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APPENDIX K
WETLANDS REGULATORY PROGRAM

1 **INTRODUCTION**

2 The U.S. Army Corps of Engineers (USACE), with oversight by the U.S. Environmental
3 Protection Agency (EPA), regulates most wetlands and waterways in the United States. Many
4 states also have wetland and waterway protection statutes, and in those states, the USACE has
5 generally tailored its permit program, insofar as it is legal and reasonable, to complement the
6 state programs and streamline the permit application process for the public. This appendix
7 provides a brief summary of how the wetlands and waterways are regulated in each of the
8 applicable states.

9 The USACE regulates through three primary statutory authorities:

- 10 • Section 404 of the Clean Water Act (1977) (33 U.S.C. 1344) authorizes the USACE to
11 issue permits, after notice and opportunity for public hearing, for the discharge of
12 dredged or fill material into the “navigable waters of the United States” at specified sites.
- 13 • Section 10 of the Rivers and Harbors Act (1899) (33 U.S.C. 403) authorizes the USACE,
14 after notice and opportunity for public hearing, to prohibit the unauthorized obstruction
15 or alteration of any "navigable water of the United States."
- 16 • Section 103 of the Marine Protection, Research, and Sanctuaries Act (1972) (33 U.S.C.
17 1413) authorizes the USACE to issue permits, after notice and opportunity for public
18 hearing, for the transportation of dredged material for ocean disposal, where it is
19 determined that the disposal will not unreasonably degrade or endanger human health,
20 welfare, or amenities, or the marine environment, ecological systems, or economic
21 potentialities.

22 Of these authorities, Section 404 of the CWA and Section 10 of the RHA are most likely to
23 regulate CPB activities.

24 The term “navigable waters” has different meanings under the two statutes. For Section 10, the
25 term refers to those waters that have been, are being, or could be used for the transport of goods
26 in interstate commerce. These waters include waters subject to the ebb and flow of tide, certain
27 rivers, canals, and lakes, etc., that the USACE has formally declared to be navigable under
28 Section 10. For Section 404 of the CWA, the term is generally shortened to “waters of the U.S.,”
29 and includes any waterways with a surface water connection to those waters traditionally
30 considered “navigable” under Section 10 of the RHA, plus their adjacent wetlands. It would also
31 include isolated lakes and wetlands that straddle the border between two or more states. Isolated,
32 intrastate waters, or wetlands are generally not considered waters of the U.S., nor are the extreme
33 headwaters of streams (33 Code of Federal Regulations [CFR] Parts 320 – 330).

34 Projects permitted under Section 404 of the CWA must, under Section 401 of the CWA, first
35 obtain a certification from the state agency with authority over water quality issues within the
36 state that the proposed discharge will meet the state’s water use standards. This is called the
37 water quality certification or certificate. Projects permitted by the USACE under any of its
38 authorities also require a Coastal Consistency Determination (CCD) if the project is proposed in
39 the coastal zone of a state with an approved Coastal Zone Management (CZM) Program. CZM
40 requirements for Federal agencies are addressed in Section 3.5, Water Resources, in the PEIS.

1 Because it is a Federal agency, the CBP would be required to obtain a CCD for projects within
2 approved coastal zones even for those projects for which a USACE permit is not required.

3 Canada and many of its provinces also have wetland regulatory programs and requirements.
4 However, with the exception of limited boat or ground vehicle patrol operations conducted in
5 association with the Canadian Border Services Agency and the Canadian Royal Mounted Police,
6 the activities being conducted or proposed by CBP have little or no potential to impact Canadian
7 wetlands and waterways. Any facility construction would occur on the United States side of
8 border, not on the Canadian side of the border.

9 Another potential wetland or waterway permit could result if the proposed activity were to
10 impact a formally designated “Wild and Scenic River.” Any proposed, federally assisted project
11 within the bed or banks of a Wild and Scenic River requires a formal consultation with the
12 Federal Wild and Scenic River managing agency, unless it is very minor maintenance of an
13 existing project. This review, required under Section 7 of the Wild and Scenic Rivers Act
14 (WSRA), determines whether the project is likely to have a “direct and adverse” effect on the
15 river’s free-flowing character, water quality, or “outstandingly remarkable values.” If the WSR
16 managing agency finds that the project is likely to have a direct and adverse effect, the agency
17 may suggest changes to the project’s design in order to avoid the adverse impacts to these values
18 and a revised proposal can be resubmitted for review. If the project cannot be revised to avoid
19 direct and adverse effects on the WSR, Federal participation in the project cannot continue
20 (National Wild and Scenic Rivers, 2010).

21 **Maine**

22 Maine’s Natural Resources Protection Act (NRPA) requires a permit from the Maine Department
23 of Environmental Protection when a project impacts 4,300 square feet or more of freshwater
24 wetland; when a project is within 75 feet of a river, stream, or brook; or when a project is within
25 250 feet of a coastal wetland, great pond, or state-defined wetlands of special significance.
26 There are three levels of permitting under this statute:

- 27 • Tier 1 applies to disturbances to up to 15,000 square feet of impact, so long as the
28 wetland to be impacted is not a state-defined wetland of special significance.
- 29 • Tier 2 applies to disturbances between 15,000 and 43,560 square feet (one acre) of
30 wetland so long as the wetland to be impacted is not a state-defined wetland of special
31 significance.
- 32 • Tier 3 or individual permit – the project would impact more than one acre of wetland or
33 waterway.

34 An additional permit, the “Site Location of Development Act” permit, is required for projects
35 with a footprint larger than 20 acres. In unorganized townships, project proponents apply for a
36 “Land Use Regulating Commission Development Permit” with thresholds similar to the NRPA
37 permit. Compliance with the Coastal Zone Management Act and a Section 401 Water Quality
38 Certification is required to obtain an NRPA permit.

39 The New England District of USACE has issued the Maine State Program General Permit
40 (SPGP). Piggybacking on the state’s own program, the USACE general permit categorizes

1 projects with less than 15,000 square feet of wetland impact as Category 1, non-reporting (i.e.,
2 the project proponent can proceed without notifying the USACE, provided he or she obtains any
3 necessary authorizations from the state). Category 2 projects are those projects that would cause
4 between 15,000 square feet and 3 acres of impact (including secondary impacts) to inland
5 waterways or wetlands; these require an application to the USACE, which can be filed
6 concurrently with the Maine state permit application. Projects with over three acres of wetland
7 impacts are required to file an application for an individual permit directly with the USACE.

8 **New Hampshire**

9 New Hampshire's Department of Environmental Services Wetlands Bureau requires a Dredge
10 and Fill permit for projects impacting wetlands, and a Shoreland permit for construction,
11 earthwork, and clearing of vegetation within 250 feet of public waters (lakes and ponds over ten
12 acres, rivers, and fourth-order or larger streams). There are three categories of projects: projects
13 in nontidal wetlands impacting less than 3,000 square feet of wetland or 50 feet of shoreline are
14 considered minimum-impact projects; as long as no municipally defined Prime Wetlands are
15 involved, these impacts may be permitted under an expedited review process. Projects impacting
16 between 3,000 and 20,000 square feet of wetland are defined as minor-impact projects; these
17 projects are also subject to a less intensive permitting process. Projects impacting more than
18 20,000 square feet of wetlands are considered major-impact projects; major projects require a
19 standard Dredge and Fill permit. Any project with a footprint larger than 100,000 square feet (or
20 50,000 square feet if shoreland is included) also requires an Alteration of Terrain permit.

21 The USACE New England District New Hampshire SPGP parallels the state's thresholds for
22 minor and minimum-impact projects, with a joint permitting process. The USACE defines
23 major-impact projects as those between 20,000 square feet and 3 acres of impact. Individual
24 permits are required for projects with more than three acres of impact.

25 **Vermont**

26 Vermont Wetland Rules and the associated permitting process were updated in 2010 to provide
27 new guidance and revised permit application forms. The Vermont Wetland Rules identify and
28 protect 10 functions and values of "significant" wetlands and establish a 3-tier wetland
29 classification system to identify such wetlands. The applicant submits delineation and functional
30 assessment information to the Agency of Natural Resources (ANR), which then determines the
31 wetland class. The first two classes of wetlands (Class I and Class II) are considered significant
32 and protected under the wetland rules, along with their buffer zones (generally 100-foot for Class
33 I and 50-foot for Class II). Any projects impacting these wetlands would require a General or
34 Individual permit, depending on the level of impact. The revised permit rules are still under
35 development, so thresholds have not been finalized. Class III wetlands are not protected by the
36 Vermont Wetland Rules and a Vermont Wetland permit is not required for projects in Class III
37 wetlands.

38 The USACE New England District Vermont SPGP regulates all federally jurisdictional wetlands,
39 regardless of Vermont classification. Category 1 projects are for wetland impacts on less than
40 3,000 square feet and are generally non-reporting provided they meet the other general terms and
41 conditions of the SPGP. Certain activities are not eligible for coverage under Category 1 and are
42 therefore subject to the Category 2 requirements. Category 2 projects require reporting; these
43 projects have between 3,000 square feet and 1 acre of wetland impact or do not meet the

1 Category 1 requirements for some other reason. Category 2 projects must meet the general
2 requirements of the SPGP, require written authorization from the Corps, and are reviewed by the
3 interagency review team which includes the EPA and the U.S. Fish and Wildlife Service
4 (USFWS). Projects with over one acre of wetland impacts are required to file an application for
5 an Individual permit with the USACE.

6 The Vermont ANR has granted water quality certification for USACE SPGP Category 1
7 activities and has conditionally granted the Section 401 water quality certification for Category 2
8 activities, as long as the activity is reasonably likely to have minimal or no impact on water
9 quality. The Vermont ANR retains the right to require an individual water quality certification
10 for any Category 2 activity over which they have concern.

11 **New York**

12 Under the New York Freshwater Wetlands Act, either the New York Department of
13 Environmental Conservation (NYDEC) or the Adirondack Park Agency regulates freshwater
14 wetlands. The Adirondack Park Agency regulates wetlands within the boundaries of Adirondack
15 Park, which includes a significant portion of the northeastern part of the state.

16 The NYDEC regulates wetlands 12.4 acres or larger, although smaller wetlands are protected if
17 they have unusual local importance in providing valuable functions such as water quality
18 maintenance or floodwater storage. The Adirondack Park Agency does not have a size
19 threshold, and regulates certain activities within 100 feet of a wetland if they have the potential
20 to adversely affect the wetland (NYDEC, 2010; Adirondack Park Agency Web site, 2010).

21 The USACE New York and Buffalo Districts share implementation of the USACE wetland
22 regulatory Program in New York State. There is no SPGP or other general permit keyed to the
23 state wetlands permitting programs, although the state agencies and USACE do share a joint
24 permit application form (USDOD, 2010a; USDOD, 2010b).

25 **Pennsylvania**

26 Wetlands in Pennsylvania are regulated by both the USACE and the Pennsylvania Department of
27 Environmental Protection (DEP). (Federal wetland permits in the project area would be
28 processed by the Pittsburgh District of the USACE.) Pennsylvania has a number of laws
29 regulating wetlands. The Pennsylvania Dam Safety and Encroachments Act gives the
30 Pennsylvania DEP the authority over wetlands of the state and authority over section 401 Water
31 Quality Certifications. For exceptional wetlands, permits will only be granted when the project
32 will not have an adverse impact, is water-dependent, there is no practicable alternative, will not
33 cause or contribute to a violation of an applicable state water quality standard, will not contribute
34 to ground and surface water pollution, will have no impairment of wetland's exceptional value,
35 and the applicants will replace the affected wetlands. Permits will be issued for other wetlands
36 based on the areal extent of the wetland impacts, the wetland's values and functions, the unique
37 values to the area or region, and comments from other state and Federal agencies.

38 The Pittsburgh District of USACE has issued the Pennsylvania SPGP, which authorizes projects
39 that result in less than 1 acre of impact to wetlands and 250 linear feet or less of stream. There
40 are three categories based on the type of project and the level of review received through the
41 Pennsylvania DEP. Category 1 projects can generally proceed without review by the USACE

1 provided the permittee receives state authorization for the project. Category II projects require
2 notification in the Pennsylvania Bulletin as required by the Pennsylvania Dam Safety and
3 Encroachment Act. The publication of the notice will provide the USACE and the state and
4 Federal resource agencies (USEPA, USFWS, and NOAA-Fisheries) the opportunity to review
5 these projects. The third category of projects includes those activities the USACE wants to
6 review and coordinate with the natural resources agencies, and determine on a case-by-case basis
7 whether or not to authorize the impact under the SPGP or as an individual permit
8 (Commonwealth of Pennsylvania, 2010; PDEP, 2003).

9 **Ohio**

10 Wetlands in Ohio are regulated by several USACE districts (Buffalo, Huntington, and Pittsburgh
11 Districts) and the Ohio Environmental Protection Agency (OEPA). Ohio regulates and requires
12 permits for those wetland and water areas beyond the reach of Federal jurisdiction, namely
13 isolated wetlands. It has also strengthened its role in the USACE permit process by
14 strengthening its Section 401 certification process.

15 The Ohio Revised Code 6111.02 through 6111.028 gives the OEPA authority to regulate
16 discharges of fill into isolated wetlands. Isolated wetlands are not connected to other surface
17 waters and the USACE has determined that most are not “waters of the US.” For any projects
18 involving the placement of fill into an isolated wetland, a permit from OEPA is needed. Under
19 Ohio’s antidegradation rule, isolated wetlands are categorized as follows (USEPA, 2009; OEPA
20 2010):

- 21 • Category 1 are wetlands with minimal wetland function and/or integrity..
- 22 • Category 2 wetlands have moderate wetland function and/or integrity.
- 23 • Category 3 wetlands have superior wetland function and/or integrity.

24 Wetland categories are determined using the draft Ohio Rapid Assessment Method.

25 The USACE has not issued an SPGP in Ohio but has issued several regional activity-specific
26 general permits for activities with minor impacts.

27 **Indiana**

28 Wetlands in Indiana are regulated by the USACE (Chicago, Detroit, and Louisville Districts), the
29 Indiana Department of Environmental Management (IDEM), and the Indiana Department of
30 Natural Resources (IDNR). Title 13 of the Indiana Code gives IDEM the authority to issue
31 Section 401 Water Quality Certificates and gives the Indiana Water Pollution Control Board
32 authority to adopt rules to protect water quality. The Indiana Isolated Wetlands Law gives the
33 IDEM authority to regulate isolated wetlands not regulated by the USACE. It requires
34 individuals to obtain a permit for any project that will result in a discharge to an isolated wetland.

35 The Indiana Lake Preservation Act gives the IDNR authority to regulate activities over, along, or
36 lakeward of the shoreline of a public freshwater lake’s legal or average normal shoreline.
37 Certain activities within 10 feet landward of a lake’s legal or average normal shoreline are also
38 under IDNR regulation.

1 The Indiana Navigable Waterways Act gives the IDNR jurisdiction over any waterway that is
2 considered a “navigable water” under Section 10 of the RHA. These waterways have formally
3 been declared by the Indiana General Assembly as a “public highway.” Other authorities give
4 the IDNR control over specific activities or aspects (e.g., construction of artificial channels) in
5 Indiana’s navigable waterways.

6 The Chicago, Detroit, and Louisville Districts of the USACE have jointly issued a Regional
7 General Permit for just about any activity limited to one acre or less impact to wetlands (or other
8 “special aquatic sites”) and less than 1,500 linear feet of stream channel (not to exceed 1 acre),
9 provided the project proponent obtains a Section 401 Water Quality Certification from IDEM
10 (IDEM, 2008; USDOD, 2009a).

11 **Illinois**

12 Wetlands in Illinois are regulated by the USACE, Illinois Environmental Protection Agency
13 (IEPA), Illinois Department of Natural Resources (IDNR), and local governments. The Illinois
14 Rivers, Lakes, and Streams Act gives the IDNR the authority to grant permits for any project
15 dealing with dams, construction within a public body of water, and construction within
16 floodways. In addition, Chapter 92, Part 704 of the Illinois Administrative Code (Regulation of
17 Public Rules) establishes that any project in or along Lake Michigan requires a joint application
18 to the IDNR and the IEPA. The IEPA is also responsible for granting the CWA Section 401
19 water quality certification. Finally, many local governments have passed ordinances that feature
20 wetland and wetland setback protection standards. These standards do not replace the IDNR or
21 the USACE authority; however, they may be more restrictive (FindLaw, 2010; IDNR et al.,
22 2010).

23 **Michigan**

24 Michigan wetlands are regulated by the USACE, Department of Environmental Quality (DEQ),
25 the USEPA, the Land and Water Management Division (LWMD), and local governments.
26 However, under Section 404(g) of the CWA the USEPA has transferred the authority to
27 administer the Section 404 CWA program to the State of Michigan for those waters and wetlands
28 the state regulates. The USACE retains Federal jurisdiction over traditionally navigable waters
29 including the Great Lakes, connecting channels, other waters connected to the Great Lakes
30 where navigational conditions are maintained, and to wetlands directly adjacent to these waters.
31 The DEQ and USACE have a joint state and Federal permit process in waterways where both
32 state and Federal jurisdiction apply, to streamline the application process for applicants. The
33 LWMD acts as a clearinghouse to determine if joint review is needed on a permit.

34 Under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection
35 Act, the state regulates wetlands:

- 36 • Connected to one of the Great Lakes or Lake St. Clair;
- 37 • Located within 1,000 feet of one of the Great Lakes or Lake St. Clair;
- 38 • Connected to an inland lake, pond, river, or stream;
- 39 • Located within 500 feet of an inland lake, pond, river or stream;

- 1 • Not connected to one of the Great Lakes or Lake St. Clair, or an inland lake, pond,
2 stream, or river, but more than five acres in size; and,
- 3 • Not connected to one of the Great Lakes or Lake St. Clair, or an inland lake, pond,
4 stream, or river, and less than five acres in size, but the DEQ has determined that these
5 wetlands are essential to the preservation of the state's natural resources and has notified
6 the property owner.

7 In addition, local jurisdictions regulate wetlands by passing wetland ordinances. Wetlands
8 regulated by local governments are less than five acres (MDNRE, 2010).

9 **Wisconsin**

10 Wetlands in Wisconsin are regulated by the USACE, the Wisconsin Department of Natural
11 Resources (WDNR), and local jurisdictions through the state-mandated Shoreland Zoning
12 ordinances. The WDNR has regulatory authority over all wetlands, including isolated wetlands,
13 in Wisconsin. As with the State of Michigan, the EPA has transferred the authority to administer
14 the Section 404 CWA program to the State of Wisconsin under Section 404(g) for those waters
15 and wetlands the state regulates. The USACE retains Federal jurisdiction over traditionally
16 navigable waters under Section 10 of the RHA.

17 Under the Navigable Waters Protection, Chapters 30 and 31 of the Wisconsin Statutes, the
18 WDNR regulates most alterations to the state's navigable waters and wetlands. Navigable
19 waters are defined as "any waterway capable of navigation by a recreational craft on a regularly
20 recurring basis, including spring freshets." Wetlands are defined as "an area where water is at,
21 near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic
22 vegetation and which has soils indicative of wet conditions." Chapters NR 299 and 103 of the
23 Wisconsin Administrative Code gives authority to the WDNR to carry out the CWA provisions,
24 while the Isolated Wetland Protection Provisions of Wisconsin Act 6 give the WDNR the
25 authority to regulate isolated wetlands. The USACE nationwide permits have been suspended in
26 Wisconsin, and the state has issued its own SPGP for activities with minor impacts. Applicants
27 need a Water Quality Certification for both federally and nonfederally regulated projects
28 (WDNR, 2010; Cain, 2008).

29 The Shoreland Wetland Zoning Program (Sections 281.21, 59.692, 61.351, 62.231 of the
30 Wisconsin Statutes) requires that counties, villages, and cities have ordinances that prohibit fill
31 in wetlands. This program is administered by local governments, with the WDNR having
32 oversight authority. Protection areas include 1,000 feet from lakes and 300 feet from rivers or
33 streams. In addition, many local jurisdictions have passed ordinances that feature wetland and
34 wetland setback protection standards. These standards do not replace WDNR or USACE
35 authority, but they may actually be more restrictive (Cain, 2008).

1 **Minnesota**

2 Wetlands in Minnesota are regulated by the USACE, the Minnesota Department of Natural
3 Resources, the Minnesota Pollution Control Agency, and local governments. Laws regulating
4 wetlands include the Public Water Work Permit Program, Minnesota’s Wetland Conservation
5 Act, and Section 401 of the Clean Water Act. The first of these laws gives the Minnesota DNR
6 authority to regulate projects that occur within the ordinary high water levels (OHWL) of public
7 waters and public waters wetlands. Any project that includes filling, excavation, shore
8 protection, bridges and culverts, structures, docks, marinas, water-level controls, dredging, or
9 dams are subjected to regulation.

10 The Minnesota Wetland Conservation Act gives local governments the authority to administer
11 regulations on all wetland draining and filling activities not protected by the Minnesota DNR.
12 Exemptions are available for activities impacting wetlands of 400 square feet or less. Other
13 exemptions ranging from 2,000 to 10,000 square feet of impacts are allowed depending upon
14 wetland type and location.

15 The Minnesota Pollution Control Agency has the authority to determine whether projects comply
16 with the state’s water quality standards and to issue Water Quality Certifications. The agency
17 also reviews and comments on USACE permit applications.

18 Two or more of these programs often cover the same wetland. In some cases, various portions of
19 the same wetland are regulated by different programs. Additional local laws include watershed
20 district rules, shoreland and floodplain ordinances, and municipal wetland ordinances.

21 The Minnesota USACE has established general permits and a letter of permission process that
22 replaces the USACE’s nationwide permits (MBWSR, 2010; USDOD, 2010c; MDNR, 2010).

23 **North Dakota**

24 Wetlands in North Dakota are regulated by the USACE, the North Dakota Department of Health
25 (NDDH), the North Dakota State Water Commission, the Local County Water Resource Boards,
26 and the local Soil and Water Conservation Districts (USDA-NRCS). North Dakota includes
27 wetlands in the State’s definition of waters.

28 The North Dakota Century Code Sections #61-01-22, 61-02-14, and 61-02-20 establish that a
29 permit is required from the local county water resource board and the North Dakota State Water
30 Commission to drain any water of the state, while Century Code #61-32-01 establishes that
31 proponents of any project occurring in a wetland compromising 80 acres or more shall first
32 secure a permit. The NDDH is responsible for granting Section 401 Water Quality Certifications
33 and uses the North Dakota Water Quality Standards to determine if a project meets the standards
34 of the state.

35 The USACE has not developed any SPGPs for North Dakota, but has adopted regional
36 conditions for the nationwide permits. The USACE nationwide permits cover a variety of
37 activities, with maximum impacts of up to 0.5 acres. Projects with impacts greater than 0.5 acres
38 require individual permits (Crooke, 2010).

1 **Montana**

2 In addition to the USACE Sections 404 and 10 permits, the State of Montana has regulations for
3 the protection of streams and waters, and permits may be required for work in and near wetlands
4 and other waters. Under the Montana Water Quality Act, the Montana Department of
5 Environmental Quality is charged with regulating the waterways of the state and issuing or
6 denying permits. Wetlands are included in the definition of the state’s waterways. A permit is
7 required to discharge sewage, industrial waste, or other waste into state waters. Also, under the
8 Natural Streambed and Land Preservation Act (i.e., the “310 Law”), any individual or
9 corporation proposing construction in a perennial stream is required to apply for and obtain a 310
10 permit. Permitting is administered by local Montana Conservation Districts (MDNRC, 2010).

11 Under the Montana Stream Protection Act, any Federal, state, or local agency conducting a
12 project that may impact the bed or banks of a stream must acquire a permit (Stream Protection
13 Act [SPA] 124 Permit) from Montana’s Department of Fish and Wildlife (MT FWP, 2010).
14 Under the Montana Lakeshore Protection Act, Montana has authorized counties to develop
15 permit requirements for any development along the shorelines of lakes, rivers, and streams.
16 Although most counties in Montana have not developed these requirements, Flathead County,
17 which abuts the Northern Border, has enacted a Lakeshore Protection Act.

18 The USACE has not developed any SPGPs for Montana, but has adopted regional conditions for
19 the nationwide permits. Montana has also developed a joint permit application for any project
20 requiring permitting from multiple jurisdictions (MDEQ, 2010).

21 **Idaho**

22 In addition to meeting the USACE Federal wetland permitting requirements, Idaho Stream
23 Channel Protection Act gives the Idaho Department of Water Resources permitting authority
24 over any project that will obstruct, diminish, destroy, alter, modify, relocate, or change the
25 natural shape or direction of a stream channel flow. Projects within the ordinary high water
26 marks of a continuously flowing stream, including recreation, dredging, or mining, require a
27 permit.

28 The USACE has issued regional general permits for structures such as piers and docks in Lake
29 Pend Oreille and some of the other waterways (USDOD, 2010d; USDOD, 2009b).

30 **Washington**

31 In addition to the USACE Sections 404 and 10 permitting requirements, the State of Washington
32 has several laws applicable to waters and wetlands. Waters of the State of Washington are
33 defined as those fresh and salt waters below the ordinary high water mark within the boundaries
34 of the state. Under The Hydraulic Code, Washington’s Department of Fish and Wildlife is
35 authorized to protect fish and fish habitats from impacts associated with “construction of any
36 form of hydraulic project or performance of other work that will use, divert, obstruct, or change
37 the natural flow or bed of any of the salt or fresh waters of the state.” Projects are conditioned or
38 denied for the protection of fish life.

39 The Shoreline Management Act gives authority to local governments to develop a Shoreline
40 Master Program (SMP). Activities that require permits are defined within SMP for each local
41 jurisdiction.

1 Projects exceeding \$5,718 fair market value along coastal shorelines, shorelines of streams or
2 lakes, or wetlands are required to acquire a Shoreline Substantial Development Permit from the
3 Washington State Department of Ecology. The cost of the permit is determined by the local
4 issuing jurisdiction. The Washington State Department of Ecology does not have authority to
5 approve or deny permit requests. However, the Department of Ecology can require compliance
6 with the Washington State Environmental Policy Act (i.e., the project proponent may have to
7 prepare an environmental impact review and possibly an environmental impact statement).

8 Under the Growth Management Act, local governments have authority to regulate wetlands as
9 critical areas designated by the Department of Ecology.

10 Permitting for the various regulations is accomplished through a joint permitting process called
11 the Joint Aquatic Resources Permits Application (WSGORA, 2010; USDOD, 2007).

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