices; BMP design requirements; performance requirements; adaptive management requirements; schedules for implementation, maintenance, and/or frequency of actions (EPA, 2010; 2014b; 2016a; 2016b; 2016c).

The EPA has defined the control measures and evaluation requirements that WSDOT must implement during the five-year permit term which include specific actions and activities, measurement and/or assessment to determine compliance, and regular progress reporting to the EPA and the Puyallup Tribe. Together these elements comprise the comprehensive stormwater management program (SWMP), through which the EPA, the Tribe, and the Permittee will use adaptive management over the successive permit terms to improve the effectiveness of stormwater pollutant controls that protect water quality to meet the applicable water quality goals.

C. NPDES Jurisdiction For Surface Waters of the Puyallup Tribe

The EPA administers the NPDES permit program for discharges to Tribal waters within Indian Country; the term, *Indian Country*, is defined at 40 CFR § 122.2. Washington Department of Ecology (Ecology) is authorized to administer the NPDES permit program for discharges to state waters within Washington (Washington State and EPA, 2018).

For the Puyallup Tribe, the term ‘Indian Country’ is defined exclusively through the 1988 *Land Claims Settlement Agreement (LCSA)* and the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. § 1773, to include all lands held in trust by the federal government for the Puyallup

Tribe, other federally recognized tribes, or individual tribal member, within the 1873 Survey Area of the Puyallup Reservation and expressly includes the portion of the mainstem Puyallup River channel (below the mean highwater mark) within the 1873 Survey Area. (United States; Puyallup Tribe of Indians; et al, 1988).³ An illustrative map showing the 1873 Survey Area of the Puyallup Reservation is available in Appendix A-Figure A.1 below (EPA Region 10, 2021e).

In May 1994, under CWA § 518(e) of the CWA, 33 U.S.C. § 1377(e), the EPA granted the Tribe *Treatment as a State* (TAS) status to carry out the water quality standards and the water quality certification programs pursuant to CWA § 303, 33 U.S.C. § 1313, and CWA § 401, 33 U.S.C. § 1341, respectively (EPA, 1994). On October 31, 1994, the EPA approved the Tribe's *Water Quality Standards for Surface Waters of the Puyallup Tribe* (WQS). The WQS apply to the Puyallup River bedlands below the ordinary highwater mark, the mouth of Hylebos Creek intertidal areas below the high tide line, and "all surface waters overlying Tribal trust properties, up to the ordinary highwater mark" within the 1873 Survey Area (Puyallup Tribe, 1994; EPA communication with Puyallup Tribe, 3/15/2022).

In 1997, the EPA, the Tribe, and Ecology entered into two agreements that clarify implementation of environmental regulations, and specifically the NPDES program, within the 1873 Survey Area.

- The *Intergovernmental Agreement between Puyallup Tribe of Indians, EPA, and the Washington Department of Ecology* describes the partnership to protect human health and the environment through consistent, efficient, and effective environmental regulation and management (Puyallup Tribe, WA Dept of Ecology & EPA, 1997a).
- The subsequent *Memorandum of Agreement Among the U.S. Environmental Protection Agency, the Washington Department of Ecology and the Puyallup Tribe of Indians* (1997 MOA) defined the respective roles and responsibilities of each party related to administration of the NPDES program for point source discharges on trust lands within the exterior boundary of the 1873 Survey Area of the Puyallup Indian Reservation (EPA, Ecology & Puyallup Tribe, 1997b). The 1997 MOA states:

"EPA retains primary environmental regulatory authority for managing federal programs on Indian reservations under the CWA except where a State has an express grant of jurisdiction from Congress sufficient to support delegation, or EPA has authorized the Tribal Government to administer the program. The Puyallup Land Claims Settlement Agreement has further clarified the jurisdictional issues within the Puyallup Indian Reservation by providing that the Tribe and EPA have exclusive jurisdiction for administration and implementation of environmental laws on trust lands within the 1873 Survey Area of the Reservation. EPA and the State have exclusive jurisdiction for administration and implementation of environmental laws on non-trust lands within the 1873 Survey Area of the Reservation. For purposes of determining jurisdiction over

³ See: 1988 LSCA Sections I.A-B. See also LSCA Section VIII.A, pages 18-19: "The federal definitions of "Indian country", "Indian lands", and/or "Indian reservation" shall not be used by the Tribe or the United States as a basis for asserting Tribal control over non-trust lands either inside or outside the 1873 Survey Area, or the activities conducted on those lands, except as provided by the Agreement, or as otherwise agreed to between the Tribe and State, and/or local governments." The LSCSA is available to review online at: <https://www.puyalluptribe-nsn.gov/wp-content/uploads/Land-Claims-Settlement-Agreement.pdf>. See also: Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. § 1773 at: <https://www.congress.gov/101/statute/STATUTE-103/STATUTE-103-Pg83.pdf>.

NPDES permitted dischargers, it is the location of the discharge outfall, not the location of the activity producing the discharge, that determines which governmental entity has jurisdiction." (Emphasis added).

D. Permit History

1. MS4 Discharges Authorized Under the Washington State-Issued NPDES Permit

Most of WSDOT's MS4 infrastructure in Washington is located along state highways and transportation facilities that are not on land held in trust by the federal government; instead, these MS4 assets are located along WSDOT's right-of ways and other state-owned properties and drain surface runoff that discharges into surface and ground waters of the State of Washington.

As a "medium MS4" under federal NPDES regulations, WSDOT submitted its MS4 permit application to Ecology in 1993 as required by the NPDES regulations at 40 CFR §§ 122.26(d) and (e)(4). Ecology subsequently granted WSDOT its MS4 permit coverage for discharges in King, Pierce, and Snohomish Counties of Western Washington in 1995.

WSDOT's regulated MS4 discharges are currently authorized throughout the State under the Ecology-issued *WSDOT Municipal Stormwater General Permit* (WSDOT GP) as #WAR043000A (Ecology, 2018a; Ecology, 2019c). The WSDOT GP was last reissued by Ecology in March 2019 and has been administratively extended since its expiration date on April 5, 2024; it authorizes stormwater discharges from WSDOT's MS4s in King, Pierce, and Snohomish Counties, and in urban areas throughout the State with populations of greater than 50,000 people based on the latest Decennial Census. The WSDOT GP also authorizes WSDOT's MS4 discharges into any Washington waterbody for which there is an EPA-approved Total Maximum Daily Load (TMDL) with wasteload allocations and associated implementation documents specifying actions for WSDOT stormwater discharges.

The WSDOT GP issued by Ecology in 2019 required WSDOT to implement a comprehensive stormwater management program (SWMP) using WSDOT's 2019 *Highway Runoff Manual* (HRM), the document tailored to address stormwater impacts from the WSDOT-owned/operated transportation infrastructure. The HRM directs WSDOT's planning, design, construction, and maintenance of stormwater management facilities for new and redeveloped highways, rest areas, park & ride lots, ferry terminals, and associated maintenance facilities. At the time, Ecology reviewed the 2019 HRM to determine its equivalency with the contemporaneous version of the *Stormwater Management Manual for Western Washington* (SWMMWW) (WSDOT, 2019; Ecology, 2024b; Ecology & WSDOT, 2019).⁴

⁴ The WSDOT 2019 HRM is available on the WSDOT website at: <https://wsdot.wa.gov/engineering-standards/all-manuals-and-standards/manuals/highway-runoff-manual>.

Prior to August 2024, Ecology had published versions of the *Stormwater Management Manual for Western Washington* in 2019; 2014; 2012; 2005; 2001 and 1992. These prior versions of the stormwater manual remain available for historical context on Ecology's website at: <https://ecology.wa.gov/regulations-permits/guidance-technical-assistance/stormwater-permittee-guidance-resources/stormwater-manuals>.

On July 1, 2026, Ecology proposed for public comment its *Draft 2026 WSDOT Municipal Stormwater General Permit* (Draft 2026 WSDOT GP). See additional discussion in Section IV. C below. As part of draft WSDOT permit, Ecology also proposed its determination that the proposed 2026 WSDOT HRM is equivalent to the 2024 SWMMWW.⁵

The Ecology-issued 2019 WSDOT GP and the Draft 2026 WSDOT GP each specifically exclude, and do not authorize, discharges to waters located in Indian Country. As explained in Section 1.D.2 above, for the purposes of the EPA's draft permit action discussed herein, the term Indian Country includes lands held in trust by the federal government for the Puyallup Tribe, individual tribal members, or other federally recognized tribes within the 1873 Survey Area of the Puyallup Reservation. Therefore, the WSDOT GP does not authorize discharges from outfalls located on land held in trust by the federal government within the 1873 Survey Area, and/or that discharge into surface waters that are subject to the Puyallup Tribe's WQS. As a result, WSDOT must obtain an MS4 permit issued by the EPA for these discharges.

2. Discharges to be Authorized by an EPA-issued NPDES Permit

In February 2012, WSDOT informed the EPA and Tribe that it intended on applying for an NPDES permit from the EPA for discharges into the Tribe's portion of the Puyallup River from a new outfall WSDOT needed to construct for runoff from a new northbound section of the Interstate 5 (I-5) High Occupancy Vehicle (HOV) lanes. As described in Section II below, in August 2012, the EPA received WSDOT's permit application for all MS4 outfall discharges into surface waters of the Puyallup Tribe and received an amendment in 2015.

a. Prior Public Comment Periods

On April 1, 2021, the EPA proposed the draft WSDOT MS4 Permit for public comment concurrently with a draft permit for the Tacoma MS4 discharges into Puyallup Tribal waters. At the same time, the EPA requested certification of each Permit from the Puyallup Tribe under CWA §401 and provided Ecology copies of each draft Permit for review under CWA §401(a)(2) with notice that issuance of the Permits may affect the quality of State waters.

Based on comments received, and the incorporation of the Tribe's CWA §401 certification conditions, the EPA significantly revised and repropose each Permit for a second comment period beginning on July 20, 2022, and ending on September 19, 2022. During this time the EPA also began discussions with the Services regarding the issuance of these MS4 Permits and development of the Biological Evaluation (BE) to consider effects of permit issuance on ESA-listed species and critical habitats in the discharge areas.

⁵ Ecology's Draft 2026 WSDOT GP and Fact Sheet, including the Draft 2026 HRM, were posted for public comment on Ecology's website at: <https://ecology.wa.gov/regulations-permits/permits-certifications/stormwater-general-permits/municipal-stormwater-general-permits/wsdot-municipal-stormwater-permit> between July 1 - Aug 21, 2026.

b. Changes to the EPA's Draft WSDOT Permit Since the 2022 Comment Period

Since 2022, the EPA has revised the draft WSDOT MS4 permit based on input from coordination with the Tribe's water quality program, public comments received, relevant U.S. Supreme Court decision applicable to EPA-issued NPDES permits, reconsideration of the EPA's draft permit compared to the provisions in WSDOT's comparable permit issued by the Washington Department of Ecology for MS4 discharges to state waters, and the EPA's discussions during consultation with the Services for protection of ESA-listed species and critical habitat as required by the ESA, MSA, and 40 CFR § 122.49.

E. Tribal Coordination and Consultation

The EPA consults with federally recognized Tribal governments on a government-to-government basis when the EPA's actions and decisions may affect Tribal interests. Meaningful Tribal consultation is an integral component of the federal government's general trust relationship with federally recognized Tribes. The federal government recognizes a Tribe's right to self-government, with sovereign powers over their members and their territory. Executive Order 13175 (November 2000) entitled "Consultation and Coordination with Indian Tribal Governments" requires federal agencies to have an accountable process to assure meaningful and timely input by Tribal officials in the development of regulatory policies on matters that have Tribal implications and to strengthen the government-to-government relationship with Indian Tribes. In December 2023, the EPA issued the "EPA Policy on Consultation with Indian Tribes" which updated national guidelines and institutional controls for consultation.

1. Tribal Coordination

Since 2012, the EPA has worked closely with the Puyallup Tribe's water quality program representatives during the permit development process.

During the first public comment period, the EPA requested that the Tribe certify the draft WSDOT permit pursuant to CWA § 401. On December 15, 2021, the Tribe provided the EPA with a CWA § 401 certification with conditions, and the EPA subsequently incorporated those conditions into the draft WSDOT permit. Due to the substantial revisions, the EPA offered a second comment period on the permit that started July 20, 2022.

WSDOT did not submit comments during the second comment period, however, based on other public comments received, the EPA made editorial changes to the WSDOT MS4 permit for consistency with the concurrently proposed Tacoma MS4 permit. The EPA then revised the WSDOT permit based on ESA consultation-related discussions with the Services. As such, on October 15, 2025, the EPA provided the Tribe with the revised draft WSDOT MS4 permit and notified the Tribe that the EPA would be seeking a new CWA § 401 certification in the near future.

Since then, the EPA has met with the Tribe's representative on numerous occasions to discuss specific Tribal concerns and to understand the types of permit conditions that the Tribe intends on providing through the CWA § 401 certification process. Where feasible, the EPA has incorporated the Tribe's input on certain topics into the draft Permit as discussed in this FS for consideration during this public comment process. In late August 2026, the EPA

formally requested the Tribe provide CWA § 401 certification of the revised draft WSDOT MS4 permit concurrent with this public notice announcement.

Based on current available guidance regarding potentially interested Tribal governments, on July 20, 2026, the EPA also coordinated with environmental staff representatives of the Muckleshoot Indian Tribe and the Confederated Tribes and Bands of the Yakama Nation to offer the opportunity to review the preliminary draft permit documents prior to the formal public comment period.

2. Invitations to Consult

The EPA formally invited the Chairman of the Puyallup Tribe of Indians to engage in government-to-government consultation on the issuance of the WSDOT MS4 permit on October 4, 2018, and March 30, 2021.⁶ In late August 2026, the EPA again invited the Chairman of the Puyallup Tribe to consult on a government-to-government basis regarding this revised proposed issuance of the WSDOT MS4 permit action; the EPA also sent formal requests to invite government-to-government consultation to the Chairman of the Muckleshoot Indian Tribe, and to the Chairman of the Confederated Tribes and Bands of the Yakama Nation, respectively.

II. Permit Application and MS4 Outfall Information

As discussed above, WSDOT owns and/or operates an NPDES-regulated MS4 with outfalls discharging to both State waters and surface waters of the Puyallup Tribe.

The EPA is proposing an individual NPDES permit to authorize discharges from the MS4 outfalls discharging into Tribal waters summarized in Table 1 below.

Appendix B of this FS contains a map identifying the general locations of the outfalls to be covered by the permit. In its application, WSDOT reported that it discharges from eight (8) outfalls to the Tribal portion of the Puyallup River:

- Six (6) outfalls along State Route 167 (SR 167), and
- Two (2) outfalls associated with runoff draining from approximately 45 acres of the Interstate 5 High Occupancy Vehicle (HOV) lanes.
 - Prior to discharging to the Puyallup River, runoff from the Interstate 5 area is first routed through a combination treatment train consisting of a constructed stormwater treatment wetland (CSTW) and a modified media filter drain (MMFD).
 - The second outfall from the Interstate-5 area is the point at which WSDOT's system is designed to overflow runoff (when necessary) through an interconnection into the Tacoma MS4, and the combined discharge flows through Tacoma Outfall #SWDP-100635 (aka, the *Cleveland Pump Station*).

⁶ In these same letters, the EPA also invited consultation on draft permits for the Tacoma MS4 and Pierce County MS4 discharges.

Table 1: Washington State Department of Transportation MS4 Outfall Information

NPDES Permit #:	WAS026743	
Operator:	Washington State Department of Transportation (WSDOT)	
Ownership Type:	State Agency	
Physical Address:	310 Maple Park Avenue SE, Olympia WA 98501	
Mailing Address:	P.O. Box 47300 Olympia, WA 98504	
Application Date:	December 2012; updated September 3, 2015	
Facility Contact:	Sheena Pietzold. Stormwater Permit Program Manager Sheena.Pietzold@wsdot.wa.gov ; (360) 570-6701	
Receiving Water	Puyallup River	
Outfall Locations	Interstate 5 Outfall	<i>Latitude: 47.2401, Longitude: -122.39988</i>
	I-5 HOV Lane Outfall ^a	<i>Latitude: 47.242909, Longitude: -122.405576</i>
	SR 167-1.102 ^b	<i>Latitude: 47.22968718, Longitude: -122.3764956</i>
	SR 167 - 2.103	<i>Latitude: 47.22100005, Longitude: -122.3549697</i>
	SR 167 - 4.101	<i>Latitude: 47.20896606, Longitude: -122.3294706</i>
	SR 167 - 4.122	<i>Latitude: 47.20922515, Longitude: -122.3302585</i>
	SR 167 - 5.130	<i>Latitude: 47.20466911, Longitude: -122.3137755</i>
	SR 167 - 5.138	<i>Latitude: 47.20471284, Longitude: -122.3135111</i>
^a I-5 HOV Lane = Interstate 5 High Occupancy Vehicle Lane. This portion of WSDOT's system is interconnected to and discharges through the Tacoma MS4 outfall previously known as Outfall 196 or as the <i>Cleveland Pump Station</i> . ^b SR = State Route.		

III. Receiving Waters

The outfalls described in Section II above discharge into the Lower Puyallup River within the 1873 Survey Area of the Puyallup Reservation near Tacoma, Washington. The Lower Puyallup River is in the Puyallup Subbasin (HUC 17110014) and drains into Commencement Bay and Puget Sound where Washington is the downstream state.

A. Water Quality Standards

CWA § 301(b)(1)(C) requires the development of limitations in permits necessary to meet water quality standards (WQS). 40 CFR § 122.4(d) requires that the NPDES permit conditions ensure compliance with the WQS of all affected States. A Tribe or State's WQS are composed of use classifications, numeric and/or narrative water quality criteria and an anti-degradation policy. Use classification systems designate beneficial uses each water body is expected to achieve, such as drinking water supply, contact recreation, and aquatic life. Numeric and narrative water quality criteria are the criteria deemed necessary to support the beneficial use classification of each water body. The anti-degradation policy represents a three-tiered approach to maintain and protect various levels of water quality and uses.

To ensure that MS4 permit conditions are protective of downstream uses in waters subject to the WQS of the Tribe and the WQS of Washington State, the EPA considered both the Tribe and State WQSs in developing the narrative permit effluent limits necessary to establish the MS4 permit standard that reduces pollutants in MS4 discharges to the MEP, protects water quality, and satisfies the other applicable requirements of the CWA.

The EPA used the Tribe's WQS to consider the use classifications and narrative limitations in the WSDOT permit, and used the Washington WQS related to stormwater discharges as additional reference to establish and confirm the appropriate narrative terms and conditions, and to protect downstream uses in the State of Washington. See additional discussion of these Tribal and State requirements in Sections IV.B and IV.C below.

B. Designated Beneficial Uses

Section 4 of the Tribe's WQS identifies five classes of surface waters of the Puyallup Tribe: Class AA (extraordinary); Class A (excellent); Class B (good); Class C (fair); and Lake Class. Section 11 of the WQS classifies the Puyallup River, from mouth to River Mile 1.0, as a Class B water; from River Mile 1.0 to the up-river boundary of the 1873 Survey Area, the River is considered a Class A water. See the summary of characteristic uses in Table 2 below. No other waters or water body segments are listed in the Tribe's WQS (Puyallup Tribe, 1994).

Table 2: Characteristic Uses of Class A and Class B Waters in the Puyallup Tribe's WQS

Class A	Class B
Water supply (domestic, industrial, agricultural); Stock watering; Fish and shellfish; Wildlife habitat; Ceremonial and religious water use; Primary contact recreation; Commerce and navigation	Water supply (industrial and agricultural); Stock watering; Fish and shellfish; Wildlife habitat; Secondary contact recreation; Commerce and navigation

All discharges to surface waters of the Puyallup Tribe must also comply with any limitations imposed by the Tribe as part of its water quality certification pursuant to CWA § 401, 33 U.S.C. § 1341. Additionally, the permit conditions must meet the applicable water quality requirements of affected States, including downstream States (see 40 CFR §§ 122.4(d), and 122.44(d)(4); see also CWA § 401(a)(2)).

Since the Puyallup River is a tributary of Commencement Bay, and the discharges to the Tribe's portion of the river may affect the quality of the waters in Commencement Bay, the EPA must ensure that Washington WQS are met in Commencement Bay as the downstream state waterbody. [40 CFR § 122.4(d)]. Washington Administrative Code (WAC) 173-201A-602 lists use designations for fresh waters and WAC 173-201A-610, Table 612 is the list for marine waters. Water quality standards for fresh and marine waters are found in WAC 173-201A-600 and 173-201A-210, respectively. (Ecology, 2019b). The Puyallup Tribe's WQS and the Washington WQS list similar designated uses for the Puyallup River.

Table 3. Designated Beneficial Uses of Downstream State of Washington Waters

Fresh Waters		Aquatic Life	Water Supply	Recreational	Miscellaneous
Puyallup River	From mouth to River Mile 1.0	Rearing/Migration Only	Industrial, Agricultural, and Stock Water	Secondary Contact	Wildlife Habitat, Harvesting, Commerce/Navigation, Boating, Aesthetics
Marine Waters		Aquatic Life	Shellfish Harvest	Recreational	Miscellaneous
Commencement Bay	Inner	Good	No	Secondary Contact	Wildlife Habitat, Harvesting, Commerce/Navigation, Boating, Aesthetics
	Outer	Excellent	Yes	Primary Contact	

C. Water Quality Limited Waters

Any water body that does not and/or is not expected to meet applicable water quality standards is described as “impaired” or as a “water quality-limited segment.”

CWA § 303(d), 33 U.S.C. § 1313(d), requires States to identify impaired water bodies within the State and to develop Total Maximum Daily Load (TMDL) management plans for those impaired water bodies. TMDLs define both waste load allocations (WLAs) and load allocations (LAs) to specify how much of a particular pollutant can be discharged from both regulated point sources and unregulated non-point sources, respectively, such that the water body will again meet the applicable water quality standards. In a waterbody where the EPA has approved a TMDL, any NPDES permit conditions must be consistent with the assumptions and requirements of the available WLAs. See 40 CFR. § 122.44(d)(1)(vii)(B). (EPA, 2002; EPA, 2014b)

Because the Puyallup Tribe has TAS status, it is responsible for identifying impaired waterbodies and developing TMDLs for waters subject to its WQS. To date, the Tribe has not

listed any impairments nor developed any TMDL for any of the Tribe's waters. However, the Tribe participates in Ecology's CWA § 303(d) impairment listing decisions and TMDL development for upstream and downstream segments of the Puyallup River watershed subject to the Ecology WQS.

The EPA reviewed Ecology's latest Water Quality (WQ) Assessment Report as approved by the EPA Region 10 for CWA purposes in May 2026, to determine whether any of the outfalls identified in the draft WSDOT MS4 permit discharges to an impaired waterbody (Ecology, 2025a; 2026; EPA Region 10, 2026). The only impaired waterbody segment that the outfalls discharge to is the portion of the Puyallup River identified as *Assessment Unit Identification (ID) 17110014000028_001_001*, which is described as the segment starting at the 66th Street Bridge upstream to State Route (SR) 512; that portion of the waterbody is listed by Ecology as impaired (in *Category 5*) for fecal coliform bacteria, temperature, and mercury.

Four of the eight WSDOT MS4 outfalls [specifically, Outfalls 4.101, 4.122, 5.130, and 5.138] are located along SR 167 and these outfalls discharge directly into the impaired segment of the Puyallup River as explained above.

Each of the outfalls drain adjacent areas that the EPA presumes, based on discussions with WSDOT staff at the time the permit application was submitted, are relatively small in size, based on the limited information available in the permit application materials. To address the uncertainty regarding the drainage area and to assess the need for future source controls, the EPA is requiring WSDOT to provide an accurate description of the areas draining to each of the outfalls and report the findings on an accelerated timeframe; see additional discussion below in Section IV.G.1.b (*Requirements for MS4 Discharges to Impaired Waters*).

IV. Basis for Permit Conditions

A. Clean Water Act

Permit conditions are based on CWA § 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B), which at a minimum requires an NPDES permit for MS4 discharges to:

- 1) effectively prohibit non-precipitation related flows from entering the MS4, and
- 2) require controls to reduce pollutants in municipal stormwater discharges to the MEP, including management practices, control techniques, and system design and engineering methods, and/or other such provisions determined to be appropriate by the NPDES permitting authority for the control of pollutants.

Section I.B above discusses the regulatory background and associated definitions of relevant terms for the NPDES municipal stormwater permit program. The EPA defines its MS4 standard through the control measures, monitoring, and evaluation requirements that comprise the comprehensive SWMP defined in the Permit.

CWA § 308 and federal NPDES regulations at 40 CFR § 122.44(i) require monitoring in permits to determine compliance with effluent limitations.⁷ The narrative effluent limitations, compliance reporting, and analytical monitoring requirements that the EPA has proposed in the WSDOT MS4 Permit are explained in the subsections below.

Numeric water quality based effluent limitations are not proposed at this time, however, if the Tribe includes any numeric effluent limits as a condition of the Tribe's CWA § 401 certification, the EPA is required to include those limits pursuant to CWA § 401(d), 33 U.S.C. § 1341(d).

B. Tribal Requirements

Section I.C above notes that the EPA approved the Tribe's WQS on October 31, 1994. The Puyallup WQS define "all known, available, and reasonable methods of prevention, control, and treatment," or AKART, to represent "*the most current methodology that can reasonably be required for preventing, controlling, or abating the pollutants associated with a discharge.*" The Tribes' WQS further states that "*...the 1992 Stormwater Management Manual for the Puget Sound Basin may be used as a guideline, to the extent appropriate, for developing BMPs to apply AKART for stormwater discharges.*" (Puyallup Tribe, 1994).

The Department of Ecology wrote the 1992 *Stormwater Management Manual for the Puget Sound Basin* as the technical manual that established the foundation for runoff pollution control from urban land uses for cities, counties, and WSDOT to enforce minimum requirements for new development and redevelopment as required by the Puget Sound Water Quality Management Plan (Ecology, 1992). Since then, Ecology has periodically updated the technical manual, and its manual equivalency review procedures, most recently as the 2024 *Stormwater Management Manual for Western Washington* (Ecology, 2024b). On July 1, 2026, Ecology proposed its determination that the Draft 2026 HRM is equivalent to the 2024 SWMMWW. Given this, the EPA has determined that, for the purpose of the EPA's draft

⁷ See CWA § 502(11) and 40 CFR § 122.2. As defined in Part 9 of the draft permit, the terms and conditions of the WSDOT MS4 permit represent a type of effluent limitation and refers to the actions and activities designed to reduce pollutant discharges in stormwater. See also 40 CFR § 122.34 and 81 Federal Register (FR) at page 89337 (Dec. 9, 2016).

WSDOT MS4 permit discussed here, the 2026 HRM constitutes AKART for establishing BMPs to control pollutants in the MS4 discharges to be authorized and thus meets the Tribe's WQS.⁸

C. State of Washington Requirements

Section I.D.1 above explains that the majority of MS4 outfalls owned and/or operated by WSDOT in the Puyallup River and elsewhere in Washington are authorized under the WSDOT GP issued by Ecology to discharge stormwater into state waters.

40 CFR § 122.44(d) requires that permit conditions meet the applicable water quality requirements of affected States other than the State [or in this case, Tribe] in which the discharge originates. In this case, Washington is the downstream State. Thus, for the limited number of MS4 outfalls that discharge to the surface waters of the Puyallup Tribe, the permit conditions must also ensure that the Washington WQS are met at the point where the Tribal waters become state waters.

In its prior drafts proposed in 2021 and 2022, the EPA considered and incorporated many of the MS4 permit requirements from the Ecology-issued 2019 WSDOT GP to ensure consistency with the State's requirements, including the State of Washington's AKART standard at WAC 173-201A, (which is the same as the Tribe's AKART standard).

The EPA is proposing to cite the 2026 HRM in its Final Permit Appendix C as the minimum requirements that represent AKART for the transportation-specific BMPs that WSDOT must follow for its stormwater management practices; see additional discussion in Section IV.F.4 of this FS. In the event that the Draft 2026 HRM has not been finalized before the EPA issues the WSDOT MS4 Permit, the EPA includes revised text in Permit Part 2.2 as outlined below in Section IV.E.

D. Authorized Discharges

The EPA has revised **Permit Part 1** (compared to its prior permit proposals in April 2021 and July 2022) as discussed below.

- The Permit cover page lists the individual MS4 outfalls by latitude/longitude and by waterbody location. The cover page explicitly authorizes discharges from the MS4 outfalls located on land held in trust by the federal government within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington, and/or from MS4 outfalls that directly discharge into surface waters of the Tribe, in accordance with the Permit's conditions and other requirements.
- **Permit Part 1.1** authorizes certain types of surface runoff that are unrelated to precipitation events (referred to as "non-stormwater") that may be discharged through/from the MS4 outfalls listed in the Permit, provided these discharges can satisfy one of the specific conditions listed in Permit Parts 1.1.a through 1.1.e, which are nominally related to emergency discharges or discharges that can be otherwise

⁸ As explained above in Footnote #4, the 1992 *Stormwater Management Manual for the Puget Sound Basin* is the original version of Ecology's 2024 SWMMWW. Current and historical versions of the SWMMWW are available on Ecology's website; see: <https://ecology.wa.gov/regulations-permits/guidance-technical-assistance/stormwater-permittee-guidance-resources/stormwater-manuals>.

managed by the Permittee. Note that the most common examples of non-precipitation related flows are listed in Permit Parts 3.3.d and e, where categories of allowable and conditionally allowable non-stormwater discharges are identified consistent with 40 CFR § 122.26(d)(2)(iv)(B)(1), and the comparable MS4 permits issued by Ecology.

- **Permit Part 1.2** clarifies that discharges of NPDES-regulated stormwater associated with industrial activity, including large and small construction activity, are only authorized to discharge through the identified MS4 outfalls when covered under the appropriate NPDES general or individual permit(s).
- **Permit Part 1.3** is retitled as *Permit Conditions and Effluent Limitations*. To articulate how the Permittee must meet the MS4 standard (i.e., how the Permittee must reduce the discharge of pollutants to the MEP, protect water quality, and satisfy the appropriate water quality requirements of the CWA and the Surface Water Quality Standards of the Puyallup Tribe), the EPA has restructured the Permit to clarify the requirements meant to accomplish each aspect of the MS4 Standard:
 - To reduce the discharge of pollutants from the MS4 outfalls discharging to surface waters of the Puyallup Tribe to the MEP, the Permittee must comply with the requirements of Permit Part 2 (*Permittee Responsibilities*), Permit Part 3 (*Stormwater Management Program Control Measures*), and Part 5 (*Monitoring*).
 - To protect water quality, and satisfy the appropriate requirements of the CWA and the Surface Water Quality Standards of the Puyallup Tribe, the EPA has identified additional actions in Permit Part 4 (*Special Conditions*) related to requirements for discharges to impaired waters (Permit Part 4.1); implementation of requirements based on Biological Opinions resulting from completed ESA consultations (Permit Part 4.2); and conditions of CWA § 401 water quality certification from the Puyallup Tribe (Permit Part 4.3).
 - A necessary component of meeting the MS4 standard and the Puyallup Tribe's AKART standard is a formal adaptive management response process that can address any MS4 discharge that is identified – by the EPA, by the Puyallup Tribe, or by the Permittee – as being noncompliant with the respective permit requirements. Permit Part 1.3.c directs the Permittee to manage these issues using an adaptive management response process that is outlined in Permit Part 4.4. See additional discussion in Section IV.G.4/IV.G.4 below.

E. Permittee Responsibilities

The EPA revised Permit Part 2 (compared to its prior permit proposals in April 2021 and July 2022) in response to public comments, as discussed below.

- In **Permit Part 2.1**, the EPA allows the Permittee to share their stormwater responsibilities with outside entities. Through joint agreements the Permittee may team with others to accomplish work under the SWMP; the Permittee remains responsible for Permit compliance in the event their partner fails to implement the agreed upon activities. Written agreements for shared or delegated work must be documented in the Annual Reports and discussed in the SWMP Document required by Permit Part 2.3.

- In **Permit Part 2.2**, the EPA requires the Permittee to maintain relevant ordinances or other regulatory mechanisms sufficient to control pollutant discharges into and from the specified MS4 outfalls to meet the permit requirements. The Permittee’s legal authority and regulatory documents are identified in Permit Appendix C (*Minimum Technical Requirements*). Permit Part 2.2.a defines the expectations for the Permittee’s legal authority, pursuant to 40 CFR § 122.26(d)(2)(i). The EPA recognizes that state transportation agencies do not typically have legal authority to enact ordinances but use authorities under state or federal law to impose policies, standard operating procedures, contractual language, or other enforceable means to maintain adequate regulatory control over their infrastructure assets. The EPA uses the terms “legal authority” and “regulatory mechanism” to refer to such enforceable controls, and both terms are found in the Permit.

The EPA has established a proposed deadline in Part 2.2 in the event that any subsequent updates to WSDOT’s legal authority are necessary to meet the Tribal WQS during the permit term. As noted above in Section IV.C, the EPA is aware that Ecology will require WSDOT to use the final version of the 2026 HRM to manage stormwater in compliance with the final version of their statewide WSDOT GP. The final EPA-issued WSDOT MS4 Permit will also require WSDOT to use the 2026 HRM to meet the Puyallup Tribe’s WQS. However, in the event of an interim period (where the statewide WSDOT GP has not been issued by Ecology and the 2026 HRM is not finalized by WSDOT when the EPA issues the final WSDOT MS4 permit), the EPA is proposing a 15-month deadline from the permit effective date for WSDOT to establish the 2026 HRM or a comparable regulatory mechanism. The EPA will delete this provision from the final permit if Ecology issues their statewide WSDOT GP and the 2026 HRM is finalized prior to the EPA’s permit issuance date.

- **Permit Part 2.3** requires WSDOT to conduct its comprehensive Stormwater Management Program (SWMP) activities in areas draining to the MS4 outfalls specified in the Permit. WSDOT must maintain a written SWMP Document, or documents, to describe in detail how WSDOT complies with the required control measures, special conditions, and monitoring specified by the EPA-issued Permit.

- The EPA recognizes that WSDOT maintains the *2024 Stormwater Management Program Plan* which describes how WSDOT currently implements required activities of the Ecology-issued statewide WSDOT GP for its transportation related MS4 facilities in the NPDES-regulated urban areas of Washington.⁹

To meet the SWMP documentation requirements of the EPA-issued permit for its discharges to the waters of the Puyallup Tribe, WSDOT can add to, or update, their existing SWMP Plan, or they can create an entirely separate SWMP

⁹ The *2024 Stormwater Management Program Plan* is available at: <https://wsdot.wa.gov/sites/default/files/2024-12/Env-StormW-SWMP2024.pdf>.

Document. The EPA uses the phrase “SWMP Document” only to differentiate it from WSDOT’s Ecology-required SWMP Plan.

- Any WSDOT description of how they conduct their SWMP activities to comply with the EPA-issued Permit for areas draining to WSDOT MS4 outfalls into Tribal waters must reference the NPDES permit number (#WAS026743) and explicitly identify the document’s purpose, and date of latest WSDOT review and/or update in a clear and concise manner; for example, on the SWMP Document’s cover page and footer margins, the SWMP Document Title, Permit # and latest version and review date can be identified; the introductory text can provide context, such as : *“This SWMP [document/plan/addendum] describes how [WSDOT] complies with the requirements of [NPDES Permit #WAS026743, effective [date-date]] to reduce pollutants during the [date-date] timeframe from the MS4 outfalls... that discharge to surface waters of the Puyallup Tribe.”*
- The purpose of a SWMP Document is to inform the public, the Tribe, and the EPA about how an MS4 Permittee reduces pollutants in stormwater to the MEP prior to its discharge into waters of the United States; it can also document permit compliance with the permit, analyze a Permittee’s work completed to date, and outline plans for future MS4 related water quality project goals.
- **Permit Part 2.4** requires WSDOT to report any changes in MS4 outfall ownership, operational authority, or responsibility for SWMP implementation. As drafted, the Permit identifies known MS4 outfalls currently owned/operated by WSDOT that are either located on land held in trust by the federal government within the 1873 Survey Area and/or directly discharge to surface waters of the Puyallup Tribe. Given the potential for future changes in jurisdictional status for individual parcels within the 1873 Survey Area, this provision instructs WSDOT to notify the EPA and the Tribal Water Program whenever it is determined that:
 - Additional MS4 outfalls are discovered that discharge into surface waters of the Tribe that were not previously inventoried; or
 - The Permittee has either transferred away or has annexed new responsibilities for the areas draining to the individual MS4 outfalls discharging into surface waters of the Tribe. It should be noted that changes in trust status for individual properties could affect the operational status of MS4 outfalls currently operated by the Permittee.
- **Permit Part 2.5** reflects the Tribe’s request through its coordination with the EPA for regular, direct communication between the Tribe and WSDOT at least once per calendar year throughout the permit term regarding WSDOT’s SWMP activity planning and implementation. As drafted, WSDOT must attempt to schedule at least one meeting per calendar year, either online or in person, with the Tribe’s Water Quality Program Manager [or their representative(s)] to share information, coordinate, and consult on activities to be conducted in areas draining to MS4 outfalls discharging to waters of the Puyallup Tribe.

F. SWMP Control Measures

Part 3 in the Permit contains clear, specific, and measurable requirements that comprise minimum SWMP control measures WSDOT must implement to reduce pollutants to the MEP in their jurisdictional areas draining to the MS4 outfalls discharging to surface waters of the Puyallup Tribe. For each control measure described below, the EPA outlines specific tasks, BMPs, design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and/or frequency of actions.

The stormwater control measures in Permit Part 3, along with the monitoring and other requirements defined elsewhere in the Permit, establish the federal MS4 permit standard as documented in this FS and in the Administrative Record. The EPA determines that the terms and conditions reflected in the Permit and discussed in this FS incorporate the AKART practices and other requirements necessary to ensure that the Puyallup Tribe's water quality standards for stormwater discharges will be met.

1. Education and Training

Education and training are essential parts of any program or plan to reduce stormwater pollutants because human activities contribute significantly to the types and sources of pollutants in urban settings. NPDES permits for stormwater discharges must include provisions for public education and outreach [see 40 CFR §§ 122.26(d)(2)(iv)(B), (D)(4) and (A)(6)].

Permit Part 3.1 requires WSDOT, as a state agency, to focus efforts on necessary stormwater management-related training activities for its staff, contractors, and consultants responsible for stormwater related work within its right of ways in the drainage areas leading to the MS4 outfalls that discharge to waters of the Tribe. The EPA considered comments previously submitted by WSDOT in 2021, and comparable requirements in both the 2019 and Draft 2026 WSDOT GP, to revise this control measure.

2. Public Involvement/Participation

Much like the Education and Training control measure, the Public Involvement and Participation control measure in the draft WSDOT MS4 Permit requires WSDOT to actively engage the public in stewardship activities and to participate in SWMP implementation and updates. See 40 CFR §122.26(d)(2)(iv). The purpose of the control measure is to engage the public in decision-making processes involving the SWMP implementation, which can be important to the overall success of the SWMP (EPA, 2023b).

WSDOT engages in these activities as required by its Ecology-issued GP, including conducting public meetings regarding project-specific environmental review documentation and alternatives for managing stormwater and hosting "Adopt-a-Highway" programs. In **Permit Part 3.2**, the EPA proposes that such actions also occur in areas that drain into the MS4 outfalls discharging to surface waters of the Puyallup Tribe. WSDOT must maintain its publicly accessible website and post its relevant stormwater program materials.

3. Illicit Discharge Detection and Elimination

40 CFR § 122.26(d)(2)(iv)(B) require permits for regulated MS4 discharges to include Illicit Discharge Detection and Elimination (IDDE) programs designed to identify and eliminate, or

properly regulate, discharges to the MS4 (EPA, 2023c; Ecology, 2024b). As defined at 40 CFR § 122.26(b)(2), an illicit discharge is any discharge to a MS4 that is not entirely composed of stormwater and is not one of the types of non-stormwater discharges that can be specifically allowed by a permit.

This control measure requires WSDOT to provide ongoing surveillance and deterrence to prevent significant pollutant loading caused by illicit discharges or illicit connections into the MS4. Illicit discharges can enter an MS4 through direct connections (e.g., wastewater piping mistakenly or deliberately connected to storm drains), or through indirect connections (e.g., infiltration into MS4s from cracked sanitary systems, spills into storm drain inlets, or discarded paint or used oil dumped directly to a drain). Both types of illicit discharges contribute excessive pollutants to the MS4 and, as a result, negatively affect water quality.

Investigating and eliminating illicit discharges from entering an MS4 improves water quality. Successful IDDE programs use current maps, enforcement of appropriate ordinances, ongoing detection and prioritization, effective elimination activities, and staff training to prevent non-stormwater from entering the MS4 and reaching the receiving water.

WSDOT must continue their ongoing IDDE program activities to proactively detect and correct illicit discharges and illicit connections in the areas discharging to the MS4 outfalls discharging to surface waters of the Tribe.

The EPA redrafted the IDDE text after considering comments received during the 2021 and/or 2022 public notice periods, from the Puyallup Tribe, and considering terms and conditions in Ecology's WSDOT GP.

- **Permit Part 3.3.a** requires an IDDE program description in the SWMP document.
- **Permit Part 3.3.b** requires WSDOT to submit and maintain updated map(s) of the MS4 infrastructure in areas draining to the MS4 outfalls identified as discharging to surface waters of the Puyallup Tribe. WSDOT submitted preliminary MS4 outfall maps with their original permit application; an example of the WSDOT MS4 map as submitted is provided in Appendix B of this FS. The EPA previously proposed that, prior to the expiration date of the permit and as part of the Permit Renewal application, WSDOT must update their MS4 map(s) to provide electronic access and identify all receiving waters, location of treatment or flow control facilities, and/or other features as listed in the permit text.
 - However, based on the water quality impairments identified for the Puyallup River and the location of four (4) of WSDOT's outfalls along State Route (SR) 167, the EPA revised the schedule for WSDOT to conduct fieldwork to update the outfall and drainage area mapping of these outfalls. See additional discussion about this accelerated mapping requirement for the MS4 discharges to impaired waters in Section IV.G.1 of this FS.

Table 4: New Information for MS4 Maps in Tribal MS4 Drainage Areas

Proposed Additional MS4 Mapping Characteristics
For each area in WSDOT jurisdiction draining to the identified MS4 outfalls discharging to surface waters of the Puyallup Tribe, the following new information must be mapped, summarized, and submitted to the EPA as part of each Annual Report required by Permit Parts 3.3.b.iv and 3.3.i:
Estimated Total Acres
- Estimated Acres by Land Use Category: <i>Commercial; Industrial; Residential; Open Space</i>
- Estimated Acres by Land Cover Category: <i>Tree Canopy; Non-Canopy Vegetation; Buildings; Other Impervious; Soil and Dry Vegetation; Roads; Water</i>
Estimated Acres of Runoff Treated with One or More Structural BMP(s)

- **Permit Part 3.3.c.** requires the Permittee to effectively prohibit discharges of non-stormwater to the MS4 through use of an ordinance or other regulatory mechanism and to provide enforcement procedures and actions.
- **Parts 3.3.d and e** list the allowable non-stormwater discharges that do not need to be prohibited from entering the MS4 [consistent with 40 CFR § 122.26(d)(2)(iv)(B)(1)] and a smaller subset of conditionally allowable discharges that may be discharged only if specific treatment, assessment or education/training requirements are implemented consistent with the 2019 WSDOT GP and the Draft 2026 WSDOT GP.
- **Permit Part 3.3.f** requires the implementation of a program to detect, identify, and eliminate illicit discharges, spills, and illicit connections including procedures to inspect, screen for, and determine sources of the problem(s), removing the source if one is identified, and documenting the actions taken. The provision includes clear timelines for achieving compliance with these objectives, which are also consistent with timeframes established in Ecology's 2019 WSDOT GP and the Draft 2026 WSDOT GP.
- **Permit Part 3.3.g** requires WSDOT to maintain telephone hotline numbers or other means for public reporting of spills and other illicit discharges.
- **Permit Part 3.3.h and i** define expectations for staff training and outlines expected information to be included in Annual Reports, respectively.

4. New Development, Redevelopment, and Construction Site Runoff Control

Consistent with 40 CFR §§ 122.26(d)(2)(iv)(A)(2) and 122.26(d)(2)(iv)(D), the Permittee must implement and enforce a program to reduce pollutants in stormwater runoff from new development, redevelopment, and associated construction activities in the areas draining to the MS4 outfalls discharging to surface waters of the Puyallup Tribe.

The EPA's draft WSDOT permit requirements have been revised based on prior comments submitted and upon the EPA's reconsideration of the requirements to be largely comparable to the similar requirements in Ecology's WSDOT GP.

Substantive requirements of this measure are described in greater detail below and apply to the approximately 50 acres draining to the WSDOT outfalls currently identified in the EPA's permit. The EPA includes the following discussion for background and context in the event that WSDOT identifies additional areas draining to other MS4 outfalls that it owns and/or operates that discharge into surface waters of the Puyallup Tribe during the effective dates of the permit:

- Site operators doing construction activity within WSDOT's jurisdiction must use erosion and sedimentation practices to prevent pollutants – particularly sediment and sediment-bound pollutants- from discharging in stormwater runoff during land disturbance and consequent vegetation removal activities. Ongoing urbanization creates additional impervious surfaces and increases the types and quantity of pollutants that enter nearby surface waters. Therefore, planning for and installing structural practices that can control and prevent runoff, or provide runoff treatment, after site construction is completed mitigates potential damage to aquatic and recreational resources from new development or redevelopment sites (Ecology, 2024b; Ecology, 2019d; EPA, 2023d; EPA, 2023e).
- WSDOT must reduce pollutants in stormwater runoff from new development, redevelopment, and associated construction activities by enforcing a program that involves oversight of “regulated construction activities” in the WSDOT areas that drain to the MS4 outfall(s) specified in the Permit that discharge to surface waters of the Tribe, to ensure compliance with the Ecology-specified development and construction rules in the HRM.
- **Permit Parts 3.4.b** requires WSDOT to direct those who are responsible for “regulated construction activities” and “regulated industrial activities,” [as defined in Permit Part 9 (*Definitions*)] to obtain appropriate permits as required by Permit Part 1.2.
 - Therefore, in a situation where WSDOT has any authority or oversight of regulated construction activity or regulated industrial activity that may occur on non-Tribal trust land and the activity discharges its stormwater directly into WSDOT's MS4 and/or discharges into state waters, WSDOT would refer the project's operator to obtain “appropriate permit” coverage under a permit for construction stormwater or industrial stormwater discharge issued by Ecology (because the activity's discharge would occur in Washington's NPDES jurisdiction).
 - Conversely, where WSDOT has authority or oversight over regulated construction activity or regulated industrial activity that would occur on Tribal trust land adjacent to WSDOT right-of-way in an area draining to a WSDOT MS4 outfall listed in the permit, and/or that discharges directly into surface waters of the Tribe, WSDOT should refer the project operator to either the Puyallup Tribe or to the EPA for direction regarding obtaining NPDES permit coverage under

the appropriate EPA-issued construction or industrial stormwater discharge permit.

- **Permit Part 3.4.c** specifies that WSDOT must use the most current technical standards, minimum requirements, thresholds, and practices necessary to control pollutants in runoff from its roadway and transportation related projects and activities (Ecology, 2024a; Ecology, 2019c; WSDOT, 2019, 2026). In Permit Appendix C, the EPA's draft permit identifies the 2026 HRM as the source document for these minimum requirements to ensure that such transportation related stormwater BMPs meet the Tribe's AKART threshold and therefore meet the EPA's MS4 permit standard.
- **Permit Parts 3.4.d and e**, respectively, require sufficient staff education and training and the expected content of the Annual Report for this control measure.

5. Stormwater Management for Existing Highway Discharges into Tribal Waters

40 CFR § 122.26(d)(2)(iv)(A) requires medium MS4s to manage stormwater using structural and source control practices designed to reduce pollutants in runoff from existing commercial and residential areas that discharge from the MS4. Structural controls are used to reduce flow and treat stormwater runoff and include permanent facilities, such as retention basins and infiltration devices, that can address impacts on watershed hydrology where such practices were not installed during prior development projects.

The EPA renamed this section of its draft WSDOT MS4 Permit text from *Structural Stormwater Control* to *Stormwater Management for Existing Highway Discharges into Tribal Waters*; it establishes the EPA's expectations for a program that is broadly consistent with the statewide highway retrofit program required by Ecology in the draft WSDOT GP.

If, during the permit term, WSDOT anticipates new development or redevelopment projects to occur in the areas draining to the WSDOT MS4 outfalls specified in the permit, WSDOT must plan, design, and/or install feasible stormwater BMPs to manage runoff from existing roadway areas discharging into waters of the Puyallup Tribe. The goal is for WSDOT to consider retrofitting existing impervious areas that lack any runoff treatment or flow control, or to retrofit areas where the existing stormwater treatment or flow control BMP does not reflect current standards in the HRM, using WSDOT's updated project planning and retrofit prioritization efforts in order to further reduce pollutant discharges from the WSDOT MS4 outfalls.

The EPA has reconsidered the actions WSDOT must take to implement a retrofit program given that a majority of the runoff generated from the identified WSDOT drainage area discharging to the portion of the Puyallup River subject to the Puyallup Tribe's WQS (estimated to be approximately 45 acres of roadway, of an unconfirmed estimate of +/- 50 total acres), is currently treated via WSDOT's constructed stormwater treatment wetland (CSTW) and the modified media filter drain (MMFD) prior to discharge.

6. Source Control for Existing Development – EPA Proposes to Delete this Control Measure

The EPA's draft WSDOT Permit as originally proposed in April 2021 included a source control requirement (similar to a comparable requirement in Ecology's Phase I GP for cities and

counties) for an inspection-based pollution prevention program for existing commercial and business land uses with potential to release pollutants into the MS4. (Ecology, 2018a).

However, upon reconsideration the EPA proposes to delete the *Source Control for Existing Development* measure from the draft WSDOT MS4 permit because 1) comparable statewide WSDOT GP requirements by Ecology do not contain such requirements; and 2) information provided to the EPA to date shows that WSDOT's outfalls discharging to surface waters of the Puyallup Tribe drain runoff from roadways and these areas do not include contribution from identified commercial land uses.

During the permit term, if WSDOT discovers that drainage from private or commercial land use activities is interconnected or contributing pollutants to the WSDOT MS4 drainage systems, the EPA believes it is unlikely WSDOT will have direct legal control over the adjacent private property area. If such contributing commercial areas are identified through MS4 mapping required by proposed Permit Parts 3.3.b and 4.1, WSDOT must instead address such impacts in cooperation with the neighboring jurisdiction(s) through WSDOT's Illicit Discharge Detection and Elimination program.

7. Municipal Operations & Maintenance

40 CFR § 122.26(d)(2)(iv)(A) requires a MS4 operator to have an ongoing program of using pollution prevention/good housekeeping techniques as part of their municipal operations to prevent pollutants from being conveyed into receiving waters through the MS4 and to train employees to use appropriate BMPs in their day-to-day duties that protects water quality and reduces pollutants into the MS4 (EPA, 2023f). This control measure in the EPA's draft WSDOT MS4 Permit requires an operations and maintenance program that includes maintenance standards for WSDOT's stormwater management facilities, inspection procedures, and stormwater pollution prevention plans where necessary.

The EPA has renamed the control measure in the permit text as "Maintenance" for consistency with WSDOT's existing SWMP terminology. The EPA has revised and renumbered the following provisions based on comments received from WSDOT and others in October 2021; discussions with the Puyallup Tribe; consideration of Ecology's existing and proposed GPs for WSDOT; and discussions with the Services regarding the EPA's request for ESA consultation:

- **Permit Part 3.6.b** requires WSDOT to establish maintenance standards for their stormwater management facilities as part of their maintenance program. The purpose of a maintenance standard is to determine if maintenance of a specific stormwater facility is required. The maintenance standard is not the measure of a facility's required condition between inspections. Exceeding the maintenance standard condition between inspections and/or scheduled maintenance is not a permit violation. Currently Chapter 5 of the 2019 HRM, as cited in Appendix C of the draft permit, describes BMP specific maintenance standards used during WSDOT's inspections of its stormwater treatment and flow control BMPs to determine when maintenance actions are required.

- **Permit Parts 3.6.d and 3.6.e** requires WSDOT to ensure that all of its permanent stormwater facilities, as well as catch basins and inlets, are regularly inspected and maintained in areas draining to its MS4 outfalls discharging to Tribal waters.
- **Permit Part 3.6.f** requires WSDOT to continue using appropriate and protective maintenance practices for other related activities occurring on lands that are owned and/or maintained by the Permittee in the areas draining to MS4 outfalls discharging to Tribal waters. The phrase ‘lands owned or maintained by the Permittee’ includes, but is not limited to, any parking lots, streets, roads, highways, buildings, open space, road right-of-way, maintenance yards, stormwater treatment BMPs and facilities, and flow control BMPs and facilities. The wide-ranging list of activities cited in Part 3.6.f reflects typical actions that transportation agencies conduct which must be done in a manner that is protective of water quality. Each of these activities, if done improperly, can be harmful to water quality due to the high potential for runoff containing suspended solids, trash, toxic chemicals, organic materials, and other pollutants.
- **Permit Part 3.6.g** reflects a new requirement for street sweeping that the EPA includes as an additional action to increase pollutant control as a conservation measure that will protect ESA-listed species and critical habitats.

As recognized in recent research and by Ecology in their 2024 Phase I MS4 GP for cities and counties, street sweepers help address multiple pollutants by collecting the solids found on the roadway surfaces and preventing them from washing into storm drains (Ecology, 2023). Street sweeping is an effective BMP for source control of total suspended solids, trash, total phosphorous, total nitrogen, total metals, and potentially for tire wear particles, among other pollutants; it is not expected to address pollutants in a dissolved phase or pollutants that bind to ultra-fine particulate matter. However, with ongoing research underway, sweeping continues to be one of several overlapping source control approaches that, when performed properly, can effectively prevent pollutants in stormwater discharges (Seattle, 2018; Herrera Environmental Consultants, 2020; Jarlskog & al, 2020; Das & Wiseman, 2024; Weston, 2010; EPA, 2021; Kidwell-Ross, 2009; Ecology, 2022b).

In the draft WSDOT MS4 permit, the EPA proposes that WSDOT conduct a street sweeping analysis, based on WSDOT’s statewide stormwater program, to compare its current street sweeping/cleaning activities in areas draining to the MS4 outfalls discharging to the Tribal portion of Puyallup River with a proposed goal of sweeping these areas four times per calendar year. The EPA also proposes that WSDOT consider the feasibility of increasing its sweeping frequency in these areas over the Permit’s five-year term. The EPA has reviewed WSDOT’s discussion of its existing sweeping activities program in its current statewide 2024 *Stormwater Management Plan* and referenced through Ecology’s 2019 WSDOT GP; in the 2024 Plan, WSDOT states that it “conducts sweeping operations to keep road surface clean and remove sediment, leaves, litter, and other debris before it enters the stormwater systems or surface waters. The extent of debris accumulation and funding provided by the State Legislature dictates scheduling.” (WSDOT, 2024).

- **Permit Part 3.6.h** requires WSDOT to implement a stormwater pollution prevention plan (SWPPP) or plans, for any locations where its heavy equipment or other materials are stored within areas draining to the outfalls that discharge to Tribal waters. A SWPPP must be designed for sites not regulated by another NPDES permit and should include both non-structural and structural control BMPs. A well designed SWPPP implemented by well trained staff will help to reduce pollutants in the runoff. The EPA expects that by using generic SWPPP template(s), WSDOT can maintain standard SWPPP practices to effectively manage operations at storage yards and heavy equipment areas if necessary.
- **Permit Part 3.6.i** addresses requirements for consistent training for the WSDOT staff, consultants, and contractors, who often represent different departments and organizations that may not regularly communicate with each other regarding water quality or environmental issues.
- **Permit Part 3.6.j** outlines Annual Report requirements for maintenance activities in the areas draining to outfalls discharging to surface waters of the Puyallup Tribe.

G. Special Conditions

CWA § 301(b)(1)(C) and 40 CFR §122.44(d) require the EPA to set specific requirements that Permittee must follow to achieve water quality goals for the MS4 discharges to surface waters of the Puyallup Tribe. The EPA will include specific requirements in Permit Part 4.

1. Requirements for MS4 Discharges to Impaired Waters

40 CFR § 122.44(d)(1)(vii) requires that the EPA review the impairment status of the receiving waters for the WSDOT MS4 outfalls named in the draft Permit; see discussion in Section III.C above.

Four (4) of WSDOT's MS4 outfalls (namely, Outfalls 4.101, 4.122, 5.130, and 5.138) are located along SR 167 and discharge into the segment of the Puyallup River identified by Ecology as *Assessment Unit ID 17110014000028_001_001*; as previously noted, this segment is listed as impaired for fecal coliform bacteria, temperature, and mercury by Ecology in its 2020-2022 WQ Assessment Report. (Ecology, 2025a). While the State's water quality impairment listing decisions are not applicable to the Tribe's jurisdiction, and there are no applicable EPA-approved TMDLs developed by Ecology or the Tribe for these pollutants, staff with the Puyallup Tribe and Ecology water quality program have routinely worked cooperatively on a variety of water quality issues pertaining to the Lower Puyallup River in response to water quality impacts.

In its 2021 Fact Sheet supporting the original draft WSDOT MS4 permit, the EPA acknowledged the *Puyallup River Watershed: Fecal Coliform Total Maximum Daily Load - Water Quality Improvement Report and Implementation Plan* (Ecology, 2011) which appears to apply and overlap with the 1873 Survey Area of the Puyallup Reservation. The Tribe is credited as having contributed to the TMDL study, yet the Ecology document states that *"Tribal land and waters of the Puyallup Tribe...[is] within the area studied; however, these waters are not under the TMDL's jurisdiction. The TMDL covers state waters only."* In a later section WSDOT is quoted as having submitted the following comment to Ecology:

"It is reasonable to assume that [WSDOT's] stormwater may be a source or a conveyance of fecal coliform in areas [where] adjacent land uses are a recognized

source of bacteria. While WSDOT roadways or rights-of-way can be the source of fecal coliform bacteria at a WSDOT outfall (if measured) from adjacent private property via natural drainage, an illicit discharge, or an illegal connection, WSDOT will implement the following which include some pollution-prevention measures that address fecal coliform bacteria concentrations, for state road and highway runoff according to itsStormwater Management Program Plan: Discharge inventory and Illicit Discharge Detection and Elimination (source identification and control); Implementation of the Highway Runoff Manual (stormwater BMP design manual equivalent to Ecology's Stormwater Management Manual). ...Stormwater BMP retrofit program [and] Highway maintenance program." (Ecology, 2011, pp. C-127, C-130.)

The WSDOT outfalls identified in the EPA permit drain from areas that the EPA presumes are relatively small in size and are immediately adjacent to SR 167, based on the information available via the WSDOT MS4 permit application materials. For example, WSDOT's 2015 permit application estimated the area leading to Outfall 4.122 as 1.64 acres, but contributing land use and land cover is unknown. Acreage totals for other WSDOT outfalls along SR 167 identified in the EPA permit are similarly unconfirmed.

The EPA is proposing in Permit Part 4.1 that WSDOT conduct updated field investigation on an expedited schedule during the first year of the permit to map outfall location, acreage, and other area characteristics for specific locations along SR 167 to determine whether there may be adjacent sources or conveyances of fecal coliform bacteria or other pollutants into the Puyallup River through the WSDOT MS4 outfalls. Rather than waiting until the end of the permit cycle for the updated MS4 maps, the EPA is proposing that the new information be submitted with the 1st Year Annual Report. The EPA believes this investigation may yield additional benefit during the permit term by identifying possible sources of the other impairment pollutants (temperature and/or mercury) entering WSDOT outfalls as possible illicit discharges.

Using this new information, as a subsequent step, Permit Part 4.2 then requires WSDOT to consider feasible enhanced SWMP control measures for source control, treatment, or prevention in these drainage areas that could further reduce the contribution of fecal coliform bacteria, temperature, and/or mercury in stormwater runoff from its outfalls. This summary of feasible control measures to be deployed must be submitted to EPA and the Puyallup Tribe as part of WSDOT's 4th Annual Report.

2. Requirements from Terms and Conditions of the Biological Opinion(s) Concluding Endangered Species Act Consultation with NMFS and USFWS

To date, the EPA has not received final Biological Opinions from USFWS or NMFS in response to its evaluation of effects on endangered species, designated critical habitat, and essential fish habitat resulting from the proposed issuance of the WSDOT MS4 Permit. Therefore, no additional ESA-related provisions are proposed in Permit Part 4 at this time.

3. Conditions of the CWA §401 Certification from the Puyallup Tribe

Given the extensive revisions that have been made to the draft WSDOT permit, the EPA will request a new CWA § 401 certification from the Tribe in late August 2026. As explained in Section I.A above, the EPA has met with the Tribe to discuss several of the Tribe's topics of

concern. The EPA anticipates receiving conditions with the Tribe's final water quality certification under CWA § 401 and will include any individual conditions to the final Permit in Part 4.3. See further discussion in Section VI.C below.

4. Adaptive Management Response

The EPA made minor edits to the adaptive management response provisions in renumbered Permit Part 4.4, consistent with the proposed changes to Permit Part 1.3 (*Permit Conditions and Effluent Limitations*) discussed in Section IV.D above.

An effective adaptive management response from WSDOT will identify the cause of an identified water quality problem, provide the EPA with one or more anticipated response(s) to remove the cause of the problem and commit to regaining compliance with the Permit. This provision is consistent with EPA guidance, the Ecology-issued WSDOT GP, and other MS4 permits issued by both the EPA Region 10 and Ecology. (EPA, 2016a; 2016b; 2024d; EPA Region 10, 2020a; Ecology, 2019c; Ecology, 2024a)

Once issued, noncompliance with any Permit requirements may constitute a CWA violation. The failure to report to the EPA as in Part 4.4.a, or failure to evaluate SWMP implementation and identify management response actions upon notification from the EPA as indicated in Part 4.4.d, will constitute a violation of the Permit. Any actions and/or time periods specified by the EPA for remedying noncompliance as outlined by Permit Part 4.4.e does not absolve the Permittee of the initial underlying noncompliance.

H. Stormwater BMP Effectiveness Monitoring Requirements

40 CFR § 122.26(d)(2)(v) requires that MS4 operators assess the effectiveness of their SWMP activities and the appropriateness of their selected BMPs. Permit Part 5 contains requirements for BMP effectiveness monitoring and reporting, which have been revised since the EPA's April 2021 and July 2022 public comment periods based on current information and comments received.

Permit Part 5.1 requires WSDOT to quantify the effectiveness of the constructed stormwater treatment wetland (CSTW) and the modified media filter drain (MMFD) in reducing pollutant concentrations in stormwater runoff from Interstate 5 during standard roadway operating conditions prior to discharging to the Tribe's portion of the Lower Puyallup River. **Permit Part 5.2** defines requirements for a quality assurance project plan (QAPP); **Parts 5.3 through 5.6** contain standard NPDES permit conditions related to monitoring practices.

The EPA has proposed that WSDOT begin stormwater BMP effectiveness monitoring no later than one year after the permit effective date, upon completion of a QAPP that meets the requirements outlined in Permit Part 5.2.

Based on the EPA's preliminary discussions with the Puyallup Tribe ahead of the EPA's request for CWA § 401 certification of the WSDOT Permit, the EPA expects the Tribe to condition the final Permit to require sampling for additional parameters and require WSDOT to submit the draft QAPP for the Tribe's review and approval prior to starting the monitoring. If these conditions are included in the CWA § 401 certification, they will be incorporated into the Permit pursuant to CWA §401(d).

WSDOT submitted comments to the EPA on October 26, 2021, requesting that the EPA replace its original proposal for monitoring at the newly constructed Interstate 5 MS4 outfall into the Puyallup River, due to identified difficulties associated with tidal influences, accessibility, and sampling safety issues (WSDOT, 2021).

The EPA incorporated WSDOT's suggested alternative sampling and other edits to Permit Part 5.1, which will assess pollutant removal effectiveness of the CSTW/MMFD by sampling at the wetland's inlet and outlet, using collection techniques based on the testing protocols for evaluating stormwater treatment technologies with long detention times outlined in Appendix C of Ecology's *Technical Guidance Manual for Evaluating Emerging Stormwater Treatment Technologies Technology Assessment Protocol – Ecology (TAPE)* (Ecology, 2024d; WSDOT, 2021).¹⁰ The Ecology TAPE protocol for evaluating long detention is a formally recognized process for sampling stormwater inflows and outflows at pond- or wetland-type BMPs.

The EPA proposes that samples of the CSTW/MMFD influent, effluent, and stormwater solids must be analyzed for parameters listed in Permit Appendix E. In its 2021 comments to the EPA, WSDOT requested fewer parameters and other changes to the sample collection logistics, in part because the TAPE protocol for long detention practices does not require as many parameters as the EPA continues to propose for sampling in draft Appendix E. In the EPA's July 2022 public notice (EPA Region 10, 2022), the EPA accepted many of WSDOT's suggested revisions but kept the parameters for sampling, because assessing the capacity of the CSTW/MMFD combination to provide effective treatment of road runoff and the reduction of as many pollutants as possible.

- The EPA continues to propose that WSDOT assess the effectiveness of the CSTW treatment capacity for the same parameters as the EPA is proposing for the City of Tacoma to sample its respective stormwater discharges occurring downstream at the Cleveland Pump Station. The EPA and the Tribe seek a meaningful stormwater treatment and stormwater monitoring dataset for this Puyallup River area that does not currently exist.
- The EPA derived the parameters for sampling in proposed Appendix E from the Ecology-issued Phase I MS4 GP-Appendix 9 (Ecology, 2019e; 2024). The EPA also used these parameters to inform the assumptions in its BE analysis of stormwater runoff impacts on ESA listed threatened and endangered species and designated critical habitat in the Lower Puyallup River and Commencement Bay, given the relative absence of available monitoring or BMP effectiveness data for these stormwater discharges (EPA Region 10, 2024e; 2025).
- To date, the EPA is unaware of any WSDOT dataset that represents treatment effectiveness of this CSTW, and/or datasets from the other MS4 Permittee discharges into the Tribal portion of the Lower Puyallup River. The monitoring data is therefore needed to further inform the EPA's ESA consultation with NMFS and USFWS, and to

¹⁰ Ecology's TAPE program provides a peer-reviewed regulatory verification and certification process for emerging stormwater treatment technologies. The TAPE program is administered by Ecology, with assistance from staff at the Washington Stormwater Center (www.wastormwatercenter.org), which provides stormwater technical and management assistance including guidance on certification of emerging treatment technologies.

assist the EPA's continued work with the Puyallup Tribe on potential adaptive management investments that will reduce negative effects of MS4 discharges from the outfalls identified in the WSDOT (and comparable Tacoma) MS4 Permit(s).

I. Reporting and Recordkeeping Requirements

Permit Part 6 outlines reporting and recordkeeping requirements; 40 CFR §122.42(c) requires that MS4 Permittees provide updated monitoring information and other report documentation on their compliance with the Permit's terms and conditions to the NPDES permit authority at least annually.

- **Permit Part 6.1** outlines instructions for WSDOT to submit documents electronically to the EPA and the Puyallup Tribe. After the Permit's effective date, the EPA will share instructions with WSDOT for using the EPA's dedicated, web-based MS4 Permit reporting portal for submitting Annual Reports and other documents to the EPA, consistent with the NPDES E-Reporting regulations at 40 CFR Part 127.
- **Permit Part 6.2** specifies reporting periods and due dates for submitting the WSDOT's MS4 Annual Reports. In comments submitted in 2021 WSDOT requested that their reporting periods match their fiscal years (July 1-June 30), followed by a reporting deadline of Oct 31st each year. The EPA revised the draft Permit to reflect this schedule. Permit Appendix A will contain an Annual Report template to reflect the final Permit and that aligns with the EPA's web-based MS4 Permit reporting portal.
- **Permit Part 6.3** provides the content, deadlines and format for reporting WSDOT's evaluation of the effectiveness of the CSTW/MMFD treatment prior to discharge into the Puyallup River. A *Stormwater BMP Effectiveness Monitoring Report* must be attached to each Annual Report, summarizing progress or actions during the prior reporting period to initiate and/or continue data collection, and including a comprehensive summary or analysis of any data collected from the permit effective date. Permit Appendix B contains the proposed content for the *Stormwater BMP Effectiveness Monitoring Report*, using the Ecology document entitled *Technical Guidance Manual for Evaluating Emerging Stormwater Treatment Technologies: Technology Assessment Protocol – Ecology (TAPE)* (Ecology, 2024d).

The BMP Monitoring Report attached to the 1st Annual Report likely will not contain data but instead document progress toward finalizing the QAPP and initiating data collection. Subsequent reports must integrate any data collected from earlier years into the analysis of results, as appropriate.

- **Permit Parts 6.4 and 6.5** addresses records retention and availability requirements, respectively. WSDOT must keep records required by the Permit for a period of at least five years and must submit records only when requested to do so by the EPA or the Puyallup Tribe. See 40 CFR §122.41(j)(2). Information regarding WSDOT's SWMP must be publicly available at a minimum via the WSDOT website.

J. Appended Information

Permit Appendix A – Annual Report Template

Appendix A contains a draft outline of an Annual Report Template to assist the Permittee with submitting the MS4 Annual Report electronically. The Permittee is not obligated to use the Template, but all required elements from the Permit will be included in the template and serve as a guide for filling out the Annual Report online through NeTMS4, the EPA's Web based reporting portal for the MS4 permit program.

Permit Appendix B –BMP Effectiveness Monitoring Report

See discussion above.

Permit Appendix C- Minimum Technical Requirements

This Appendix identifies WSDOT's planning minimum design requirements and best management practices for construction activities and new and existing Washington State highways, rest areas, park and ride lots, and highway maintenance facilities that are determined by the Washington Department of Ecology to be functionally equivalent to those in the 2024 *Stormwater Management Manual for Western Washington* (SWMMWW), and that the EPA and the Tribe determine also meet the technical requirements necessary to meet the MS4 permit standard defined in the EPA permit. It is the EPA's intention that the final Permit, when issued, will require WSDOT to use the final 2026 *Highway Runoff Manual* to comply with the stormwater control measures required in the final Permit.

Permit Appendix D – Street Waste Disposal

This Appendix addresses the disposal of both street waste solids and street waste liquids, consistent with provisions of the 2024 SWMMWW and the HRM. WSDOT Permit Part 3.6 (*Maintenance*) and Permit Part 7.13 (*Removed Substances*) require that all decant water and solids removed from catch basins to be disposed in a manner to prevent pollutants from entering waters of the U.S.

Permit Appendix E - Monitoring Parameters and Minimum Levels

This Appendix lists the pollutants and minimum levels that WSDOT must monitor to evaluate the effectiveness of the CSTW and MMFD to treat the stormwater runoff from Interstate 5 prior to discharge into the Puyallup River.

V. Standard Permit Conditions

Permit Parts 7 and 8 contain standard regulatory language that must be included in all NPDES permits. The standard regulatory language covers mandatory elements from 40 CFR § 122.41 including additional reporting requirements, compliance responsibilities, and other general requirements that are not already included in other sections of the Permit.

VI. Other Legal Requirements

A. Endangered Species Act

The Endangered Species Act (ESA) Section 7(a)(2) requires federal agencies to consult with the Services if their actions could beneficially or adversely affect any threatened or endangered species and/or their designated critical habitat. The EPA analyzed the discharges proposed to be authorized by the WSDOT MS4 Permit in a Biological Evaluation (BE) that was submitted to

NMFS and FWS with a request to initiate formal ESA consultation on October 11, 2024 (EPA Region 10, 2024e; 2024c; 2024b).

The EPA evaluated the effects of permit issuance on the following ESA-listed species near the MS4 outfall discharge locations and within the greater Commencement Bay area: *Chinook Salmon*, *Steelhead*, *Bocaccio Rockfish*, *Yelloweye Rockfish*; *Humpback Whale*; *Killer Whale*; *Sunflower Sea Star*; *Marbled murrelet*; and *Bull Trout*. The EPA also evaluated the effects of permit issuance on the designated critical habitat in the Commencement Bay area resulting from issuing the WSDOT MS4 permit for *Chinook Salmon*, *Steelhead*, *Bocaccio Rockfish*, *Yelloweye Rockfish*; *Killer Whale*; and *Bull Trout*. (EPA Region 10, 2024e)

After conversations with NMFS and FWS, the EPA submitted a comprehensive BE Addendum, and a revised preliminary draft WSDOT permit, to both NMFS and USFWS on October 10, 2025. The BE Addendum identifies additional permit requirements that the EPA views as conservation measures to reduce adverse impacts on ESA listed threatened and endangered species and on their designated critical habitats (EPA Region 10, 2025).

B. Essential Fish Habitat

Essential fish habitat (EFH) is the waters and substrate (sediments, etc.) necessary for fish to spawn, breed, feed, or grow to maturity. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the federal agency to consult with NMFS when a proposed action has the potential to adversely affect EFH (i.e., reduce quality and/or quantity of EFH).

The EPA's review of EFH shows that marine waters near Commencement Bay in Puget Sound are designated EFH for coastal pelagic species, Pacific coast groundfish, and Pacific coast salmon species (PFMC, 2021; PFMC, 2022a; PFMC, 2022b). The lower Puyallup River is designated EFH for Pacific coast groundfish and Pacific coast salmon species.

(https://www.habitat.noaa.gov/apps/efhmapper/?page=page_4). The Pacific coast groundfish fishery includes 90 species, approximately two thirds of which occur in Washington State. The coastal pelagic fishery includes four fin fishes [Pacific sardine, Pacific (chub) mackerel, northern anchovy, and jack mackerel] and the invertebrate market squid. The Pacific salmon fishery includes Chinook, coho, and Puget Sound pink salmon.

The EFH assessment is included in the BE submitted to NMFS on October 11, 2024 (EPA Region 10, 2024e; EPA Region 10, 2024c), and it determined that issuance of the WSDOT MS4 permit may adversely impact EFH for Pacific coastal pelagic species, Pacific coast groundfish, and Pacific Coast salmon.

C. CWA § 401 Certification

CWA § 401 requires the EPA to seek Tribal certification before issuing a final permit. As a result of the certification, the Tribe may require more stringent permit conditions or additional monitoring requirements to ensure that the permit complies with WQS, or treatment standards established pursuant to any Tribal law or regulation.

On March 31, 2021, the EPA requested CWA § 401 certification of the original draft WSDOT MS4 Permit from the Puyallup Tribe, and the EPA received a conditional certification for the permit on December 15, 2021.

As explained in Section I.E and elsewhere in this FS, the EPA significantly revised the draft WSDOT Permit since 2022 in response to subsequent comments received. The EPA reconsidered several requirements to further reduce potential effects on ESA listed species and critical habitats as part of its formal ESA consultation with NMFS and USFWS. The EPA has reflected on certain stormwater management requirements currently proposed by Ecology for the renewal of the WSDOT GP and that are applicable throughout the state of Washington. Throughout the permit development process, the EPA has engaged with the Puyallup Tribe's Water Quality Manager to discuss and share revised drafts of the Permit.

The EPA included requirements that respond directly to the Puyallup Tribe's concerns, comments, and/or requests during its EPA-Tribe coordination meetings (for example, see draft text at Permit Part 2.5 - *Annual Meeting*). The EPA anticipates the Tribe may include requirements related to BMP effectiveness monitoring as conditions of the Tribe's CWA § 401 certification.

In late August 2026, the EPA sent a new request to the Puyallup Tribe for CWA § 401 Certification of the draft permit.

D. Antidegradation

Because the Tribe has no implementation guidance for the antidegradation policy in their WQS, the EPA will complete the antidegradation review for this Permit.

E. Permit Expiration

The permit will expire five years from the effective date.

VII. References

The following is a partial reference list supporting the development of the MS4 permit discussed in this FS; additional references are available in the Administrative Records for the permit.

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Appendix A. Illustration of Puyallup Tribe's 1873 Survey Area and Tribal Properties

The map on the following page, **Figure A.1: Puyallup Tribe Tribal [sic] Properties on or Near the Puyallup Indian** Reservation, depicts land held in trust by the federal government for the Puyallup Tribe of Indians, individual member of the Puyallup Tribe, or for a federally recognized tribe other than the Puyallup Tribe, within the 1873 Survey Area of the Puyallup Reservation located in Tacoma, Washington, and was last updated by the Puyallup Tribe on 8/19/2020.

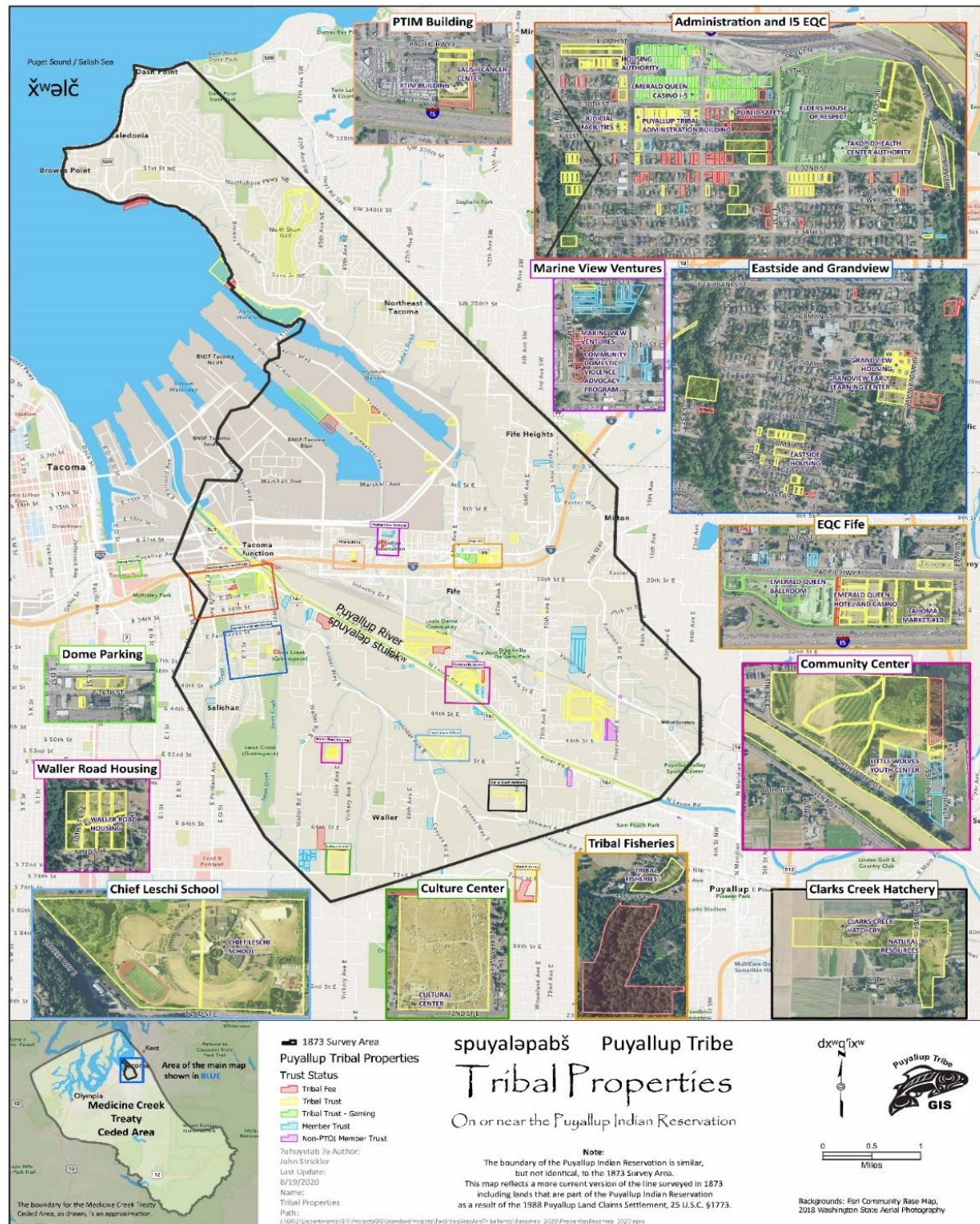
The map was included as an attachment to a joint letter documenting an understanding among parties, namely the U.S. Environmental Protection Agency Region 10, the Puyallup Tribe of Indians and the Washington Department of Ecology, for the implementation of CWA §401 water quality certifications for federal permits or licenses within the boundaries of the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington. (EPA Region 10, 2021e)

As defined in the 1988 *Land Claims Settlement Agreement* and the 1989 *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. § 1773 (b)(1), the 1873 Survey Area includes the Puyallup River bed lands below the ordinary highwater mark, the mouth of Hylebos Creek intertidal areas below the high tide line, and all land held in trust by the federal government for a federally recognized tribe or individual tribal member.

Note: The LSCSA is available to review online at: <https://www.puyalluptribe-nsn.gov/wp-content/uploads/Land-Claims-Settlement-Agreement.pdf>

See also: Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. § 1773 at: <https://www.congress.gov/101/statute/STATUTE-103/STATUTE-103-Pg83.pdf>

Figure A.1: Puyallup Tribe Tribal *[sic]* Properties on or Near the Puyallup Indian Reservation



Appendix B. MS4 Outfall Locations and Representation of Drainage Areas

The maps on the following pages, shown as **Figure B.1** and **Figure B.2**, depict the general locations of the WSDOT MS4 outfalls discharging into the Puyallup River.

Figure B.1: Illustration of WSDOT MS4 Outfall Locations into Puyallup River from I-5

Source: WSDOT 2015 Permit Application Amendment

Map: 4

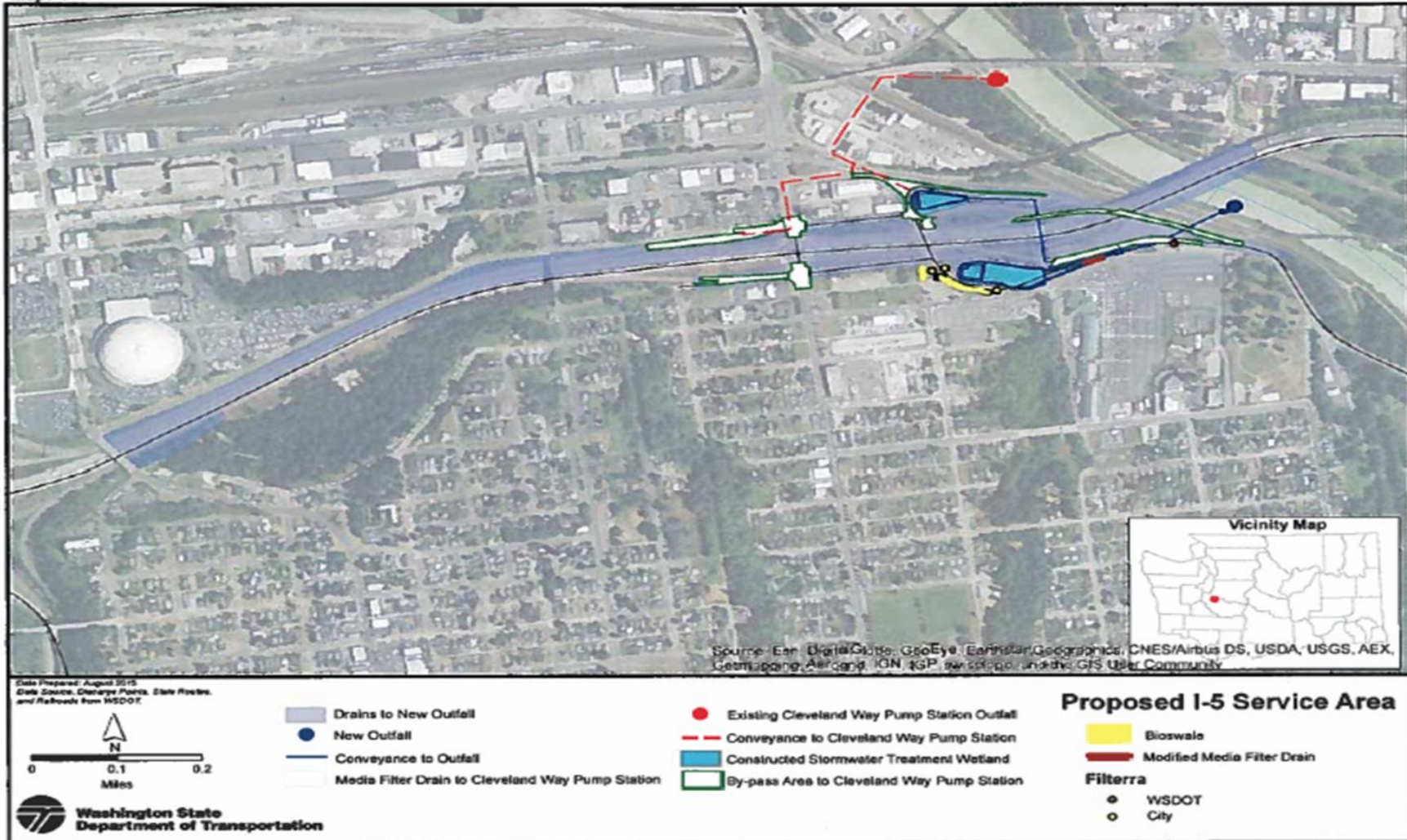
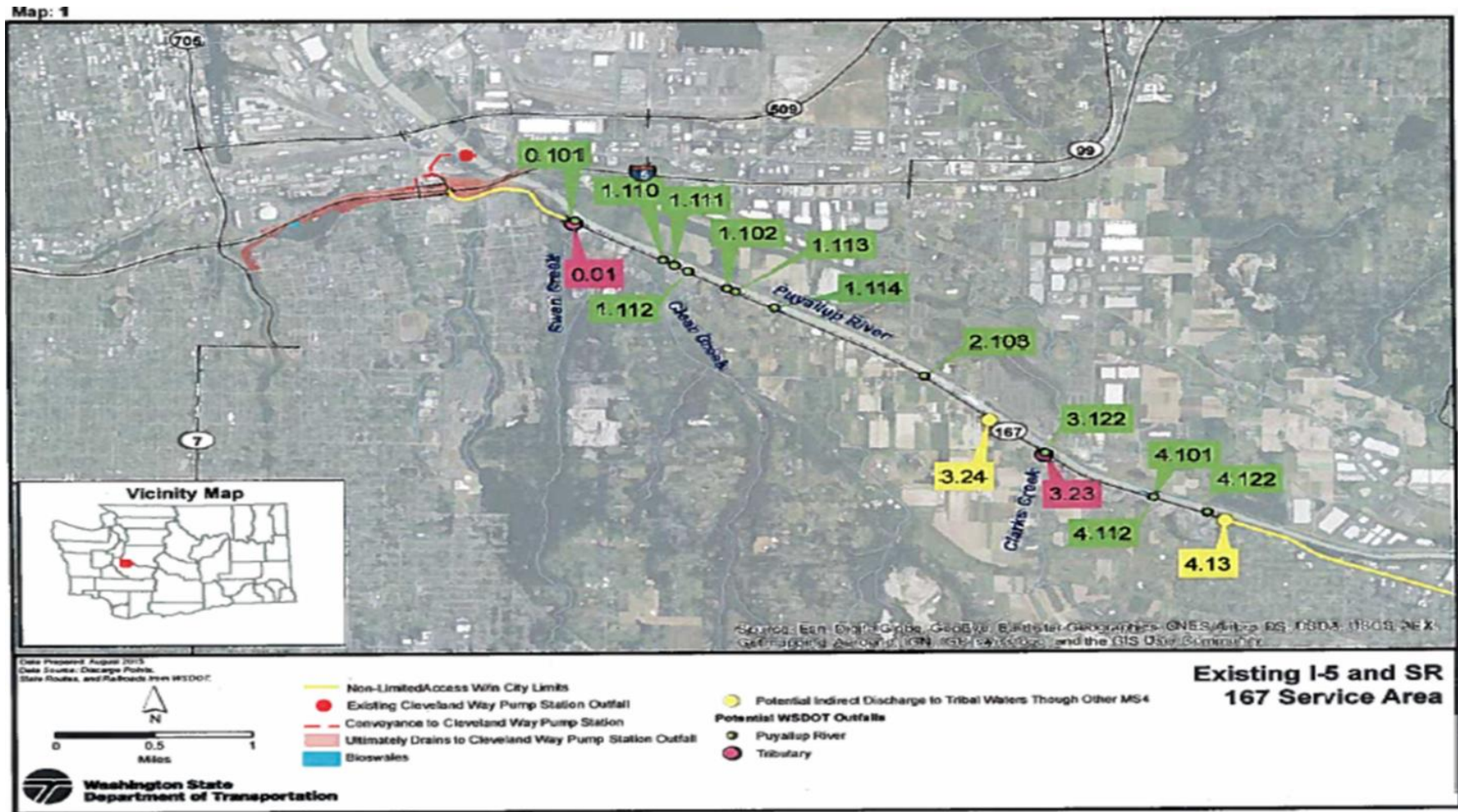


Figure B.2: Illustration of WSDOT MS4 Outfall Locations into Puyallup River along SR 167

Source: WSDOT 2015 Permit Application Amendment.



Appendix C. Antidegradation Analysis

1. Introduction

The EPA is required under CWA Section 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C), and the CWA implementing regulations (40 CFR §§ 122.4(d) and 122.44(d)), to establish conditions in NPDES permits that ensure compliance with the Puyallup Tribe's water quality standards, including antidegradation requirements.¹¹ The Tribe has no implementation procedures for these antidegradation requirements.

The EPA is issuing a first-time NPDES permit for the WSDOT MS4 that discharges into surface waters of the Puyallup Tribe. As such, this is a new action and requires a determination to ensure that:

- 1) Existing in-stream water uses and the level of water quality necessary to protect the existing uses will be maintained and protected;
- 2) Where the water quality exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless there is a finding that allowing lower water quality is necessary to accommodate important economic or social development in the area;
- 3) Where waters constitute an outstanding national resource, that water quality must be maintained and protected; and
- 4) where potential water quality impairment is associated with a thermal discharge, the Tribe's decisions must be consistent with section 316 of the CWA. (40 CFR § 131.12(a)).

The determination must be based on whether the expected concentration and loadings from the MS4 discharges will result in a measurable change that will lower water quality.

In Section C.3 below, the EPA compared terms and conditions of the draft WSDOT MS4 permit to the six objectives of the Tribe's antidegradation requirements listed in Section 8 of the Tribe's WQS to determine whether the permit will control pollutants in the MS4 discharges sufficiently to prevent measurable changes that could lower water quality in the Puyallup River and meet the Tribe's antidegradation requirements.

2. Receiving Water Classifications and Existing Receiving Water Quality

The EPA is employing a waterbody-by-waterbody approach in conducting the antidegradation analysis. The Puyallup Tribe classifies its surface waters into four categories: Class AA (*extraordinary*); Class A (*excellent*); Class B (*good*); Class C (*fair*); and Lake Class (Puyallup Tribe, 1994).

¹¹ See: *Water Quality Standards for Surface Waters of the Puyallup Tribe, Section 8: Antidegradation*, (1994) at: <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-puyallup-tribe>

The draft WSDOT MS4 permit authorizes discharges from eight (8) identified outfalls into the lower Puyallup River. The Tribe classifies the Puyallup River, from the river mile 1.0 to the up-river boundary of the 1873 Survey Area of the Puyallup Reservation, as Class A waters, with the following characteristic uses:

- Water supply (domestic, industrial, agricultural);
- Stock watering;
- Fish and shellfish (including salmonid migration, rearing, spawning and harvesting; other fish migration, rearing, spawning and harvesting; clam, oyster and mussel migration, rearing, spawning and harvesting; crustaceans and other shellfish [crabs, shrimp, crayfish, scallops, etc.] migration, rearing, spawning and harvesting);
- Wildlife habitat;
- Ceremonial and religious water use;
- Recreation (primary contact recreation; sport fishing, boating and aesthetic enjoyment); and
- Commerce and navigation.

As described in FS Section III.C, the Tribe does not have a CWA § 303(d) list of impaired waters and thus, has not developed any TMDLs. Instead, the Tribe participates in listing and TMDL development efforts with Ecology for the Puyallup River watershed areas that are not subject to the Tribe's WQS. Ecology's current WQ Assessment List identifies the segment of the Puyallup River where the WSDOT MS4 outfalls are located as impaired for fecal coliform bacteria, temperature, and mercury, and the segments immediately downstream of the WSDOT MS4 outfalls as impaired for fecal coliform bacteria.¹² (Ecology, 2025a).

The Tribe's water quality program monitors parameters at eleven sites throughout the Puyallup River watershed on a monthly basis, however, none of these monitoring sites are within the lower Puyallup River near the MS4 outfalls to be authorized by the EPA's draft permit (Puyallup Tribe, 2026; Naylor, et al., 2025).

In its 2024 Biological Evaluation submitted to the Services for Section 7 ESA consultation, the EPA summarized the water quality data collected by Ecology between Years 2012 – 2018 at two long-term sampling sites located in close proximity (upstream and downstream, respectively) of the WSDOT MS4 outfalls in the lower Puyallup River (EPA Region 10, 2024e). With some exceptions, Ecology's data reflect values that are below the state WQS for turbidity, ammonia, pH, and fecal coliform; because the state and Tribe's WQS are similar, the EPA assumes the data also reflects

¹² There is also a 1994 TMDL for the Puyallup River for biological oxygen demand (BOD), ammonia, and chlorine that does not contain any wasteload allocations for municipal stormwater discharges. There is a moratorium on using the TMDL growth reserve in the TMDL until new data shows that accessing the reserve won't result in a water quality violation. See: <https://ecology.wa.gov/water-shorelines/water-quality/water-improvement/total-maximum-daily-load-process/directory-of-improvement-projects/puyallup>

values that are below Tribal WQS as well. The exceptions included monitoring for temperature, which indicated that on warm days, the Tribe's WQS of 18°C for salmon migration and rearing can be exceeded; in addition, monitoring for dissolved metals indicates that maximum concentrations of dissolved copper, lead and total mercury exceeded the water quality criteria at the upstream sampling location.

3. Analysis

The following provides the EPA's consideration of the Tribe's antidegradation objectives as identified in Section 8 of their WQS.

a. Maintain and protect existing beneficial uses and allow no further degradation to interfere with those beneficial uses.

While this is the first time that the EPA is issuing a permit to the WSDOT MS4, the stormwater discharges from these MS4 outfalls have been ongoing. There is no indication that the WSDOT MS4 discharges have impacted existing uses; therefore, the EPA concludes that the existing uses are maintained and protected.

As described in FS Section IV above, the WSDOT MS4 permit contains narrative effluent terms and conditions that requires the implementation of a comprehensive stormwater management program to reduce pollutants in stormwater runoff draining from areas to the identified MS4 outfalls. Through the use of stormwater pollutant source control, treatment, inspection/maintenance, pollution prevention techniques, and other actions that are known to control both the quantity and quality of stormwater that is produced by pollutant generating impervious surfaces and human activities in urban settings, the Permittee is required to use BMPs that represent AKART for stormwater management as required by the Tribe (Puyallup Tribe, 1994).

The EPA's draft MS4 requires the Permittee to reduce stormwater pollutant concentrations and flow draining from WSDOT's public highways, rights of way, and other activity areas within WSDOT's jurisdiction during the permit term. WSDOT must apply the technical standards, minimum requirements, thresholds, adjustments, and definitions in the latest Washington State Highway Runoff Manual on a site and project specific basis for the planning, design, inspection, and maintenance of stormwater management facilities in areas draining to the MS4 outfalls specified in the final permit and that discharge to the portion of the Puyallup River subject to the Tribes WQS. For MS4 outfall drainage areas and possible sources in as-yet undefined drainage areas, the EPA has directed that WSDOT must investigate, map and document the drainage areas leading to four (4) outfalls along SR 167 to determine if any additional or targeted source control, treatment or prevention actions are feasible or necessary to further reduce pollutant contributions to impaired waters.

In total, the EPA determines the activities will reduce pollutant loadings in stormwater from this area to the maximum extent practicable and will not cause further impairment of the Puyallup River where the WSDOT MS4 outfalls are located.

b. Use the waterbody's natural condition as the water quality criteria whenever the natural conditions are of a lower quality than the assigned criteria.

Not applicable. Based on information available to the EPA at this time, the natural conditions of the Puyallup River near the WSDOT MS4 outfalls to be authorized by EPA's permit are not lower than the assigned WQ criteria.

c. Protect existing water quality whenever the waterbody is of a higher quality than the criteria assigned, and prevent pollution from reducing existing water quality except when:

- **It is clear that overriding public interest will be served after public participation and intergovernmental coordination;**
- **New and existing point sources are using all known, available, and reasonable methods of prevention, control, and treatment (AKART) prior to discharge; and activities resulting in pollution from nonpoint sources are using all known, available, and reasonable best management practices; and**
- **When authorizing the lowering of water quality in a high-quality waterbody, the lower quality must fully support all existing beneficial uses.**

As described above, the upstream and downstream segments of the Puyallup River are listed by Ecology as impaired for certain specific pollutants. The Puyallup Tribe's WQS are at least as stringent as the Washington water quality standards for these pollutants, yet the Tribe does not have its own CWA § 303(d) impairment listing procedure. Because of this, it is reasonable to assume that the segments of the Puyallup River subject to Tribal WQS are also impaired for certain pollutants under the Tribe's criteria which are similar to Washington's WQS. Therefore, the EPA finds that the waterbody is not of higher quality than the criteria.

In addition, as explained in Section C.3.a of this antidegradation analysis, the WSDOT MS4 permit will ensure that the existing water quality is not lowered.

d. Short-term modification of water quality may be allowed pursuant to Section 10 of the Tribe's WQS.

Not applicable. The WSDOT MS4 permit does not involve any application of chemicals, such as aquatic herbicides or other activity as described in Section 10, for which a short-term modification may be warranted.

e. Whenever the quality of the water constitutes an outstanding national resource (such as national or tribal parks, wildlife refuges, and waters of exceptional recreational and ecological significance), that water quality must be maintained and protected.

Not applicable. As the receiving water for discharges to be authorized by the WSDOT MS4 permit, the lower Puyallup River is not classified as an outstanding national or tribal resource water.

f. In cases where potential impairment is associated with a thermal discharge, the antidegradation policy and implementation method must be consistent with CWA § 316.

Not applicable. The WSDOT MS4 permit does not involve thermal discharges from industrial sources or cooling water intakes as described in CWA § 316.