

WESTERN WASHINGTON AGRICULTURAL ASSOCIATION

**SKAGIT DELTA TIDEGATES AND FISH INITIATIVE
IMPLEMENTATION AGREEMENT**

ENVIRONMENTAL CHECKLIST

&

NON-PROJECT REVIEW SUPPLEMENT

JANUARY 2008

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A. BACKGROUND

1. Name of proposed project, if applicable:

This is a non-project review for the proposed adoption of the Skagit Delta Tidegates and Fish Initiative Implementation Agreement (Agreement). See Section D Supplement for additional information.

2. Name of applicant:

Western Washington Agricultural Association (WWAA)

3. Address and phone number of applicant and contact person:

*Contact: Mr. Mike Rundlett
Western Washington Agricultural Association
2017 Continental Place, Suite 6
Mount Vernon, WA 98273
(360) 424-7327*

4. Date checklist prepared:

December 2007

5. Agency requesting checklist:

None.

6. Proposed timing or schedule (including phasing, if applicable):

The Agreement will be in effect for 25 years from the date of signature by each Drainage District, and upon signature by the Western Washington Agricultural Association (WWAA), NOAA's National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USFWS), and Washington Department of Fish and Wildlife (WDFW). It is anticipated that the Agreement will be signed in the first quarter of 2008.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

The Agreement will be managed by an Oversight Committee. The Oversight Committee shall be composed of a representative(s) from each of the following entities: WDFW, NMFS, District Commissioners (two) (to be selected by the duly elected Commissioners of all Districts signatory to the Agreement), WWAA, and an invited tribal representative to be selected by the Skagit area Tribes. Any changes to the Agreement will be addressed through this Committee, and through approval by the signatory parties.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

None.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

No specific proposals are known at this time.

10. List any government approvals or permits that will be needed for your proposal, if known.

Specific approvals or permits for the adoption of the Agreement are not anticipated to be required. The development of the Agreement is being conducted jointly by NMFS, USCOE, WDFW, and WDOE. One of the objectives of the Agreement is to develop a streamlined process to address regulatory approvals and permits required to complete tidegate and floodgate maintenance actions.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The Agreement, when implemented, will provide a process for regulatory review and permitting of tidegate and floodgate maintenance on existing tide and flood gates owned or under the control of the diking/drainage/irrigation districts signatory to the Agreement.

The low-lying land in the Skagit delta requires tidegates and floodgates to provide adequate drainage to maintain agricultural activities. Tidegates are one-way check valves at the end of the drainage system that allow drainage water to flow to a marine natural watercourse (i.e. Skagit Bay, Swinomish Channel, Padilla Bay, and Samish Bay) during a low tide cycle and then close to prevent saltwater from entering a drainage system when the tide rises. Floodgate operation is similar to that of tidegates, with the exception that they allow water to flow outward from the drainage system into a freshwater natural watercourse (i.e. Skagit River, Samish River) while preventing water in a natural watercourse from back-flooding into a drainage system when the water elevation in the natural watercourse is higher than the floodgate.

The purpose of the Agreement is for the agricultural community to work cooperatively with the regulatory agencies to bring tidegate and floodgate maintenance into compliance with local, state, and federal regulatory processes. To achieve regulatory compliance for tidegate and floodgate maintenance a streamlined regulatory review process is needed and will be established through the adoption of the Agreement. To address the Endangered Species Act, Clean Water Act, and fish passage issues a programmatic approach to regulatory review and permitting is needed and will be established through the Agreement. Affected parties to the Agreement will include the drainage/irrigation/diking Districts (signatory to the Agreement) and regulatory agencies with jurisdiction of maintenance actions at tidegates and floodgates owned or operated by the Districts participating in this Agreement. Maintenance actions, defined in the Agreement as including both repair and replacement activities, include maintenance actions at 37 tidegate sites with 88 tidegates and 11 floodgate sites that contain 17 individual floodgates that are under the ownership or control of Drainage, Diking, and/or Irrigation Districts that are parties to this Agreement.

It is the intent of the Skagit Delta Tidegate and Fish Initiative that the impairment of fish passage associated with the presence and maintenance (segregated into three categories: minor repair, major repair and replacement) of tidegates and floodgates within the geographic scope of the Agreement will be sufficiently addressed, both individually and collectively, through the adoption of and adherence to a delta-wide landscape approach for estuarine habitat restoration. For purposes of implementing the Agreement a habitat restoration credit system is proposed (See Part 4-5 of the Agreement). As estuarine habitat projects on agricultural lands are developed and completed within the Skagit delta Restoration Area (See Figure 2-1A below) credit for tidegate and floodgate repair actions will be accrued. The credits will be utilized by the Districts covered under the Agreement to complete maintenance actions. The intent of the crediting system is to link estuarine habitat restoration with maintenance actions to address ESA and fish passage issues. For purposes of fulfilling the provisions of this Agreement,

WWAA and each participating District within the Skagit and Samish River deltas (which may include Drainage and Irrigation Districts 5, 14, 15, 16, 17, 18, 19, 22, 25; Consolidated Diking District 22; Diking, Drainage and Irrigation District 12, and Diking District 3) agree to support the conversion of up to 2,700 acres of delta agricultural lands as a means to achieve the estuarine habitat restoration and smolt production goals and objectives of the Federally approved Skagit Chinook Recovery Plan, and consistency with Chapter 85 Revised Code of Washington. For the Tidegates and Fish Initiative, the attainment of smolt production goals identified within the Skagit Chinook Recovery Plan 2005 or the conversion and restoration of a maximum of 2,700 acres of agricultural land within the Skagit delta area, whichever is achieved first, will be the determining factors in fulfilling the obligations of each Party, subject to the provisions contained within the Agreement.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The Coverage Area for tidegate and floodgate repair and maintenance actions as defined under the Agreement is comprised of approximately 53,322 acres of farmland in the Skagit and Samish River deltas located in the western portion of Skagit County, Washington and a limited area in northwest Snohomish County, Washington; including the tidal delta areas of Skagit Bay, Padilla Bay, Samish Bay and the Swinomish Channel (Figure 1). These project areas are inclusive of the historic estuarine wetlands, downstream migration corridors, and connectivity corridors such as the Swinomish Channel. This area is inclusive of the jurisdictional boundaries and jurisdictional responsibilities of Drainage and Irrigation Districts 5, 14, 15, 16, 17, 18, 19, 22, 25; Consolidated Diking District 22; and Diking, Drainage and Irrigation District 12, all of which control lands historically subject to tidal influence within the Skagit and Samish River deltas, as well as Diking District 3, which has drainage interests within tidally influenced zones that lay within the same geographic area. The Coverage Area is bounded by the towns of Sedro-Woolley, Burlington, and Mount Vernon on the east and Samish and Padilla Bays and the Swinomish Chanel on the west.

An estuarine restoration area (based on the work of the Skagit Chinook Recovery Plan) for the Agreement is identified in Figure 2-1A.

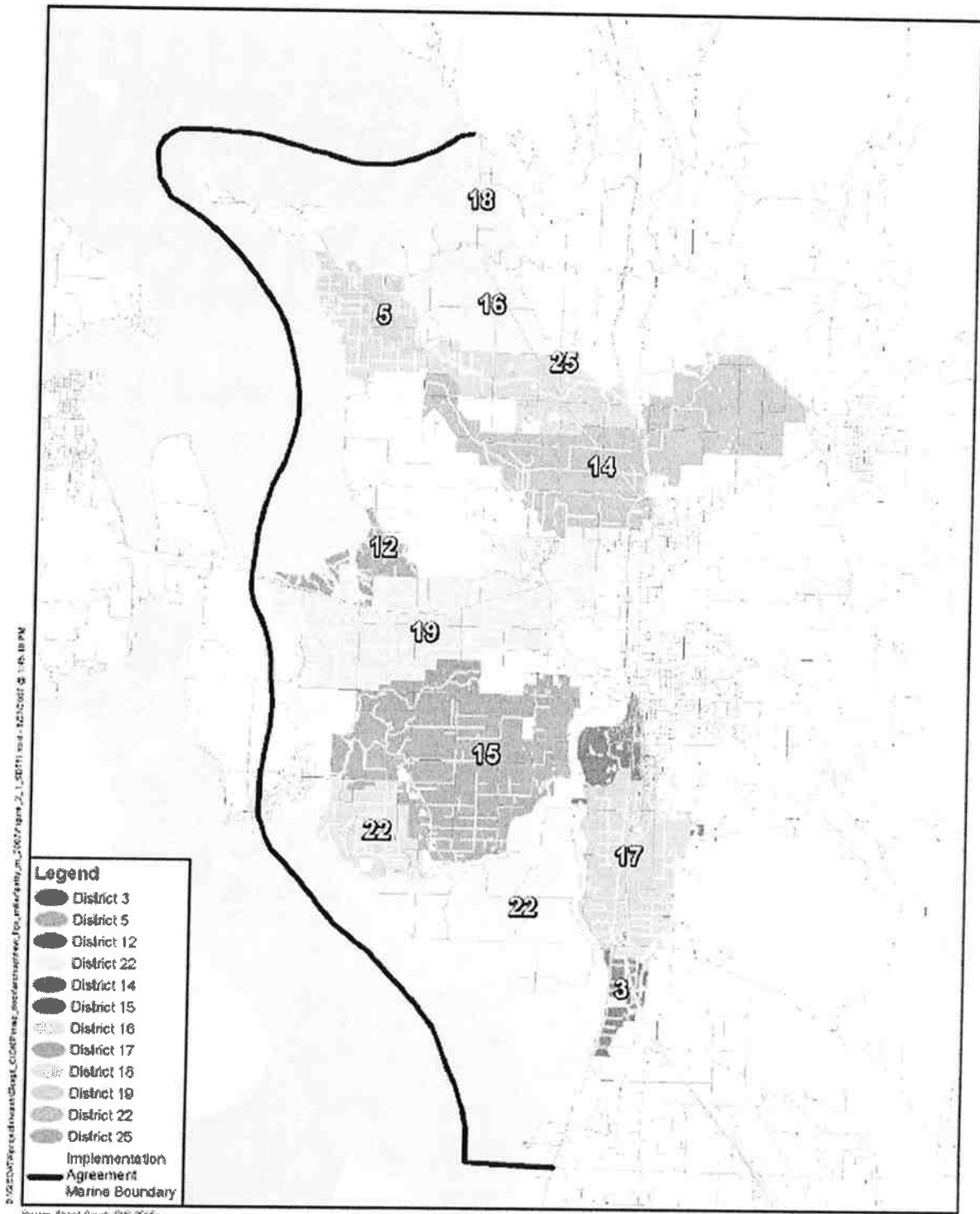


Figure 1
Implementation Agreement Coverage Area

Skagit Delta Tidegates and Fish Initiative -
Implementation Agreement July 2007

July 2007
HDR



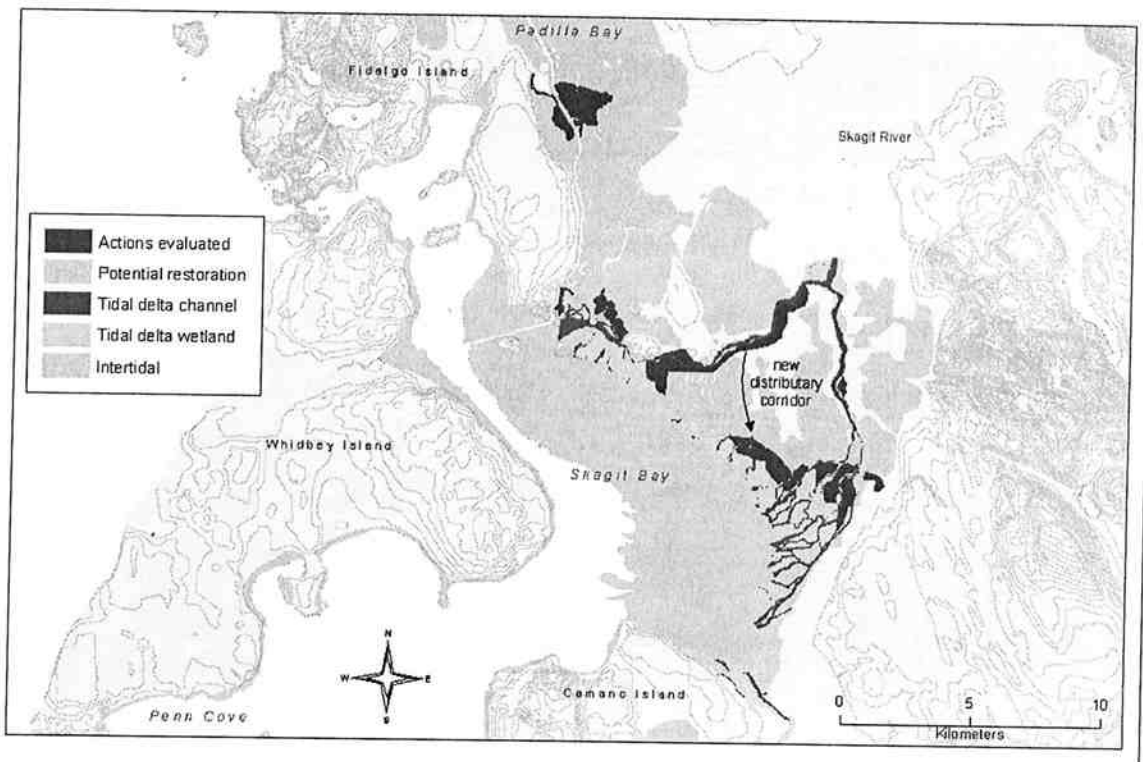
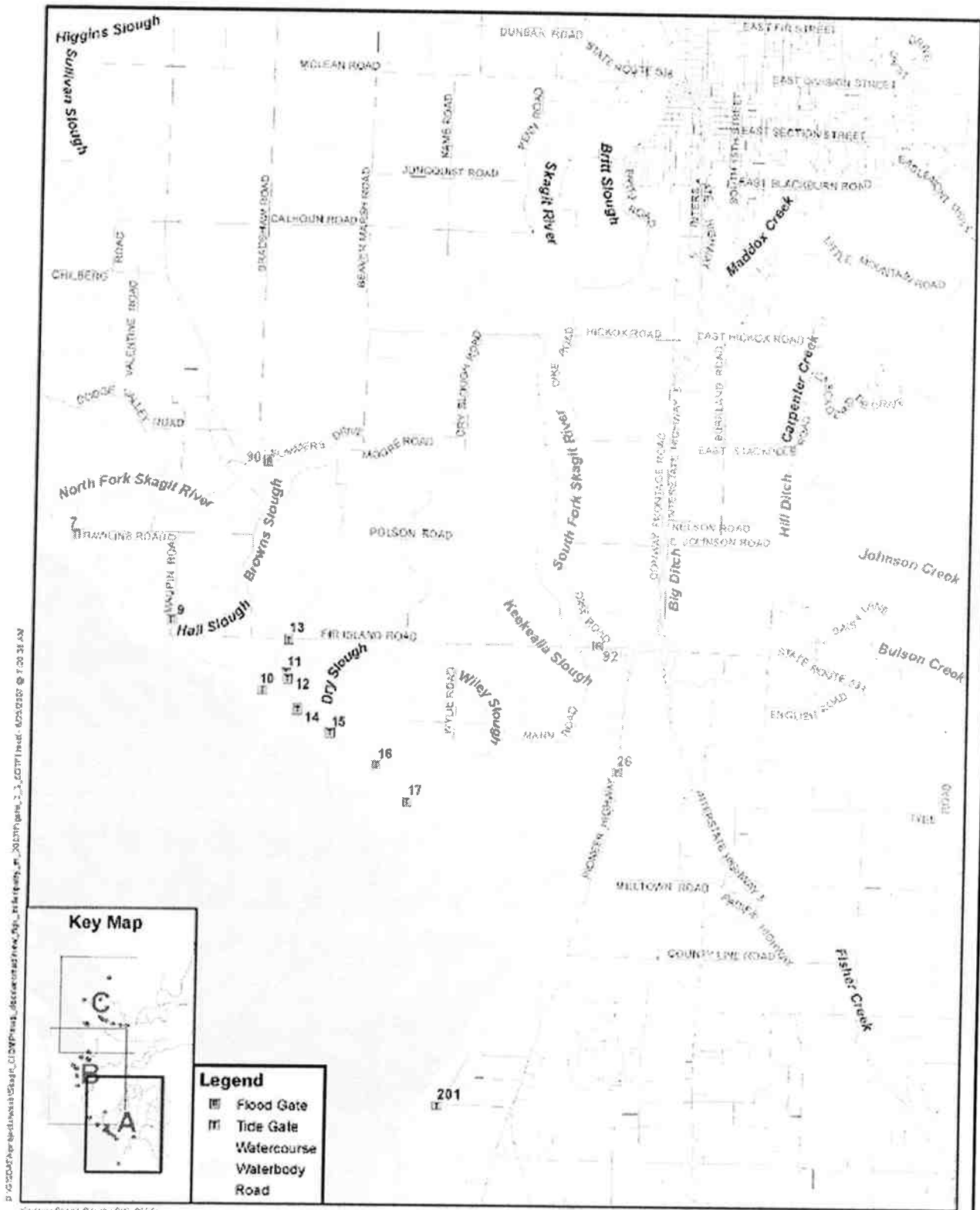


Figure 2-1A. Implementation Agreement Restoration Area as depicted in Beamer et al. 2005; Appendix D Skagit Chinook Recovery Plan: Figure 7.1. Potential tidal delta restoration. Location of existing delta habitats that are easily accessible to delta rearing Chinook salmon (yellow and blue polygons) and the location of delta restoration actions evaluated in this document (pink polygons). Polygons shown as "potential restoration" are areas where it is geomorphically possible to restore to tidal delta habitat (based on the historic limit of tidal delta habitat from Collins 2000).

Many of the tidegates are sited in a facility complex that is composed of multiple gates. The Agreement addresses 37 tidegate complexes composed of 88 individual tidegates, and 11 floodgate complexes composed of 17 individual floodgates. Locations of these complexes are depicted on Figures 2A, B, and C (Figures from the "Working Draft" of the Agreement prepared July 2007).

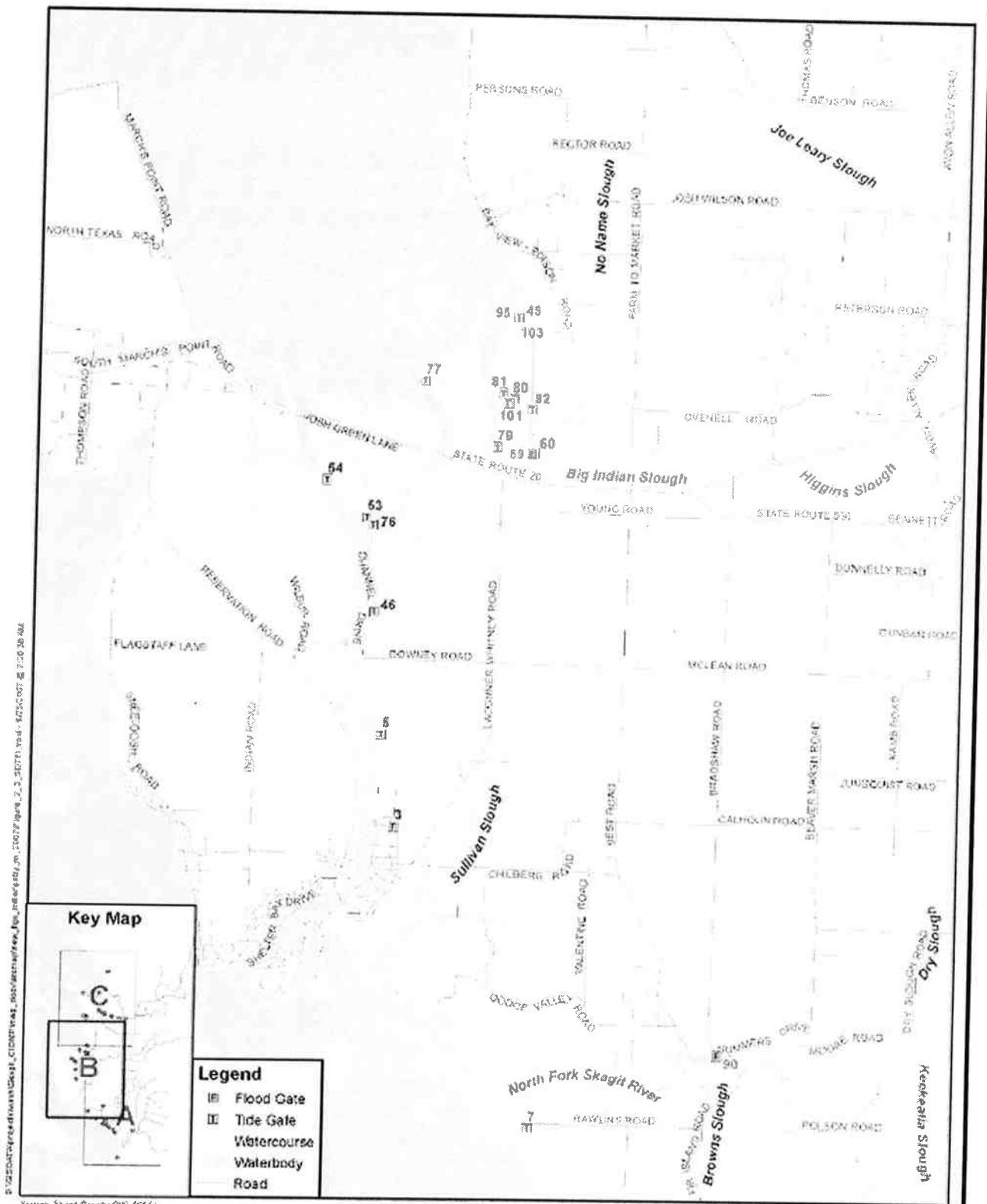


**Figure 2A
Tidegates and Floodgates within the
Coverage Area, By Site ID. Number**

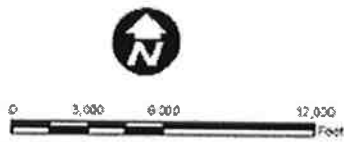
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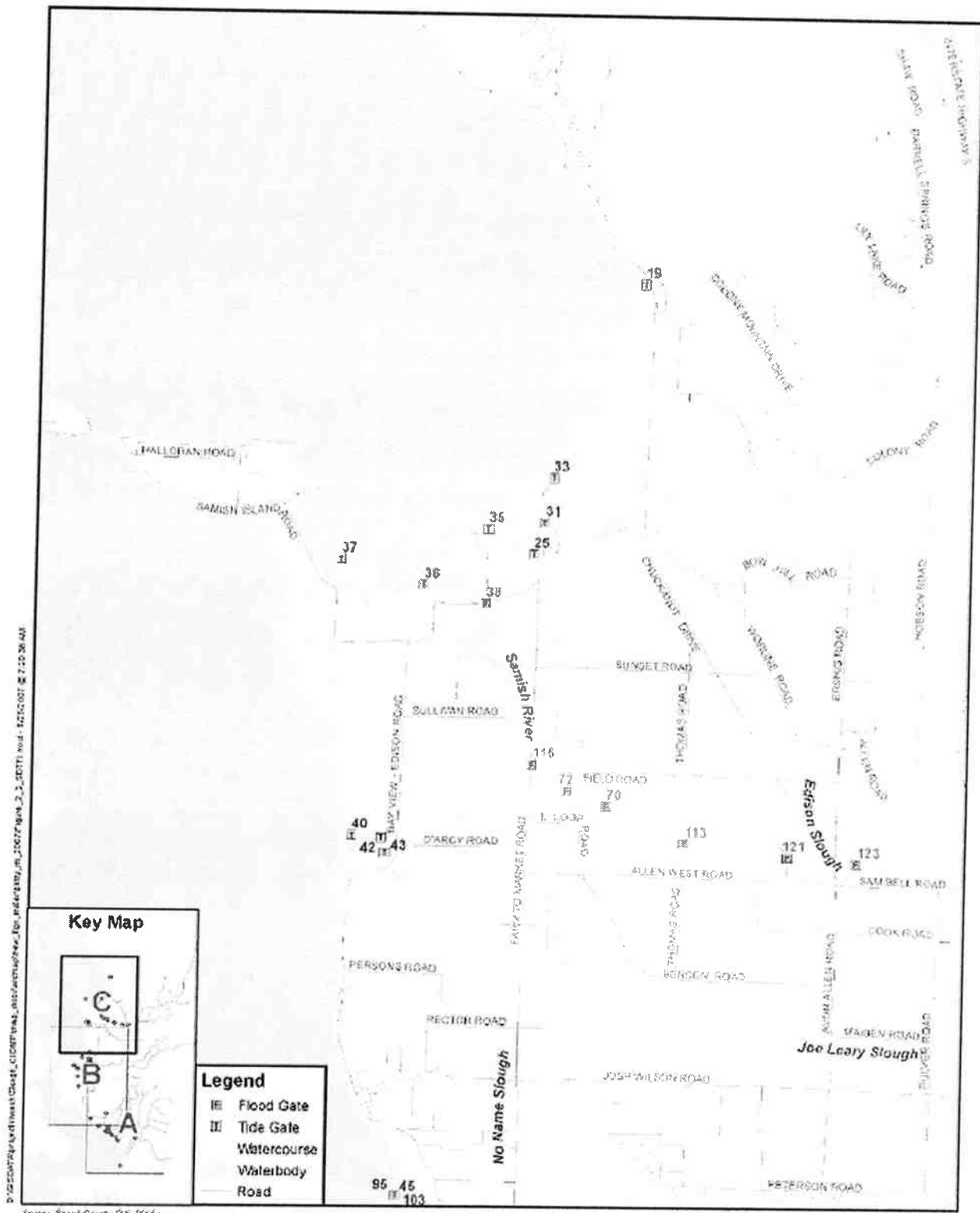
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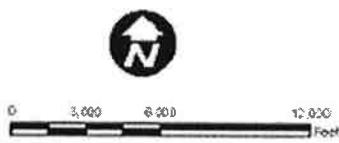


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B. ENVIRONMENTAL ELEMENTS

1. EARTH

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other
- b. What is the steepest slope on the site (approximate percent slope)?
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)?
If you know the classification of agricultural soils, specify them and note any prime farmland.
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

Sections 1(a) through 1(h) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

2. AIR

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

Sections 2(a) through 2(c) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

3. WATER

- a. Surface:
 - 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
 - 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.
- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.
- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.
- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground:

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.
- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.
- 2) Could waste materials enter ground or surface waters? If so, generally describe.

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

Sections 3(a) through 3(d) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

4. PLANTS

a. Check or circle types of vegetation found on the site:

- _____ deciduous tree: alder, maple, aspen, other
- _____ evergreen tree: fir, cedar, pine, other
- _____ shrubs
- _____ grass
- _____ pasture
- _____ crop or grain
- _____ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- _____ water plants: water lily, eelgrass, milfoil, other
- _____ other types of vegetation

- b. What kind and amount of vegetation will be removed or altered?
- c. List threatened or endangered species known to be on or near the site.
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Sections 4(a) through 4(d) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

5. ANIMALS

- a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:
 - birds: hawk, heron, eagle, songbirds, other:
 - mammals: deer, bear, elk, beaver, other:
 - fish: bass, salmon, trout, herring, shellfish, other:
- b. List any threatened or endangered species known to be on or near the site.
- c. Is the site part of a migration route? If so, explain.
- d. Proposed measures to preserve or enhance wildlife, if any:

Sections 5(a) through 5(d) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

6. ENERGY AND NATURAL RESOURCES

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

Sections 6(a) through 6(c) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

7. ENVIRONMENTAL HEALTH

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.
 - 1) Describe special emergency services that might be required.
 - 2) Proposed measures to reduce or control environmental health hazards, if any:

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.
- 3) Proposed measures to reduce or control noise impacts, if any:

Sections 7(a) through 7(b) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

8. LAND AND SHORELINE USE

- a. What is the current use of the site and adjacent properties?
- b. Has the site been used for agriculture? If so, describe.
- c. Describe any structures on the site.
- d. Will any structures be demolished? If so, what?
- e. What is the current zoning classification of the site?
- f. What is the current comprehensive plan designation of the site?
- g. If applicable, what is the current shoreline master program designation of the site?
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project displace?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

Sections 8(a) through 8(l) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

9. HOUSING

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
- c. Proposed measures to reduce or control housing impacts, if any:

Sections 9(a) through 9(c) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

10. AESTHETICS

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
- b. What views in the immediate vicinity would be altered or obstructed?
- c. Proposed measures to reduce or control aesthetic impacts, if any:

Sections 10(a) through 10(c) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

11. LIGHT AND GLARE

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
- c. What existing off-site sources of light or glare may affect your proposal?
- d. Proposed measures to reduce or control light and glare impacts, if any:

Sections 11(a) through 11(d) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

12. RECREATION

- a. What designated and informal recreational opportunities are in the immediate vicinity?
- b. Would the proposed project displace any existing recreational uses? If so, describe.
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

Sections 12(a) through 12(c) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

13. HISTORIC AND CULTURAL PRESERVATION

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.
- c. Proposed measures to reduce or control impacts, if any:

Sections 13(a) through 13(c) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

14. TRANSPORTATION

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.
- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?
- c. How many parking spaces would the completed project have? How many would the project eliminate?
- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).
- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.
- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.
- g. Proposed measures to reduce or control transportation impacts, if any:

Sections 14(a) through 14(g) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

15. PUBLIC SERVICES

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.
- b. Proposed measures to reduce or control direct impacts on public services, if any.

Sections 15(a) through 15(b) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

16. UTILITIES

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Sections 16(a) through 16(b) do not apply to the proposed adoption of the Agreement. Please refer to Section D, Supplemental Sheet for Non-Project Actions, which provides general programmatic-level environmental impact information.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: *M. Skully*

Date Submitted: *1/21/08*

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

The proposed action is the adoption of the Skagit Delta Tidegates and Fish Initiative Implementation Agreement (Agreement). The Agreement refers to maintenance actions at 37 tidegate sites with 88 tidegates and 11 floodgate sites that contain 17 individual floodgates that are under the ownership or control of Drainage, Diking, and/or Irrigation Districts that are Parties to the Agreement. Environmental impacts would be associated with the maintenance activities of those specific projects. Those impacts will be evaluated during the environmental review at the project level.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposed action is the adoption of an agreement to facilitate regulatory review and address fish passage at tide and flood gates. The adoption of the Agreement will not forgo any existing environmental review procedures, but will establish a programmatic framework for obtaining environmental and regulatory review. Environmental impacts, as identified in Question 1. would not occur as a result of adopting the Agreement. Maintenance actions that would be authorized in conjunction with the Agreement will undergo SEPA review at the project level.

Air

Proposed measures to avoid or reduce such increases are:

Minimization measure for environmental impacts will be addressed under the project SEPA review.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Direct impacts to plants and animals would not occur as a result of the proposed action, adoption of the Agreement. Maintenance actions that would be authorized in conjunction with the Agreement will undergo SEPA review at the project level and will address impacts to plants, animals, fish and marine life.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

The adoption of the Agreement will provide a process to streamline the environmental permitting for maintaining tidegates and floodgates. For purposes of fulfilling the provisions of this Agreement, WWAA and each participating District within the Skagit and Samish River deltas (which may include Drainage and Irrigation Districts 5, 14, 15, 16, 17, 18, 19, 22, 25; Consolidated Diking District 22; Diking, Drainage and Irrigation District 12, and Diking District 3) agree to support the conversion of up to 2,700 acres of delta agricultural lands as a means to achieve the estuarine habitat restoration and smolt production goals and objectives of the Federally approved Skagit Chinook Recovery Plan, and consistency with Chapter 85 Revised Code of Washington.

3. How would the proposal be likely to deplete energy or natural resources?

Implementation of the Agreement will not have any adverse effect on energy or natural resources.

Proposed measures to protect or conserve energy and natural resources are:

No additional energy or natural resources would be required as a result from adoption of the Agreement.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Implementation of the Agreement would provide for up to 2,700 acres of agricultural land for the restoration of estuarine habitat within the Skagit delta area, ultimately producing a net gain in estuarine habitat area. These estuarine habitats are critical to the recovery of ESA-listed Puget Sound Chinook salmon stocks.

Maintenance of the tidegates and floodgates, as outlined in the Agreement, will help continue to protect important agricultural land, as a significant portion of the area is sub-tidal or subject to tidal influence, and the area receives a lot of rain and the water table is high.

Proposed measures to protect such resources or to avoid or reduce impacts are:

Protection measures (BMPs) for the repair and replacement of tidegates and floodgates have been identified in Section 4.3 of the Agreement. Protection measures will also be considered at the project level SEPA and permitting review for individual tidegate and floodgate maintenance actions.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The adoption of the Agreement will not change the existing agricultural infrastructure of tidegates and floodgates. It will facilitate and streamline the permitting process for maintaining tidegates and floodgates. No new tidegates or floodgates (existing tidegates or floodgates can be replaced on-site as a maintenance action) will be installed under this Agreement, and therefore existing agricultural use would not change. Lands identified and acquired for restoration projects would change the use of the land from agriculture to estuarine shoreland.

Restoration of agricultural lands to estuarine habitat would conflict with Skagit County goals to preserve agricultural land. However, preserving habitat is another goal of the County, and is supported by the Skagit Chinook Recovery Plan. The Agreement allows continued maintenance of drainage infrastructure, which is critical to preserving agricultural land and the agricultural production in the Skagit delta, while also restoring estuarine habitat.

Proposed measures to avoid or reduce shoreline and land use impacts are:

The proposed Agreement would limit agricultural land conversion to 2,700 acres. Any additional lands needed to address Skagit Chinook salmon recovery would be outside the scope of the proposed Agreement.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

There would be no increased demand on transportation or public services and utilities as a result of the Agreement.

Proposed measures to reduce or respond to such demand(s) are:

No new transportation or public services and utilities would be required by implementation of the Agreement.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

Development of this Agreement has facilitated the agricultural community to work cooperatively with the regulatory agencies to develop a process to bring tidegate and floodgate maintenance into compliance with local, state, and federal regulatory processes. It is the intent of the Skagit Delta Tidegates and Fish Initiative, supported by the adoption of the Agreement, that the impairment of fish passage associated with the presence and maintenance of tidegates and floodgates within the geographical scope of the Agreement will be sufficiently addressed, both individually and collectively, through the adoption of and adherence to a delta-wide landscape approach for estuarine habitat restoration. Letters of support for the adoption of the Agreement have been received from the U.S. Army Corps of Engineers, Washington State Department of Ecology, and the Governor's Office of Regulatory Assistance (See Agreement, Appendix F) . The adoption of the Agreement will provide procedural guidance for regulatory requirements.

SEPA Nonproject Review Form

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. The Nonproject Review Form (NPRF) is an optional tool to help the lead agency evaluate the environmental consequences of a nonproject proposal and to provide information to decision-makers and the public.

The NPRF cannot be used as a substitute for the environmental checklist, but may be attached as supplemental analysis. Applicable information in the NPRF can be referenced in the environmental checklist without having to repeat the information.

The NPRF is intended to be used concurrently with the development of a nonproject proposal. To achieve maximum effectiveness and efficiency the initial use of the form should begin at the time a nonproject proposal is being contemplated, i.e. upon identification that a plan, policy or rule is likely to be needed or is mandated.

The information and analysis in the NPRF should be updated as the proposal is developed. The number of revisions will depend on the complexity of the proposal. If the proposal is minor, one iteration of the NPRF may be sufficient. For more complex proposals, the NPRF should be revised as analysis is completed or key issues resolved.

If you are unfamiliar with the form, you should review all of the questions before providing any answers. This will help familiarize you with the questions and should avoid duplication of information. Please note that when a nonproject proposal is first contemplated, it is often premature to respond to some questions in the NPRF. Answers may also change as the proposal is developed and analysis is completed.

NONPROJECT REVIEW FORM

DATE: January 2008
 COMPLETED BY: Western Washington Agricultural Association

1.1.1 PART I - FRAMEWORK

1) Background

a) Name of proposal, if any, and brief description.

*The Skagit Delta Tidegates and Fish Initiative Implementation Agreement (Agreement) represents a formal commitment by the **Western Washington Agricultural Association (WWAA)**, representing the collective interests of the participating Drainage, Irrigation and Diking Districts within the Skagit and Samish River deltas; the **NOAA's National Marine Fisheries Service (NMFS)**; the **US Fish and Wildlife Service (USFWS)**; and the **Washington Department of Fish and Wildlife (WDFW)** to develop a delta-wide landscape approach to address tidegate and floodgate maintenance needs within the Skagit delta area, in conjunction with estuarine habitat restoration goals for recovery of Endangered Species Act (ESA) listed Chinook salmon in the Skagit River system.*

See SEPA Checklist – A. 11. for proposal description.

b) Agency and contact name, address, telephone, fax, email

*Western Washington Agricultural Association
 Mr. Mike Rundlett
 2017 Continental Place, Suite 6
 Mount Vernon, WA 98273
 (360) 424-7327*

c) Designated responsible official

Mr. Mike Rundlett or Mr. Mike Shelby

d) Describe the planning process schedule/timeline

The Skagit Delta Tidegates and Fish Initiative is a collaborative, multi-stakeholder process convened by the WWAA in March 2006 for the purpose of identifying pathways and protocols for local, state and federal permitting of drainage maintenance and tidegate and floodgate repair and replacement activities within the Skagit and Samish River deltas. The Agreement will be in effect for 25-years from the date of signature by each Drainage District, and upon signature by the WWAA, NMFS, USFWS, and WDFW. It is anticipated that the signature process will be initiated in the first quarter of 2008.

e) Location - Describe the jurisdiction or area where the proposal is applicable. (Attach map(s) if appropriate)

The Coverage Area under the Agreement is comprised of approximately 53,322 acres of farmland in the Skagit and Samish River deltas located in the western portion of Skagit County, Washington and a limited area in northwest Snohomish County, Washington, including the tidal delta areas of Skagit Bay, Padilla Bay, Samish Bay and the Swinomish Channel (Figure 2-1). This area is inclusive of the jurisdictional boundaries of Drainage and Irrigation Districts 5, 14, 15, 16, 17, 18, 19, 22, 25; Consolidated Diking District 22, Diking, Drainage and Irrigation District 12; and Diking District 3. The Coverage Area is bounded by the towns of Sedro-Woolley, Burlington, and Mount Vernon on the east and Samish and Padilla Bays and the Swinomish Channel on the west. See SEPA Checklist - Figure 1.

- f) What is the legal authority for the proposal?

A Memorandum of Understanding (MOU) has been developed between WWAA, NMFS and WDFW to support the development of the Agreement (See Agreement Appendix E).

This initiative is not intended or designed in any way to deny, ignore, or abridge any legal right, privilege, or opportunity extended to any Tribe either by Treaty or through federal, state or local laws, rules and regulations. Tribal interests, needs and treaty rights pertinent to federal and/or state permitting of tidegate and floodgate maintenance and the recovery of ESA-listed Chinook salmon addressed through provisions of this Agreement will be exercised through government-to-government protocols with involved federal agencies, as well as through any other formal and informal channels available to the Tribes, as they deem appropriate, including opportunities for future dialogue involving this Agreement through means such as the Skagit Tribal and Agricultural Accord.

- g) Identify any other future nonproject actions believed necessary to achieve the objectives of this action.

None are known.

2) Need and Objectives

- a) Describe the need for the action. (Whenever possible this should identify the broad or fundamental problem or opportunity that is to be addressed, rather than a legislative or other directive.)

The farmers of Skagit County need to be able to repair and replace tidegates and floodgates to maintain the drainage infrastructure of their cropland. Environmental permits are required for work on tidegates and floodgates discharging to natural watercourses. The Tidegate and Fish Initiative was developed to streamline the permitting and regulatory review process through the development of programmatic review to the extent possible. The Agreement gives more detail as to how the Initiative is to be carried out.

It is the intent of the Skagit Delta Tidegate and Fish Initiative that the impairment of fish passage associated with the presence and maintenance (segregated into three categories: minor repair, major repair and replacement) of tidegates and floodgates within the geographic scope of the Agreement will be sufficiently addressed, both individually and collectively, through the adoption of and adherence to a delta-wide landscape approach for estuarine habitat restoration.

- b) Describe the objective(s) of the proposal, including any secondary objectives which may be used to shape or choose among alternatives.

The purpose of the Agreement is for the agricultural community to work cooperatively with the regulatory agencies to bring tidegate and floodgate maintenance into compliance with local, state, and federal regulatory processes. To achieve regulatory compliance for tidegate and floodgate maintenance a streamlined regulatory review process is needed and will be established through the adoption of the Agreement. To address the Endangered Species Act, Clean Water Act, and fish passage issues a programmatic approach to regulatory review and permitting is needed and will be established through the Agreement. Affected parties to the Agreement will include the drainage/irrigation/diking Districts (signatory to the Agreement) and regulatory agencies with jurisdiction of maintenance actions at tidegates and floodgates owned or operated by the Districts participating in this Agreement. Maintenance actions, defined in the Agreement as including both repair and replacement activities, include maintenance actions at 37 tidegate sites with 88 tidegates and 11 floodgate sites that contain 17 individual floodgates that are under the ownership or control of Drainage, Diking, and/or Irrigation Districts that are parties to this Agreement.

- c) Identify any assumptions or constraints, including legal mandates, which limit the approach or strategy to be taken in pursuing the objective(s).

Actions taken to repair or replace tidegates and floodgates require authorization by the U.S. Army Corps of Engineers (USCOE), which triggers the need for Endangered Species Act (ESA) consultation with NMFS and USFWS. The Agreement was developed to facilitate a programmatic approach for regulatory review and ESA compliance, and thereby avoid individual permitting and consultation for each individual maintenance action in the Coverage Area

Successful implementation of the Agreement is predicated on the explicit support and cooperation of the Skagit agricultural community within the Skagit delta area, and by each participating Drainage, Irrigation and Diking District within the Skagit delta area. The Parties acknowledge and agree that securing funding for restoration projects will be the responsibility of the restoration community, with the support of the agricultural partners.

The support of the agriculture partners include: WWAA and each participating District within the Skagit and Samish River deltas agree to support the conversion of up to 2,700 acres of delta agricultural lands as a means to achieve the estuarine habitat restoration and smolt production goals and objectives of the Federally approved Skagit Chinook Recovery Plan. These land conversion and restoration projects will be completed by outside entities, and not directly by the agricultural community.

For purposes of implementing the Agreement the Parties acknowledge and agree that a maximum of 2,700 acres of delta agricultural lands may be converted to estuarine habitat, consistent with the stated goals and objectives of the Skagit Chinook Recovery Plan (SRSC and WDFW 2005) submitted to and approved by NMFS. The Parties also acknowledge and understand that the support of agricultural interests for the Agreement is critical to Chinook recovery and that by supporting this Agreement, agricultural interests are accepting the potential for risks that could undermine the critical mass of farmland in the Skagit Valley.

- d) If there is no legislative or other mandate that requires a particular approach, describe what approaches could reasonably achieve the objective(s).

Pathways to ensure compliance with the ESA could include:

1. *Section 7 Interagency Consultation on each individual maintenance project*
2. *Programmatic Section 7 Interagency Consultation*
3. *Avoiding activities that require ESA consultation*

Since it is presumed that tidegates need to be maintained for successful farming, the agricultural community will need to utilize the first or second pathway. The second pathway, Programmatic Consultation, is the preferred approach.

3) Environmental Overview

Describe in broad terms how achieving the objective(s) would direct or encourage physical changes to the environment. Include the type and degree of likely changes such as the likely changes in development and/or infrastructure, or changes to how an area will be managed.

Implementation of the Agreement could potentially change the land use of a maximum of 2,700 acres of agricultural land into estuarine habitat within the Skagit delta area to estuarine habitat, ultimately producing a net gain in natural habitat area. Agricultural land would be purchased or long-term conservation easements would be acquired and the dikes and tidegates removed to allow the land to revert back to wetland or saltmarsh. In some cases, setback dikes would need to be built. Many of the potential restoration sites were identified and described in the Skagit Chinook Recovery Plan (2005) and House Bill 1418 Report (See Agreement Part 4.4).

Implementation of the Agreement will also allow tidegates and floodgates to be maintained and to function as they currently exist. No new or additional tidegates or floodgates are planned. Except for those agricultural lands that will be restored to estuary, the Agreement helps to ensure that a majority of important agricultural land in Skagit County continues to function as cropland. No land use changes will occur on those properties that obtain authorization to repair tidegates and floodgates through this Agreement, thereby maintaining the existing drainage systems.

4) Regulatory Framework

- a) Describe the existing regulatory/planning framework as it may influence or direct the proposal.

See Part 3 of the Agreement for a comprehensive discussion of permitting/regulatory jurisdiction and pathways developed under this Agreement.

- b) Identify any potential impacts from the proposal that have been previously designated as acceptable under the Growth Management Act (GMA), chapter 36.70A RCW.

Restoration of agricultural lands to estuarine habitat would conflict with Skagit County goals to preserve agricultural land. However, preserving habitat is another goal of the County, and is supported by the Chinook Recovery Plan. The Agreement allows continued maintenance of drainage infrastructure, which is critical to preserving agricultural land and the agricultural production in the Skagit delta, while also restoring estuarine habitat.

5) Related Documentation

- a) Briefly describe any existing regulation, policy or plan that is expected to be replaced or amended as a result of the proposal. (Adequate descriptions in section 4.a may be referenced here, rather than repeated.)

None.

- b) List any environmental documents (SEPA or NEPA) that have been prepared for items listed in 4.a. or that provide analysis relevant to this proposal. Note: Impacts with previous adequate analysis need not be re-analyzed, but should be adopted or incorporated by reference into the NPRF. Identify the:

- i) Type of document
- ii) Lead agency and issue date
- iii) Where copies can be viewed or obtained
- iv) The portions of the document applicable to the current proposal and briefly explain relevancy. Summarize the relevant impact assessment or, provide reference to discussion(s) in Part II that includes this information.

None.

- c) List other relevant environmental documents/studies/models which have been identified as necessary to support decision making for this proposal.

Skagit Chinook Recovery Plan (SRSC and WDFW 2005)

Skagit Basin Comprehensive Irrigation District Management Plan (HDR and MarineView Fisheries, 2006)

House Bill 1418 Report: Tidegates and Intertidal Salmon Habitat in the Skagit Basin (Washington State Conservation Commission, WWAA, SRSC, 2004)

6) Public Involvement (Optional)

- a) Identify agencies with jurisdiction or expertise, affected tribes, and other known stakeholder groups whose input is likely to be specifically solicited in the development of this proposal.

- *National Marine Fisheries Service (Agreement development participant)*
- *Washington Department of Fish and Wildlife (Agreement development participant)*
- *U.S. Army Corps of Engineers (Agreement development participant)*
- *Washington Department of Ecology (WDOE) (Agreement development participant)*
- *Governor's Office of Regulatory Assistance (Agreement development participant)*
- *Western Washington Agricultural Association (Agreement development participant)*
- *USFWS*
- *Skagit River System Cooperative*
- *Swinomish Tribal Community*
- *Upper Skagit Tribe*
- *Sauk/Suiattle Tribe*
- *Samish Tribe*
- *Agricultural Community of Skagit County*

- b) Briefly describe the processes used or expected to be used for soliciting input from those listed. [Examples: ad hoc committees, tribal consultations, interagency meetings, public workshops or hearings, newsletters, etc.]

The WWAA convened multi-agency work group in March 2006 that continued through December 2007. Meetings have been held on a bimonthly or monthly schedule since March 2006. Participants have included WWAA, NMFS, WDFW, USCOE, WDOE and the Governor's Office of Regulatory Assistance.

The WWAA will hold meetings with the Districts to review and discuss the Agreement. NMFS and the U.S. COE are conducting discussions with Tribal entities in the Skagit delta area.

1.1.2 PART II – IMPACT ANALYSIS AND ALTERNATIVES

7) **Affected Environment**

Generally describe the existing environmental landscapes or elements (e.g., character and quality of ecosystem, existing trends, infrastructure, service levels, etc.) likely to be affected if the proposal is implemented. Include a description of the existing built and natural environment where future “on the ground” activities would occur that would be influenced by the nonproject proposal.

Note: When complete, this section needs to provide information on existing conditions for the elements of the environment discussed in sections 8 and 9. A list of both the built and the natural elements of the environment is found in WAC 197-11-444, and included at the end of this form.

The Coverage Area includes the majority of the Skagit and Samish River deltas, but not the majority of the basins. The Skagit Watershed originates in Canada, encompasses a portion of the northern Cascade Mountains including Mount Baker, and extends down to the lowland broad outwash plain from Sedro-Woolley west. Downstream of Mount Vernon, the Skagit River main stem splits into the North and South Forks, which encompass Fir Island and empty into Skagit Bay. The Samish Watershed lies in northwest Skagit County and southwest Whatcom County, and extends from the headwaters near the community of Wickersham and Lake Samish to the tidelands of Samish Bay.

The Agreement addresses maintenance actions at 37 tidegate sites with 88 tidegates and 11 floodgate sites that contain 17 individual floodgates that are under the ownership or control of Drainage, Diking, and/or Irrigation Districts that are parties to the Agreement.

8) **Key Issue Assessment**

List the identified key issues or areas of controversy or concern and include a brief statement of why each is a key issue. For each item listed:

- *Address ESA issues for tidegate and floodgate maintenance, addressing the impairment of fish passage associated with the presence and maintenance of tidegates and floodgates within the geographical scope of the Agreement. This is a key issue as tidegates have historically reduced fish passage into waterways. With ESA listings of fish species that utilize the nearshore areas, addressing the presence of tidegates through estuarine habitat restoration will support species recovery and potential delisting of fish species.*
- *Develop a regulatory framework for tidegate and floodgate maintenance. This is a key issue as the Agreement will provide a streamlined, programmatic and assured regulatory process that will be followed to address maintenance actions covered under the Agreement.*

- a) Identify alternative options or solutions for the objective or concern.

The only alternative for the proposed action would be a No Action alternative. This alternative would maintain the status-quo of maintenance project review on a site-by-site, action-by-action basis.

- b) Describe the environmental considerations/impacts relevant to each of the alternatives identified in 8.a.

The No Action alternative would not address ESA requirements for tidegate and floodgate maintenance from a landscape approach.

The No Action alternative would not develop a streamline regulatory process and would continue to regulate tidegate and floodgate maintenance on a site by site basis.

Under a No Action alternative, the agricultural community would not support the conversion of up to 2,700 acres of agricultural land within the Skagit Delta area to restored estuary habitat that would help support the recovery of ESA listed fish species..

- c) Describe reasonable mitigation of adverse impacts identified.

The No Action alternative would address any required mitigation on a site-by-sit, action-by-action basis.

- d) Identify those alternatives to be carried forward for further analysis.

The No Action alternative was not carried forward.

- e) Briefly describe why those alternatives rejected from further consideration were not carried forward.

The No Action alternative would not achieve the desired outcome of the proposed action, which are, achieving regulatory certainty for maintenance actions and addressing maintenance of tidegates and floodgates on a landscape basis. The No Action alternative does not address the need for programmatic regulatory review, or address ESA species enhancement on a landscape level.

9) Proposed Nonproject Action or Alternative Actions

Describe a range of reasonable alternatives or the preferred alternative that will meet the objective(s). For each alternative, answer the following questions referring again to the list of the elements of the environment in WAC 197-11-444:

- a) If this alternative were fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), describe where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely effects on the natural environment. Identify where the change or affect or increased demand constitutes a likely adverse impact, and describe any further or additional adverse impacts that are likely to occur as a result of those changes and affects.

Changes to the built and natural environment as an ultimate result of the Agreement would be limited to the potential restoration of a maximum of up to 2,700 acres of agricultural land within the Skagit delta area to estuarine habitat.

Continued maintenance of the drainage infrastructure is critical to preserving agricultural land and the agricultural production in the Skagit delta, and would not result in a change to the current built and natural environments as the function of the tidegates and floodgates would remain the same.

- b) Identify potential mitigation measures for the adverse impacts identified in 9.a and describe how effective the mitigation is assumed to be, any adverse impacts that could result from the use of the mitigation, and any conflict or concern related to the proposal objectives and/or key issues identified.

It is not anticipated that adoption of the Agreement will result in any adverse impacts. The conversion and restoration of agricultural land within the Restoration Area (See Figure 2.1A) is intended to compensate for the blockage of fish passage that occurs at the existing tidegates. The parties to this Agreement acknowledge that 2,700 acres is sufficient to fully compensate for the lost habitat associated with the 105 tide and flood gates identified in this agreement. Therefore, conversion and restoration of agricultural land exceeding 2,700 acres is beyond the scope of the agreement.

- c) Identify unavoidable impacts and those that will be left to be addressed at the project level.

No unavoidable impacts are anticipated to occur from adoption of the Agreement.

Impacts addressed at the project level will be related to the actual tidegate and floodgate maintenance actions (See Part 4.1 of the Agreement). Resource protection and conservation measures for these actions are described in Part 4.3 of the Agreement.

- d) Describe how the proposal objectives will or will not be met if the impacts described in 9.c were to occur.

The objectives of the proposal will be achieved with the facilitation of project-level actions of tidegate and floodgate maintenance concurrent with project-level actions of estuary restoration.

Note: Alternatives may be rejected at any point in the process if: they have no environmental benefit, are not within existing authority, are determined unfeasible, or do not meet the core objectives.

1.1.3 PART III – IMPLEMENTATION CONSIDERATIONS

10) Consistency of the proposal with other plans, policies and laws.

- a) Internal consistency - If there are internal inconsistencies between this proposal and your agency's previously adopted or ongoing plans and regulations, identify any strategies or ideas for resolving these inconsistencies.

Not applicable to this proposal. The WWAA does not have plans or regulations that will be impacted by the adoption of the Agreement. Other participating regulatory agencies (WDFW, NMFS, WDOE, and USCOE) have addressed their regulatory processes to be consistent with existing laws, rules or regulations.

- b) External consistency - If there are external inconsistencies between this proposal and adopted or ongoing plans and regulations of adjacent jurisdictions and/or other agencies, identify any strategies or ideas for resolving these inconsistencies.

Not applicable to this proposal. Adoption of this Agreement will not conflict with existing plans or regulations as it will provide a mechanism for compliance with existing plans and regulations.

11) Monitoring and Follow-up

- a) Describe any monitoring that will occur to ensure the impacts were as predicted and that mitigation is effective, including responsible party, timing, and method(s) to be used.

For purposes of coordinating implementation and providing management, an Oversight Committee has been designated. The Oversight Committee will be composed of a representative from each of the following entities: WDFW, NMFS, two District Commissioners (to be selected by the duly elected Commissioners of all Districts signatory to the Agreement), WWAA, and an invited tribal representative. The Oversight Committee will convene within thirty (30) days of the Agreement being signed by the principal parties (WDFW, NMFS, USFWS and WWAA). The Oversight Committee will function under the facilitation of NMFS's Office of Law Enforcement (OLE). The Oversight Committee will be composed of a representative from:

- *Washington Department of Fish and Wildlife*
- *National Marine Fisheries Service*
- *Two District Commissioners, from separate districts, to be selected by the duly elected Commissioners of all Districts signatory to this Agreement*
- *Western Washington Agricultural Association*
- *Tribal representation (invited)*

The Oversight Committee will meet as needed, but at least semi-annually, in the first year of organization and then semi-annually thereafter.

- b) Identify any plans or strategies for updating this proposed action based on deviation from impact projections or other criteria.

Proposed changes to this Agreement, such as inclusion of undefined maintenance actions or technology improvements that may impact aquatic habitat or changes to the function of the Oversight Committee will be submitted in letter format to the Oversight Committee for review to determine if the change deviates from the regulatory intent established through this Agreement. If the change in question is determined to constitute a deviation from the form and substance of this Agreement, a meeting of all signatory parties will be held to discuss required actions to address the proposed change. The Oversight Committee will coordinate with the Credit Administrator to notify signatory parties of any meeting or function to be convened for the purpose of revising or amending provisions of this Agreement. Notification will be by mail or e-mail and an acknowledgement of receipt of notification from all signatory parties to this Agreement must be received by the Credit Administrator.

Any proposed change that does not affect the intent of this Agreement will be included as an Addendum to the Agreement and provided to all signatory parties to this Agreement.