



**Washington State
Department of Transportation**

Environmental Manual

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Contents

Chapter 100	Purpose and overview	100-1
Chapter 200	Environmental considerations in transportation planning	200-1
	200.01 Introduction and overview	200-1
	200.02 Applicable statutes, regulations, executive orders, and policies	200-2
	200.03 Right-sizing	200-3
	200.04 Federal Planning and Environmental Linkages (PEL)	200-5
Chapter 300	Project scoping and programming	300-1
	300.01 Introduction	300-1
	300.02 Project scoping	300-2
	300.03 Project classification	300-3
	300.04 NEPA classifications	300-4
	300.05 SEPA classifications	300-5
	300.06 Revision of project scope and classification	300-6
	300.07 Highways over national forest lands	300-7
	300.08 Project types with special requirements	300-7
	300.09 Environmental database resources	300-12
	300.10 Applicable statutes and regulations	300-13
	300.11 Abbreviations and acronyms	300-14
	300.12 Glossary	300-15
Chapter 400	Environmental review (NEPA/SEPA) and transportation decision making	400-1
	400.01 Environmental review in project development	400-1
	400.02 Roles and responsibilities	400-3
	400.03 Identifying the type of environmental document	400-9
	400.04 NEPA/SEPA procedures and recent changes	400-11
	400.05 Ensuring environmental document quality	400-13
	400.06 Using existing environmental documents	400-14
	400.07 Schedules, deadlines, and milestones	400-18
	400.08 Documenting an Environmental Impact Statement (EIS)	400-19
	400.09 Documenting an Environmental Assessment (EA)	400-28
	400.10 Categorical Exclusions/Exemptions (CEs)	400-30
	400.11 Environmental document legal considerations	400-32
	400.12 Applicable statutes and regulations	400-35
	400.13 Abbreviations and acronyms	400-36
	400.14 Glossary	400-37

Chapter 412	Indirect and cumulative effects	412-1
412.01	Introduction	412-1
412.02	Applicable statutes, regulations, executive orders, and policies	412-3
412.03	Considerations during project development	412-3
412.04	Analysis and documentation requirements	412-4
412.05	External engagement	412-9
412.06	Internal Roles and responsibilities	412-9
412.07	Mitigation	412-10
412.08	Applicable permits and approval process	412-10
412.09	Abbreviations and acronyms	412-10
412.10	Glossary	412-10
Chapter 415	Considerations of Climate Change	415-1
415.01	Introduction	415-1
415.02	Applicable statutes, regulations, executive orders, and policies	415-3
415.03	Considerations during project development	415-3
415.04	Analysis and documentation requirements	415-4
415.05	External engagement	415-7
415.06	Internal Roles and responsibilities	415-7
415.07	Mitigation	415-8
415.08	Applicable permits and approval process	415-8
415.09	Abbreviations and acronyms	415-8
415.10	Glossary	415-9
Chapter 420	Earth (Geology and Soils)	420-1
420.01	Introduction	420-1
420.02	Applicable statutes, regulations, executive orders, and agreements	420-2
420.03	Considerations during project development	420-2
420.04	Analysis and documentation requirements	420-3
420.05	External engagement	420-4
420.06	Internal roles and responsibilities	420-4
420.07	Applicable permits and approval process	420-5
420.08	Mitigation	420-5
420.09	Abbreviations and acronyms	420-5
420.10	Glossary	420-5

Chapter 425	Air quality, greenhouse gases, energy	425-1
425.01	Introduction	425-1
425.02	Applicable statutes, regulations, executive orders, and agreements	425-1
425.03	Considerations during project development	425-2
425.04	Analysis and documentation requirements	425-3
425.05	External engagement	425-9
425.06	Internal roles and responsibilities	425-9
425.07	Applicable permits and approval process	425-10
425.08	Mitigation	425-10
425.09	Abbreviations and acronyms	425-11
425.10	Glossary	425-12
425.11	Exhibits	425-15
Chapter 430	Stormwater and water quality	430-1
430.01	Introduction	430-1
430.02	Applicable statutes, regulations, executive orders, and agreements	430-1
430.03	Considerations during project development	430-4
430.04	Analysis and documentation requirements	430-10
430.05	External engagement	430-12
430.06	Internal roles and responsibilities	430-12
430.07	Applicable permits and approval process	430-15
430.08	Mitigation	430-15
430.09	Abbreviations and acronyms	430-16
430.10	Glossary	430-17
Chapter 431	Wetlands and other waters	431-1
431.01	Introduction	431-1
431.02	Applicable statutes, regulations, executive orders, and agreements	431-2
431.03	Considerations during project development	431-3
431.04	Analysis and documentation requirements	431-6
431.05	External engagement	431-7
431.06	Internal roles and responsibilities	431-7
431.07	Applicable permits and approval process	431-8
431.08	Mitigation	431-12
431.09	Abbreviations and acronyms	431-17
431.10	Glossary	431-17
431.11	Exhibits	431-20

Chapter 432	Special flood hazard area	432-1
432.01	Introduction.....	432-1
432.02	Applicable statutes, regulations, executive orders, and agreements	432-2
432.03	Considerations during project development	432-3
432.04	Analysis and documentation requirements	432-4
432.05	External engagement.....	432-5
432.06	Internal roles and responsibilities.....	432-5
432.07	Applicable permits and approval process	432-6
432.08	Mitigation.....	432-6
432.09	Abbreviations and acronyms.....	432-7
432.10	Glossary	432-7
432.11	Exhibits.....	432-10
Chapter 436	Fish, wildlife and vegetation	436-1
436.01	Introduction.....	436-1
436.02	Applicable statutes, regulations, executive orders, and agreements	436-2
436.03	Considerations during project development	436-3
436.04	Analysis and documentation requirements	436-4
436.05	External engagement.....	436-9
436.06	Internal Roles and responsibilities	436-10
436.07	Applicable permits and approval process	436-11
436.08	Abbreviations and acronyms.....	436-12
436.09	Glossary	436-13
Chapter 446	Noise	446-1
446.01	Introduction.....	446-1
446.02	Applicable statutes, regulations, executive orders, and agreements	446-2
446.03	Noise considerations during project development	446-2
446.04	Analysis and documentation requirements	446-5
446.05	External engagement.....	446-6
446.06	Internal roles and responsibilities.....	446-6
446.07	Applicable permits and approval process	446-7
446.08	Mitigation.....	446-7
446.09	Abbreviations and acronyms.....	446-8
446.10	Glossary	446-8
446.11	Exhibit.....	446-10

Chapter 447	Hazardous materials (HazMat) and solid waste	447-1
447.01	Introduction	447-1
447.02	Applicable statutes, regulations, executive orders, and policies	447-2
447.03	Considerations during project development	447-3
447.04	Analysis and documentation requirements	447-13
447.05	External engagement	447-18
447.06	Internal roles and responsibilities	447-18
447.07	Applicable permits and approval process	447-18
447.08	Mitigation	447-19
447.09	Abbreviations and acronyms	447-19
447.10	Glossary	447-20
Chapter 455	Land use and transportation	455-1
455.01	Introduction	455-1
455.02	Applicable statutes, regulations, executive orders, and policies	455-2
455.03	Land Use and Transportation considerations during project development	455-3
455.04	Analysis and documentation requirements	455-5
455.05	External engagement	455-19
455.06	Internal roles and responsibilities	455-19
455.07	Applicable permits and approval process	455-20
455.08	Mitigation	455-21
455.09	Abbreviations and acronyms	455-22
455.10	Glossary	455-23
Chapter 456	Cultural resources	456-1
456.01	Introduction	456-1
456.02	Applicable statutes, regulations, executive orders, and policies	456-1
456.03	Cultural resources considerations during project development	456-2
456.04	Analysis and documentation requirements	456-3
456.05	External engagement	456-6
456.06	Internal Roles and responsibilities	456-6
456.07	Mitigation	456-7
456.08	Applicable permits and approval process	456-8
456.09	Abbreviations and acronyms	456-8
456.10	Glossary	456-8
456.11	Exhibit	456-11

Chapter 457	Section 4(f) evaluation	457-1
	457.01 Introduction	457-1
	457.02 Applicable statutes, regulations, executive orders, and agreements	457-3
	457.03 Considerations during project development	457-3
	457.04 Analysis and documentation requirements	457-4
	457.05 External engagement	457-8
	457.06 Internal roles and responsibilities	457-9
	457.07 Applicable permits and approval process	457-9
	457.08 Mitigation	457-10
	457.09 Abbreviations and acronyms	457-10
	457.10 Glossary	457-11
Chapter 458	Social and community effects	458-1
	458.01 Introduction	458-1
	458.02 Applicable statutes, regulations, and executive orders	458-2
	458.03 Social and community considerations during project development	458-2
	458.04 Analysis and documentation requirements	458-3
	458.05 External engagement	458-7
	458.06 Internal Roles and responsibilities	458-8
	458.07 Applicable permits and approval process	458-9
	458.08 Mitigation	458-9
	458.09 Abbreviations and acronyms	458-9
	458.10 Glossary	458-10
Chapter 459	Visual impacts	459-1
	459.01 Introduction	459-1
	459.02 Applicable statutes, regulations, executive orders, and agreements	459-2
	459.03 Considerations during project development	459-3
	459.04 Analysis and documentation requirements	459-4
	459.05 External engagement	459-7
	459.06 Internal roles and responsibilities	459-7
	459.07 Applicable permits and approval process	459-7
	459.08 Mitigation	459-7
	459.09 Abbreviations and acronyms	459-7
	459.10 Glossary	459-8

Chapter 460	Environmental justice	460-1
460.01	Introduction.....	460-1
460.02	Applicable statutes, regulations, executive orders, and agreements	460-2
460.03	Considerations during project development	460-3
460.04	Analysis and documentation requirements	460-4
460.05	External engagement.....	460-8
460.06	Internal roles and responsibilities.....	460-8
460.07	Applicable permits and approval process	460-9
460.08	Mitigation.....	460-9
460.09	Abbreviations and acronyms.....	460-10
460.10	Glossary	460-11
Chapter 465	Title VI	465-1
465.01	Introduction.....	465-1
465.02	Applicable statutes, regulations, executive orders and agreements.....	465-3
465.03	Considerations during project development	465-3
465.04	Analysis and documentation requirements	465-8
465.05	External engagement.....	465-9
465.06	Internal roles and responsibilities.....	465-9
465.07	Applicable permits and approval process	465-10
465.08	Mitigation.....	465-10
465.09	Abbreviations and acronyms.....	465-10
465.10	Glossary	465-10
Chapter 490	Tracking environmental commitments during design	490-1
490.01	Commitments must be tracked	490-1
490.02	Identify environmental commitments during environmental review and design	490-2
490.03	Perform a constructability review	490-2
490.04	Reflect environmental commitments in project design	490-2
490.05	Track environmental commitments during design.....	490-3
490.06	Respond to non-compliance events during design	490-3
490.07	Applicable statutes and regulations.....	490-3
490.08	Abbreviations and acronyms.....	490-3
490.09	Glossary	490-4

Chapter 500	Environmental permitting	500-1
	500.01 Introduction.....	500-1
	500.02 Scoping.....	500-1
	500.03 Roles and responsibilities	500-3
	500.04 Identify the Required Permits and Coordination.....	500-6
	500.05 Submit a complete permit application and obtain permits	500-7
	500.06 After permit issuance/permit modifications.....	500-8
	500.07 Manage permits and conditions during construction.....	500-9
	500.08 Links to permitting resources	500-9
	500.09 Abbreviations and acronyms.....	500-9
	500.10 Glossary	500-10
Chapter 530	Working with Tribes	530-1
	530.01 WSDOT Policy for Working with Tribes	530-1
	530.02 Treaty Rights	530-1
	530.03 Section 401 Water Quality Certification by Tribes	530-2
	530.04 Section 106 Consultation	530-2
	530.05 Archaeological Resources Protection Act Permit	530-2
	530.06 Hydraulic Project Approval	530-3
	530.07 Tribal Law.....	530-3
	530.08 Permit Assistance	530-3
Chapter 590	Incorporating environmental commitments into contracts	590-1
	590.01 Reflect the environmental commitments in WSDOT’s contracts	590-1
	590.02 Incorporate environmental commitments into contracts.....	590-2
	590.03 Environmental Commitments Meeting	590-3
	590.04 Abbreviations and acronyms.....	590-3
	590.05 Glossary	590-4
Chapter 600	Construction	600-1
	600.01 Overview	600-1
	600.02 Roles and responsibilities	600-2
	600.03 Environmental commitments by discipline.....	600-5
	600.04 Preparation for construction.....	600-9
	600.05 Compliance during construction	600-12
	600.06 Construction close out for environmental	600-13
	600.07 Applicable statutes and regulations.....	600-15
	600.08 Abbreviations and acronyms.....	600-15
	600.09 Glossary	600-16

Chapter 700	Maintenance and operations	700-1
	700.01 Environmental requirements for maintenance and operations	700-1
	700.02 WSDOT maintenance and operation plans and policies	700-2
	700.03 Interagency agreements for maintenance activities	700-4
	700.04 Applicable permits and approval process	700-5
	700.05 WSDOT manuals	700-5
	700.06 Abbreviations and acronyms	700-6
Chapter 800	Utilities, property management, and access	800-1
	800.01 Overview	800-1
	800.02 Environmental commitments for utilities accommodation	800-1
	800.03 Environmental considerations in real property disposal/lease	800-2
	800.04 Environmental considerations in disposal of pit sites	800-4
	800.05 Environmental considerations for changes in limited access	800-4
	800.06 Statutes and regulations	800-5
	800.07 Abbreviations and acronyms	800-5
	800.08 Glossary	800-5
Appendix A	Executive orders	A-1
Appendix B	Interagency agreements	B-1
Appendix C	Letters, memos, and directives	C-1

Chapter 100 Purpose and overview

The *Environmental Manual* M 31-11 and the WSDOT [Environmental Guidance](#) webpages support WSDOT [Environmental Policy Statement](#) and our Stewardship Agreement with FHWA. It also provides guidance for compliance with state and federal environmental laws and regulations for all phases of project delivery and our Stewardship Agreement with FHWA.

Exhibit 100-1 identifies the major planning, engineering, and environmental activities associated with each phase of the project delivery.

Policy, Procedures, and Workforce Development (PPWD) are foundational to all Environmental work we do at WSDOT. The *Environmental Manual* explains what the Environmental Policies are and why they are important. This manual points to where the Environmental procedures live on both the [Protecting the Environment](#) and [Environmental Guidance](#) webpages. The procedures explain how to implement the Environmental Policies. Workforce Development efforts ensure that those employees who are responsible for managing, supervising, and performing environmental work can effectively implement WSDOT's environmental policies and procedures and also track and fulfill all environmental commitments.

This manual and the supporting webpages apply to state owned and operated facilities. The intended users are WSDOT staff and consultants working on WSDOT projects. Local governments and transit agencies may also use this guidance in accordance with the [Local Agency Guidelines](#) M 36-63.

This manual and supporting WSDOT webpages replace all previous editions. Updating guidance material is a continuous process due to the ever-changing nature of environmental laws and regulations. It is the user's responsibility to use the most current information available.

Comments and suggestions for improving the manual are welcome. Contact the WSDOT *Environmental Manual* [Coordinator](#).

WSDOT Transportation Decision-Making Process and Environmental Manual Organization

Chapter 200

Transportation Planning

Identify and document environmental resources and mitigation opportunities.

Chapter 300

Scoping and Programming

Environmental review summaries and permitting, cost estimates, and STIP.

Chapter 400-490

Design and Environmental Review

Completing the environmental analysis for alternative selection during NEPA and SEPA.

Chapter 500-590

Permitting, Plans Specifications, and Engineering

Environmental permitting, plans specifications, and commitment tracking.

Contract AD, Bid, and Award

Chapter 600-630

Construction

Contracting and construction management and inspection for environmental compliance.

Chapter 700

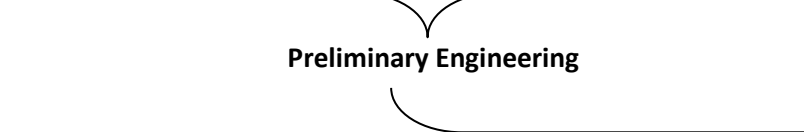
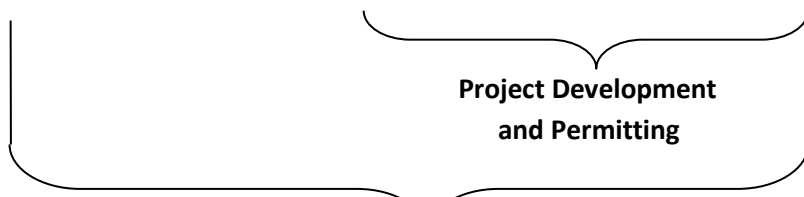
Maintenance and Operations

Inspection and monitoring for long-term environmental compliance.

Chapter 800

Property Management

Accommodating utilities and surplus property evaluation.



Chapter 200 *Environmental considerations in transportation planning*

- 200.01 Introduction and overview
- 200.02 Applicable statutes, regulations, executive orders, and policies
- 200.03 Right-sizing
- 200.04 Federal Planning and Environmental Linkages (PEL)

200.01 Introduction and overview

This chapter describes how considering environmental context informs decisions during transportation planning, and how the planning process can inform WSDOT's environmental review process. It also describes the federal Planning and Environmental Linkages (PEL) process and the authorities supporting federal PEL.

Transportation planning is a decision-making process that develops and evaluates alternatives to achieve environmental, community development, multimodal mobility, accessibility, safety, and other goals. The process leads to recommendations at a corridor, network, or statewide level. The recommendations are data driven and community informed to yield the desired future outcome. This process involves engagement with the public, government agencies (federal, state, local, tribal), organizations, and transportation interests to reach federal, tribal, state, regional, and local goals and inform decision-making. This is achieved by:

- Identifying current and desired future multimodal transportation outcomes.
- Providing opportunities for public engagement and input on plans, programs, and transportation decisions that affect them.
- Identifying environmental resources that need to be protected.
- Maximizing health, safety, and the economic well-being of transportation system users and the surrounding community.

Federal, state, local, and tribal governments develop transportation plans that are subject to federal regulations, state laws, legislative provisos, agency guidelines and expectations, and/or local ordinances. For more information on transportation planning, see the Joint Transportation Committee's [Transportation Resource Manual](#) and the [Washington Transportation Plan Phase 2, Appendix A](#).

See WSDOT's [Environmental guidance for planning studies](#) webpage for more information on integrating transportation planning and environmental review, including technical guidance for PEL teams. Refer to the WSDOT [Planning and Environmental Linkages](#) webpage for our agency's PEL guidance and resources.

200.02 Applicable statutes, regulations, executive orders, and policies

Federal and state requirements direct agency planning activities related to considering environmental context.

The Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) implementing regulations note that: “agencies shall improve efficiency of their NEPA processes by integrating the NEPA process into early planning” (40 CFR 1500.5(c)). 40 CFR 1501.2(a) further states: “agencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental effects in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts.” CEQ rules also state that federal agency actions should involve early coordination and consultation with appropriate federal, state, tribal, and local governments and other interested parties whose involvement is reasonably foreseeable (40 CFR 1501.2). WSDOT planning processes that incorporate NEPA concepts, environmental screening, and outward coordination lead to more efficient future NEPA and project delivery outcomes.

WSDOT’s [Environmental Policy Statement](#) requires cultural, historic, and environmental context to be considered in all WSDOT plans. It also directs WSDOT to engage all communities that are likely to be affected by proposed transportation plans, including minority and low-income populations and those with limited English proficiency (LEP).

WSDOT’s [Environmental guidance for planning studies](#) webpage includes technical guidance and other helpful information for including cultural, historic, and environmental context in our plans, consistent with the agency’s [Environmental Policy Statement](#). The information found on this webpage should be the baseline guidance for incorporating environmental information into planning studies and PEL studies. See the WSDOT [Planning and Environmental Linkages](#) webpage for more on how our agency conducts PEL studies.

Secretary’s Executive Order [E 1102](#) directs WSDOT to protect and preserve Washington’s wetlands, to ensure no net loss of wetlands caused by department actions, and to increase the long-term quantity and quality of wetlands. Planners must identify areas of potential wetland impact as early as possible in system and corridor planning processes and use the information to inform project scoping and advance mitigation planning.

The Secretary’s Executive Order on *Protections and Connections for High Quality Natural Habitats* [E 1031.02](#) directs WSDOT to promote and support planning studies and PEL processes that identify potentially affected fish and wildlife habitats as early as possible. This work should be done during the planning process. Early consideration of fish and wildlife habitat protection and connectivity increases the likelihood that reasonable approaches can be incorporated into projects. Mitigation considerations can be factored into projected future costs when developing planning level recommendations. See [Section 200.04\(15\)](#) for more information on mitigation development during planning.

A 2013 federal court injunction requires WSDOT to significantly increase efforts to remove barriers in western Washington that block salmon and steelhead from accessing upstream habitat. The injunction specifically applies to culverts in the Puget Sound and Washington coast area, within Water Resource Inventory Areas (WRIAs) 1-23. More information about the injunction, a list of relevant fish passage barriers, and WSDOT’s progress in complying with the injunction can be found in WSDOT’s [Annual Fish Passage Progress Report](#). The WSDOT [Fish Passage Corrected Barriers Statewide](#) web portal and WSDOT Fish Passage Uncorrected Injunction Barriers web portal provide spatial information for corrected and uncorrected injection barriers.

200.03 Right-sizing

Transportation plans can vary greatly in size and scope. Therefore, it is important to right-size efforts to incorporate environmental information.

This section describes flexible, scalable, and adaptable approaches for including environmental context in transportation plans and planning studies. Planning and environmental staff should work together to develop the best approach for the planning effort. Collaboration should begin at the earliest stages of the planning study.

An early review of the likely environmental issues, analysis, and other information can inform future planning level or project level decisions. Examples of planning level decisions include identifying desired performance and recommendations to close performance gaps. Examples of project level decisions include developing the Purpose and Need, refining alternatives, identifying interested parties and potential site-specific concerns. Project level decisions can be scaled based on the depth of the planning analysis or process. For example, some planning studies may develop alternatives to be analyzed during future phases, during environmental review, and some may develop and evaluate alternatives to identify recommendations. These efforts can also be spatially scaled, from studying a corridor to planning for service levels for a particular mode of transportation (such as Amtrak Cascades service).

WSDOT develops two types of modal plans: state owned plans and state interest plans. State owned plans include recommendations for facilities or services that WSDOT owns or manages. These plans include the [Highway System Plan](#), Washington State Ferries [2040 Long Range Plan](#), and other public transportation plans. These plans may include recommendations for projects.

State interest plans may include recommendations for facilities or services that are not WSDOT owned or managed but have a statewide impact. These plans may also include recommendations for WSDOT projects. These plans include:

- [WSDOT Active Transportation Plan](#)
- [WSDOT Freight Systems Plan](#)
- [Washington Aviation System Plan](#)
- [Washington State Public Transportation Plan](#)
- WSDOT and statewide [Passenger Rail Plans](#).

Additionally, WSDOT develops corridor plans and master plans for state routes. Depending on the need of the study and location, these location specific plans can also be a PEL study.

The [Washington Transportation Plan Phase 2](#) is a roll-up of the state owned and state interest plans and meets Federal Highway Administration (FHWA) requirements for the long-range statewide transportation plan. This plan may include a financially constrained project list.

For every transportation plan, follow:

- WSDOT's [Planning study guidance](#), including [Environmental guidance for planning studies](#).
- WSDOT's [Community Engagement Plan](#) and federal Environmental Justice (EJ) requirements, which include identifying EJ and LEP populations in the study area. It is also recommended that PEL studies include consideration of EJ impacts in their recommendations for implementation and future National Environmental Policy Act (NEPA) analysis. More information about EJ, as well as the state level HEAL Act can be found in [Chapter 460](#) and on WSDOT's [Environmental justice](#) webpage.
- Applicable state and federal laws, rules, and guidance.

WSDOT plans and studies, including PEL, should use the guidance and GIS layers on the [Environmental guidance for planning studies](#) webpage to conduct a planning-level environmental screening of the following factors associated with state highways and rights of way. This environmental screening guidance should be considered the floor and not the ceiling for planning level environmental review. For example, plans may include additional environmental disciplines as appropriate to the project context and setting, and PEL studies may include more detailed analysis, depending on the circumstances within the study area. At a minimum, planning studies should include *at least* the following screening criteria found on the [Environmental guidance for planning studies](#) webpage, but should right-size the screening and analysis to the particular study.

- Fish passage barriers.
- Wetland and other environmental mitigation sites.
- Chronic environmental deficiencies (CED).
- Noise walls.
- Historic bridges.
- Stormwater best management practices (BMP) sites and retrofit priorities.
- Climate vulnerability.
- Air quality.
- Greenhouse gas emissions.
- Habitat connectivity.
- Hazardous materials contamination sites.

Note: GIS information mentioned above can also be found on WSDOT's [Community Planning Portal](#).

This level of environmental screening should:

- Identify existing environmental assets that must be protected.
- Detect other key environmental factors that have the potential to influence the scope of future investments.
- Determine if additional environmental review is necessary prior to project development.

The plan should describe how each of the environmental assets, public and agency involvement, and regulatory requirements influenced decision-making.

The review steps described above serve as a high-level screening, which does not examine the full range of environmental and social issues that may need in-depth review during site-specific project development. Additional environmental data will likely need to be collected and analyzed in more detail once potential project locations and solutions become clearer. Refer to the discipline chapters (Chapters [420](#) through [460](#)) to learn more about the natural and human environmental project-level review requirements.

If a planning effort is leading to a defined project, please work with your regional environmental staff to determine the likely environmental classification. There are two primary paths depending on the significance of anticipated future project impacts.

The first path is for plans that are likely to lead to a project classified as a NEPA Categorical Exclusion (CE), State Environmental Policy Act (SEPA) Categorical Exemption (CE), or require a SEPA checklist. Typically, these are less complex projects that do not require a formal process

for defining Purpose and Need, alternatives screening, or public involvement. For these plans, conduct a planning-level environmental screening review found on the [Environmental guidance for planning studies](#) webpage. The review should be right-sized for the study and include as much environmental information as is useful for developing early strategies to avoid or minimize future environmental impacts.

The second path is for plans that are likely to recommend a large or complex transportation project that would typically require a NEPA Environmental Assessment (EA) or NEPA/SEPA Environmental Impact Statement (EIS). This includes projects that will eventually consider alternatives and require public engagement. Some of these processes would benefit from following the federal PEL process described in [Section 200.04](#). PEL is useful when project solutions are unclear and there is no defined Purpose and Need or range of alternatives. See the WSDOT [Planning and Environmental Linkages](#) webpage and [Section 200.04](#) for more information on when PEL studies are recommended. PEL study environmental considerations should include at a minimum the environmental screening information found on the [Environmental guidance for planning studies](#) webpage.

200.04 Federal Planning and Environmental Linkages (PEL)

PEL represents a collaborative and integrated approach to transportation decision-making that considers environmental, community, and economic goals early in the transportation planning process; and uses the information, analysis, and products developed during planning to inform the environmental review process.

WSDOT uses the phrase “federal PEL”, or simply “PEL” or “PEL study”, to describe planning efforts that follow the requirements of one or more federal authorities for integrating planning and environmental review. Compliance with the federal requirements described in the following sections can result in a planning product that the federal lead agency (FHWA or Federal Transit Administration (FTA)) agrees may be adopted or used in NEPA.

PEL studies are generally recommended for plans or planning studies that are likely to lead to a major capital improvement or policy decision. Other factors that could contribute to using the PEL process include regional significance, environmental constraints, high cost, controversy, no clear Purpose and Need, and no clearly defined alternatives.

PEL studies provide transportation and environmental context and can be used to make project or planning decisions. Examples of project decisions include developing a Purpose and Need statement, recommending alternatives to be evaluated in NEPA, establishing logical termini and independent utility, and identifying interested parties and community partners. Examples of planning decisions include tolling and modal choice. WSDOT can also use PEL to recommend the NEPA classification of future projects, for example, EA or EIS.

PEL studies are not recommended for funded projects that already have a clear solution. Instead, these projects should move directly into NEPA.

The outcome of a federal PEL study may be incorporated into a NEPA EA or EIS, either by reference (for example, as a chapter or appendix) or adopted directly into the NEPA document (for example, the NEPA Purpose and Need). See [40 CFR 1501.12](#) and [23 CFR 450.212](#) for more information incorporating planning studies by reference into environmental documents.

The following sections describe the requirements and benefits of a federal PEL and the benefits of complying with these requirements.

200.04(1) Benefits of considering environmental context during planning

There are many benefits of considering the environmental context and human and natural resource trends during the transportation planning process. Here is a list of some key benefits of linking planning and environment.

- **Building relationships** – Early consultation and collaboration with tribes, local agencies, and resource agencies improves communication and strengthens relationships.
- **Improving the quality of environmental information** – Early interagency and tribal coordination and data sharing helps to quickly identify environmental priorities and project constraints. It also helps ensure that the best available environmental information is used in planning decisions.
- **Reducing duplication of effort** – A planning-level environmental review can minimize duplication of effort by carrying forward planning decisions and analysis into the NEPA/SEPA process. This includes Purpose and Need, identification of preliminary alternatives, and the elimination of unreasonable alternatives.
- **Focusing the NEPA/SEPA review** – Early identification of key environmental resources can help tailor the NEPA/SEPA environmental review ([Chapter 400](#)). These include environmentally sensitive areas and resources in the project area that have lengthy environmental clearance processes that can affect the project schedule and budget.
- **Identifying potential mitigation strategies** – Assessing potential impacts and coordinating with the appropriate resource agencies can help determine the types of mitigation needed. Early collaboration can also help identify mitigation partners and the types of mitigation that are available. At the planning-level, mitigation is typically discussed at a regional or watershed scale. See [Section 200.04\(15\)](#) for more information.
- **Shortening permitting timelines** – Building relationships with permitting agencies can help resolve differences on key issues early in the transportation planning process. This ultimately leads to streamlined permit decisions and project delivery.
- **Delivering better on-the-ground outcomes** – Early and continued coordinated involvement with interested parties, community partners and the public, including historically disadvantaged populations helps WSDOT create programs and projects that effectively serve the community's transportation needs.

200.04(2) PEL authorities

Federal regulations applicable to FHWA and FTA have included provisions on PEL for State DOTs since 1978 when the Council on Environmental Quality (CEQ) first published their NEPA regulations that encourage integrating planning and environmental processes.

There are two main authorities that support PEL:

- [23 CFR 450.318](#) and [450.212](#) – Metropolitan, statewide and nonmetropolitan transportation planning and programming.
Note: The requirements in [23 CFR 450.212 \(a\)-\(c\)](#) and [23 CFR 450.318 \(a\)-\(d\)](#) are identical, but [23 CFR 450.318](#) refers to metropolitan planning and [23 CFR 450.212](#) refers to non-metropolitan planning. Select and cite the appropriate authority used in the PEL or cite both authorities if applicable. See [Section 200.04\(7\)](#) for additional information on these authorities.
- [23 U.S.C. 168](#) – Integration of planning and environmental review.

The WSDOT [PEL Authorities Chart](#) found on the [Planning and Environmental Linkages webpage](#) provides a visual summary of these authorities as well as other related statutes and regulations discussed later in this chapter. The PEL must clearly state which authority or authorities will be used throughout the planning effort, and the PEL must meet all requirements for the authority or authorities chosen.

WSDOT planning and environmental staff and the federal lead (FHWA or FTA) should decide together which PEL authority or authorities should be used to support the planning effort. This decision is usually based on the desired outcomes for NEPA and the authority or authorities that the planning and environmental staff and the federal lead believe would result in the most useful and relevant information.

See [Section 200.04\(5\)](#) for information on adoption and use of planning products in NEPA, which can help determine which authority to use during the PEL effort.

Note: The Federal Railroad Administration (FRA) does not currently have an equivalent statutory or regulatory planning process as described in this chapter for FHWA or FTA PEL. However, FRA uses a “similar approach to integrating the planning and environmental review processes, incorporating robust public engagement and agency coordination, in its Corridor Identification and Development Program (Corridor ID Program)” ([Infrastructure Permitting Improvement Center \(IPIC\) 2024 NEPA Report to Congress](#)).

200.04(3) Internal roles and responsibilities

The PEL process is a collaborative approach that involves experts from several offices within WSDOT. The following offices have a key role.

Region/Modal Planning Office

- Leads the PEL effort.
- Identifies any other relevant planning efforts within or adjacent to the study area and determines how they relate to the PEL.
- Determines scope and goals of PEL with assistance from Region/Modal Engineering Office.
- Leads participants and agency coordination with assistance from the Region/Modal Environmental Office.

Region/Modal Engineering Office

- Assists Region/Modal Planning Office with determining scope and goals of PEL.
- Coordinates with Region/Modal Environmental Office to review potential environmental impacts of future projects and PEL recommendations.

Region/Modal Environmental Office

- Advises the Region/Modal Planning Office on the types of planning information that are useful and relevant for NEPA.
- Assists coordination with federal, tribal, state, and local environmental resource agencies.
- Researches and provides information describing the environmental context for the PEL study area and the potential environmental impacts of future projects and PEL recommendations.

- Helps right-size the study and analysis using GIS data, windshield surveys, coordination with subject matter experts, or site-specific analysis as appropriate.
- Communicates environmental information to the PEL team so that potential budget, schedule, and permitting issues are clearly understood and taken into consideration throughout the process.

Region/Modal Communications Office

- Leads public engagement efforts.

M2 (multimodal, multidisciplinary) Team

- Core team of subject matter experts from headquarters, modes, and divisions.
- Includes representation from WSDOT's: Active Transportation Division; Capital Program Development and Management; Development Division (which includes the Environmental Services Office, and Assistant State Design Engineers); Maintenance; Multimodal Planning and Data Division; Office of Equity and Civil Rights; Public Transportation Division; Rail, Freight, and Ports Division; Transportation Safety and Systems Analysis Division; and Transportation Operations Division.
- Reviews and provides subject matter expertise and statewide perspective on draft and final PEL products.
- Provides web based guidance on planning study subject review areas via the WSDOT [Planning study guidance](#) webpage.
- Focuses on consistency between plans, policies, and agency messaging.
- Provides input and statewide perspective on the content of a planning study at specific study decision points and/or milestones such as identification of performance gaps.
- Focuses on consistency with modal plans, policies, and WSDOT messaging.
- May be requested to participate in non-planning study activities such as traffic studies, modal plans, modal studies, MPO/RTPO plan updates, and pre-design workshops

Headquarters Multimodal Planning and Data Division

- Facilitates review by Headquarters subject matter experts.

Headquarters Environmental Services Office

- Provides statewide experience and technical assistance.
- Provides direction for compliance with applicable FHWA/FTA and WSDOT policies, rules and regulations.
- Reviews work products, like coordination plans and draft documents.

Within ESO, the [NEPA/SEPA Program](#):

- Reviews planning studies for compliance with WSDOT's [Environmental Policy Statement](#) and inclusion of environmental screening in planning studies.
- Serves as liaison between the federal lead and the project team throughout the PEL process.
- Provides PEL support and guidance throughout the PEL process.
- Serves as quality assurance reviewer before PEL document is submitted to federal lead agency for review and approval.

PEL Document Signatory

- May include the Region/Modal Planning Manager, Region/Modal Administrator, Director of Multimodal Planning and Data Division, and Director of Headquarters Environmental Services Office.
- WSDOT's [Planning study guidance](#) webpage provides information related to planning study approvals.
- FHWA or FTA approves final PEL studies as the federal lead agency.

200.04(4) PEL documentation

The federal requirements for PEL are written with larger, NEPA EA/EIS, projects in mind. A PEL should include enough information to show that it fulfills all requirements of one or more federal PEL authorities discussed later in this chapter. The study should be right-sized, with the appropriate type and amount of analysis for use in future planning or NEPA.

WSDOT's [PEL Questionnaire](#) helps with documentation and the transition from planning to NEPA. These questions should be used as a guide throughout the PEL process, not only completed near the end of the process. The questionnaire is consistent with the planning regulations for FHWA and FTA and should be included in the final PEL document as an executive summary, chapter, or appendix.

The final PEL must contain all substantive materials that were used to make decisions during the PEL process. For example, technical letters, memos, reports, and studies.

The PEL may include other content, such as:

- Purpose and Need.
- Project goals.
- Alternatives development and evaluation criteria.
- Recommended alternative(s).
- Logical termini and independent utility.
- Transportation analysis.
- Affected environment and mitigation strategies.
- Agency coordination and public involvement.
- Recommendations for future systems planning, NEPA, or implementation.

The PEL objective and desired outcomes for NEPA should determine which content is relevant. This will be coordinated with the PEL study team, [NEPA/SEPA Program](#), and federal lead agency.

200.04(5) Adoption and use of PEL planning products in NEPA

A primary benefit of PEL is that it allows planning analyses and decisions to be carried forward into the environmental review process. This helps reduce duplication between the planning and environmental review processes which can lead to more efficient project delivery. However, it is important to remember that planning and NEPA are separate processes.

The federal PEL authorities define a process for adopting or using PEL planning products in NEPA. Two primary PEL authorities are used by FHWA and WSDOT: statutory [23 U.S.C. 168](#) and regulatory [23 CFR 450](#) ([23 CFR 450.212](#) and [450.318](#)). These authorities are described in greater detail below and additional information may be found in the [WSDOT PEL Authorities Chart](#) found on the [Planning and Environmental Linkages webpage](#).

The term “planning product” means a decision, analysis, study, or other documented information that is the result of an evaluation or decision-making process during transportation planning. Common examples of planning products include the establishment of a Purpose and Need statement and preliminary screening of alternatives, including the elimination of unreasonable alternatives. Refer to [Chapter 400](#) for information on Purpose and Need and reasonable alternatives.

To “adopt” a planning product means to take the planning product into the NEPA process without being subject to the NEPA analysis process (in other words where it could remain unchanged). An adopted planning product is still circulated and made available for comment with other environmental documents during NEPA, but generally the product is finalized during the PEL process and does not need to be re-evaluated.

IMPORTANT: [23 U.S.C. 168](#) is the primary PEL authority that allows planning products and decisions (for example, the Purpose and Need statement or the elimination of unreasonable alternatives) to be adopted into the NEPA process. [Section 200.04\(8\)](#) describes how, regardless of the primary PEL authority or authorities used for a PEL study, the requirements of [23 U.S.C. 139](#) must be met to eliminate unreasonable alternatives.

To “use” a planning product in the NEPA process means to introduce the planning product as useful and relevant information to be evaluated through the typical environmental review process. Unlike a planning product that is adopted under [23 U.S.C. 168](#), these products are considered “draft” and remain subject to analysis during NEPA. Examples of this include a draft Purpose and Need statement or a recommendation to eliminate unreasonable alternatives. To use these planning products during NEPA, they need to be circulated and subject to revision based on agency and public review. [23 CFR 450.212](#) and [450.318](#), [23 U.S.C. 139](#), and [40 CFR 1501.12](#) allow planning products and decisions to be incorporated by reference into the NEPA process.

200.04(6) Requirements for 23 U.S.C. 168

PEL authority [23 U.S.C. 168](#) provides a process by which agencies may adopt or incorporate by reference a planning product to use during the environmental review process.

There are ten requirements that must be met for FHWA or FTA to adopt planning products into the environmental review process under PEL authority [23 U.S.C. 168](#). These requirements are provided in [23 U.S.C. 168\(d\)](#), illustrated in the [PEL Authorities Chart](#) on WSDOT’s [Planning and Environmental Linkages](#) webpage, and listed below (paraphrased) by project phase.

During planning, the federal lead agency should concur that the following are met:

- The planning product is developed through a planning process that was conducted in accordance with applicable federal law.
- The planning product is developed in consultation with the appropriate federal and state resource agencies and tribes (See [Section 200.04\(13\)](#)).
- The planning product is the result of a planning process that included multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects on the human and natural environment.
- Public notice is provided that resulting planning products may be adopted during a subsequent environmental review process.

- The planning product has a rational basis centered on reliable and reasonably current data and scientific methods.
- The planning product is documented in sufficient detail to support the decision or results of the analysis and to meet requirements for use in the environmental review process.

During project scoping and programming:

- The federal lead agency must agree that there is no significant new information or circumstance that has reasonable likelihood of affecting the continued validity or appropriateness of the planning product.
- The federal lead agency must agree that the planning product is appropriate for adoption and use in the environmental review process.
- The planning product must be approved no more than five years before the environmental review process is initiated. (If more than five years have passed, you must verify that the planning information is still valid, i.e., there are no significant changes, to use the information in the environmental review process).

During environmental review:

- A notice of intent to incorporate a planning product must be provided. The planning product must also be provided for review and comment by the public, as well as interested federal, state, local, and tribal governments. Any resulting comments must be considered (see Sections [200.04\(13\)](#) and [200.04\(14\)](#)). Contact the [NEPA/SEPA Program](#) for more information about public comments during PEL.

If the planning product is necessary for a cooperating agency to issue a permit, review, or approval for the project, then there must also be concurrence with that agency ([23 U.S.C. 168\(d\)](#)). See [Section 400.02\(4\)](#) for more information on cooperating agencies.

If the requirements under [23 U.S.C. 168\(d\)](#) are met, then the planning product can be adopted into the NEPA document and any planning decisions that were made during the PEL process do not need to be re-evaluated during NEPA.

200.04(7) Requirements for 23 CFR 450.318 and 450.212

There are five requirements that must be met for FHWA or FTA to use planning products in the environmental review process under PEL authorities [23 CFR 450.318](#) and [450.212](#). These requirements are provided in [23 CFR 450.318\(a\)-\(d\)](#) and [23 CFR 450.212 \(a\)-\(c\)](#), illustrated in WSDOT's [PEL Authorities chart](#) and are listed below (paraphrased) by project phase.

During planning, the federal lead agency must concur that the following are met:

- The planning process involves interested federal, state, local, and tribal agencies.
- The planning product is developed through a public review process.
- There is a reasonable opportunity for anyone interested to comment.
- FHWA and FTA review the planning documents, as appropriate.

During project scoping and programming:

- The federal lead agency must agree that decisions are documented in a form that is identifiable and available for review during the NEPA scoping process and can be used or incorporated by reference in the NEPA document.

During environmental review the federal lead agency must agree that incorporating the planning products will help establish or evaluate the NEPA Purpose and Need, reasonable alternatives, impacts, or mitigation of impacts.

If the requirements under [23 CFR 450.318\(a\)-\(d\)](#) and [23 CFR 450.212 \(a\)-\(c\)](#) are met, then the planning product can be used as relevant information to be evaluated through the typical environmental review process.

200.04(8) Requirements for 23 U.S.C. 139

Regardless of the primary authority or authorities being used for a PEL study, when the desired outcomes of a federal PEL include elimination of unreasonable alternatives, the requirements of [23 U.S.C. 139\(f\)](#) must be met in addition to the primary federal authority being used for the study. Refer to WSDOT's Planning and Environmental Linkages webpage for additional PEL authority guidance.

PEL authority [23 U.S.C. 139](#) includes six requirements that must be met to eliminate unreasonable alternatives in PEL studies using either primary PEL authority ([23 U.S.C. 168](#) or [23 CFR 450.318](#) and [450.212](#)). These requirements are provided in [23 U.S.C. 139\(f\)\(4\)](#) and are (paraphrased):

- The federal lead agency must independently review the alternative evaluation process.
- There is a reasonable opportunity for public review and comment.
- The eliminated alternative must be reasonably considered.
- The lead agency provided guidance regarding analysis of alternatives and the requirements of NEPA, and any other federal law necessary for approval of the project.
- The alternative is eliminated only after considering public comments.
- Participating and cooperating agencies must be consulted to ensure that the eliminated alternative is not necessary for compliance with NEPA. Agencies with jurisdiction must also be consulted to ensure that the eliminated alternative is not necessary for a permit or approval.

If the requirements under [23 U.S.C. 139\(f\)](#) are met, then a reduced range of alternatives can be evaluated through the environmental review process.

Note: FHWA recommends using PEL authority [23 U.S.C. 139](#) to eliminate alternatives because it is the most directly applicable authority for considering and eliminating unreasonable alternatives. However, if using [23 U.S.C. 139](#) to eliminate unreasonable alternatives, then you must also use one of the other authorities discussed in previous Sections [200.04\(6\)](#) and [200.04\(7\)](#) ([23 U.S.C. 168](#) or [23 CFR 450.318](#) and [450.212](#)) to establish the Purpose and Need that is required for eliminating the alternatives. The FHWA [Planning and Environment Linkages](#) webpage includes additional information on PEL authorities that may assist in these decisions.

200.04(9) Requirements for 40 CFR 1500.4 and 1501.12

If you cannot meet the requirements listed in [Section 200.04\(6\)](#) or [Section 200.04\(7\)](#) to use the planning product in the NEPA process, then you can still introduce the planning product into the NEPA process as information that requires additional work or further action. For example, if there was no public review during the planning process, the planning products may still be referenced in the NEPA document and reviewed through the NEPA process in accordance with [40 CFR 1500.4\(l\)](#) and [1501.12](#).

To do this, WSDOT must:

- Cite the incorporated planning products within the NEPA document and briefly describe the content.
- Make the planning products reasonably available for inspection by potentially interested persons during the NEPA comment period.

Proprietary data not publicly available cannot be incorporated into the NEPA document.

200.04(10) Additional requirements applicable to all PEL authorities

Decisions made during a PEL process must be documented in a format that can be included in the NEPA document directly, by reference, or in an appendix. A key consideration is how the PEL will meet standards established by NEPA regulations and guidance. One way to do this is to use NEPA-like language such as Purpose and Need, affected environment, and environmental impacts. It is preferred to use the NEPA-like language in PEL, but if you choose to use planning terms, the [PEL Questionnaire](#) asks for the reason, definitions, and examples or a list of terms.

PEL studies must also verify that the information in the planning product is still valid if using it in the environmental review process more than five years after the planning product's approval. Any new information should be reviewed through the environmental review process, rather than through revisions to the approved planning product.

200.04(11) PEL Purpose and Need

The Purpose and Need is the foundation of NEPA and the environmental decision-making process. It allows for alternative development, analysis, and selection. See [Chapter 400](#) for more information about NEPA Purpose and Need. Federal statutes and regulations for developing a Purpose and Need statement during transportation planning that can be applied to the NEPA process are provided in [23 U.S.C. 168](#), and [23 CFR 450.318](#) and [450.212](#).

It is necessary to establish a clear Purpose and Need during PEL that is compatible with the NEPA process. In PEL, the Purpose and Need statement can take various forms, depending on the desired outcomes of the planning study. Consult with the appropriate federal and state resource agencies and tribes when developing a PEL Purpose and Need statement. See [Section 200.04\(13\)](#) for additional information on consulting with agencies and tribes, and [Section 200.04\(14\)](#) for information on community engagement.

For large corridor studies, the Purpose and Need can be a general statement of the vision and goals for the corridor and to address the issues of each recommendation or decision. This approach is recommended for PEL studies that recommend multiple projects or program-level policies or decisions.

A more specific Purpose and Need may be needed for each recommendation during future NEPA analysis. It is recommended to follow the requirements under [23 CFR 450.318](#) and [450.212](#) for establishing a Purpose and Need for a large corridor study that can be used and further evaluated during NEPA. Those requirements are listed in [Section 200.04\(7\)](#) and [200.04\(9\)](#).

For planning studies that are leading directly to a defined project, the Purpose and Need should have the same amount of detail as one that is developed during the NEPA process. In this case, the goal is to establish a Purpose and Need that can be adopted into NEPA unchanged. To do this, follow the requirements under [23 U.S.C. 168](#). The requirements are listed in the [Section 200.04\(6\)](#).

Note: PEL studies using [23 U.S.C. 168](#) must receive NEPA federal lead agency (FHWA or FTA) concurrence on the final PEL Purpose and Need statement to adopt it into NEPA.

For any PEL effort, it is strongly recommended to use the NEPA term “Purpose and Need”, rather than using planning terms such as goals and objectives.

200.04(12) Alternatives development, evaluation, and elimination of unreasonable alternatives

Unreasonable alternatives are those which do not meet the Purpose and Need or are infeasible, such as containing fatal flaws. Common examples of fatal flaws include alternatives with unacceptable significant environmental impacts, excessively high costs, or are impractical from an engineering standpoint. However, there may be other types of fatal flaws identified through the PEL process. Eliminating unreasonable alternatives during PEL allows for a more efficient environmental review because those alternatives can be excluded from the detailed analysis and evaluation that occurs during the NEPA process.

Alternatives only need to be developed to a “conceptual level” for evaluation and elimination during the PEL process. This means that alternatives may be evaluated, scored, prioritized, and/or screened out without the need to advance engineering designs beyond a very conceptual project area.

The requirements for eliminating unreasonable alternatives under [23 CFR 450.318](#) and [450.212](#), [23 U.S.C. 168](#), and [23 U.S.C. 139](#) are the same as those listed in [Section 200.04\(6\)](#), [200.04\(7\)](#), and [200.04\(8\)](#). REMEMBER - Use [23 U.S.C. 168](#) if the goal is to adopt the decision to eliminate alternatives and not re-evaluate that decision during NEPA.

Note: it is strongly recommended to use the NEPA term “alternative”, rather than using planning terms such as concept, strategy, or option.

200.04(13) Agency and tribal government coordination

WSDOT’s policy is to invite resource agencies and tribes with jurisdiction or permitting or approval authority to participate in the PEL process. The goal is to reach concurrence with these agencies and tribes on key planning decisions, such as establishing the Purpose and Need statement and eliminating unreasonable alternatives. However, concurrence is not required.

One benefit of PEL studies following the [23 U.S.C. 168](#) process is to make decisions during the planning process that do not need to be revisited during the NEPA process. This means that the PEL process is the best opportunity for interested parties to shape future projects. Also, any resource agency and tribal government coordination that occurs during PEL counts toward NEPA/SEPA project- level scoping.

It’s especially important to engage any organization that will need to make a decision or take an action on a project resulting from a PEL effort. For example, an agency (such as the U.S. Fish and Wildlife Service (USFWS)) may require a multi-year study before concluding consultation. Learning this information during the PEL process can allow WSDOT to complete the study and consultation prior to starting NEPA and may lead to faster timelines for permits requiring consultation to be complete. These efficiencies are important for meeting the time limits in [40 CFR 1501.10](#) that require agencies to complete EAs within one year and EISs within two years.

Note: While early coordination with the Department of Archaeology and Historic Preservation (DAHP) may take place, formal consultation under Section 106 of the National Historic Preservation Act may not begin until NEPA has been formally initiated.

WSDOT may establish a resource agency or tribal committee, or a general technical advisory committee that includes any interested parties with jurisdiction or expertise. However, federal PEL regulations do not require the establishment of a formal resource agency, tribal, or technical advisory group.

WSDOT must consult on PEL studies with tribal governments on a government-to-government basis. This consultation is distinct from any invitations to participate as part of a general participant advisory group and should only be done in coordination with the federal lead agency for the PEL (FTA or FHWA). Tribes may want to communicate directly with the federal lead rather than WSDOT, so coordinate with FTA or FHWA to ensure the government-to-government consultation is conducted appropriately. The federal lead agency should confirm WSDOT's participation in this process and confirm their approval of the approach before WSDOT contacts tribes during the PEL process. Tribes may accept or decline the invitation to participate or may request to stay informed during the PEL process.

WSDOT regional biologists may be able to assist in the PEL consultation process with agencies like the U.S. Fish and Wildlife Service, National Marine Fisheries Service and the U.S. Army Corps of Engineers (Corps). Coordinate with [NEPA/SEPA Program](#) and federal lead agency for assistance communicating these federal agencies.

WSDOT should make an extra effort to engage any agency that must make a future NEPA decision for a project resulting from a PEL study. For example, if the PEL is leading to a project that will require a [Section 404 of the Clean Water Act](#) permit, then WSDOT should strongly encourage the Corps to be involved during the PEL process.

If an invitation to participate in the PEL process is declined by an agency or tribe, the federal lead agency (FHWA or FTA) may still agree that the final planning products may be adopted or used in NEPA. In this case, document which agencies and tribes were invited, how WSDOT attempted to engage them initially and update them throughout the study, and whether they responded to the invitation. If an agency responded to the invitation but didn't actively participate in the PEL process, document any suggestions or comments they provided to WSDOT and how they were considered.

WSDOT must document all resource agency and tribal comments, including how each comment was considered. This should be done at major concurrence points such as establishing the Purpose and Need statement and eliminating unreasonable alternatives. For more information on concurrence points during PEL, refer to the [PEL Process Chart](#) on WSDOT's [Planning and Environmental Linkages](#) webpage.

WSDOT must also provide draft and final planning products to any interested federal, state, local, and tribal governments for review and comment, even if they declined to participate in the PEL process. WSDOT must document comments on the draft and final planning products, including how each comment was considered.

To use the final planning products in the NEPA process, the federal lead agency must determine that the resource agency and tribal consultation was adequate or that WSDOT provided a reasonable opportunity for resource agencies and tribes to comment.

200.04(14) Community Engagement

Including members of the affected community in the PEL process helps to identify issues, improve their understanding of the study's recommendations, foster relationships with the public, and generates a stronger PEL. WSDOT policy for community engagement is detailed in [Design Manual](#) Exhibits 210-1 through 210-4, [23 CFR 450.210](#), and in WSDOT's [Community Engagement Plan](#).

Refer to [Chapter 460](#) for EJ requirements for planning studies and WSDOT's [Environmental justice](#) webpage for additional guidance. The planning team determines the appropriate community engagement strategy based on the affected community's needs and values.

One recommended method for ensuring community engagement throughout the entire PEL process is to establish a community advisory group. This helps ensure public input at major concurrence points, such as establishing the Purpose and Need statement and eliminating unreasonable alternatives. However, federal PEL regulations do not require the establishment of a formal community advisory group. For more information on concurrence points during PEL, refer to the [PEL Process Chart](#) on WSDOT's [Planning and Environmental Linkages](#) webpage.

If using PEL authority [23 U.S.C. 168](#), then WSDOT must provide public notice that resulting planning products may be adopted for use in NEPA ([23 U.S.C. 168 \(d\)\(4\)](#)). The public notice intent is to ensure awareness that planning products developed during the PEL study may be adopted directly into the NEPA process without being revisited later. The WSDOT [PEL Authorities chart](#) provides information on how public notices fit into the PEL study process. Contact the [NEPA/SEPA Program](#) for guidance on the PEL public notice process.

WSDOT should make planning materials available to the public throughout the PEL process and make additional efforts to engage the public at key decision points in the process.

For example, this is important when establishing the Purpose and Need statement and eliminating unreasonable alternatives. These are the best practices for making public comment most effective. However, at a minimum, WSDOT must provide the final PEL products to the public for review and comment.

WSDOT must consider any public comments received during the PEL process. WSDOT should document each comment and how each comment was considered. Any public engagement that occurs during PEL counts toward NEPA/SEPA project-level scoping.

200.04(15) Identifying potential mitigation strategies

One benefit of considering environmental context during planning, described in [Section 200.04\(1\)](#) is the development of potential mitigation strategies. Early coordination, public involvement, and project development described in [23 CFR 771.111](#) also includes in section (2)(ii) mitigation actions consistent with a programmatic mitigation plan. Programmatic mitigation plans may be developed pursuant to [23 U.S.C. 169](#) or outside of that framework.

Under [23 U.S.C. 169](#), FHWA can approve programmatic mitigation plans for certain types of projects. These plans outline strategies for mitigating the environmental impacts of a group of projects with similar characteristics, rather than addressing mitigation on a project-by-project basis. The goal is to streamline the environmental review process while still ensuring effective mitigation.

The FHWA [Programmatic Mitigation Planning Guidebook](#) offers information on developing and implementing programmatic mitigation plans to assist transportation and environmental practitioners with impacts of future transportation projects, including at regional and landscape scales. The intended audience includes planning and project development staff from State Departments of Transportation, Metropolitan Planning Organizations, county transportation departments, and other transportation entities that can benefit from advance mitigation preparedness to facilitate future projects.

The FHWA guidebook includes discussions of the benefits of programmatic mitigation planning. These include:

- Improving environmental and community outcomes.
- Accelerating project delivery.
- Providing measurable cost savings.
- Improving predictability and building trust.

Examples of programmatic mitigation plans include:

- **Wetland mitigation banking programs:** These programs establish a framework for compensating for wetland impacts across multiple projects. They might include guidelines for creating, restoring, or enhancing wetlands in specific regions.
- **Habitat Conservation Plans (HCPs):** HCPs are often developed for projects impacting endangered species or their habitats. They outline measures to minimize and mitigate impacts on these species across multiple projects.
- **Historic Preservation Programs:** Programmatic agreements or plans may be developed to address the impacts of transportation projects on historic resources. These plans could include protocols for documenting, preserving, or mitigating impacts to historic properties.

Consult with your FHWA or FTA federal PEL lead and contact the [NEPA/SEPA Program](#) for guidance developing programmatic mitigation plans during the PEL process.

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300.01	Introduction
300.02	Project scoping
300.03	Project classification
300.04	NEPA classifications
300.05	SEPA classifications
300.06	Revision of project scope and classification
300.07	Highways over national forest lands
300.08	Project types with special requirements
300.09	Environmental database resources
300.10	Applicable statutes and regulations
300.11	Abbreviations and acronyms
300.12	Glossary

300.01 Introduction

During the project scoping and programming phase, WSDOT develops a plan to identify and address transportation facility performance needs and creates a preliminary budget for consideration by the state legislature. The process is required by state law ([RCW 47.05.010](#)) and is limited to solving safety and operational performance needs identified in WSDOT's modal plans, as well as addressing environmental factors.

Scoping defines time and cost-of-work estimates for each proposed project. It is important that estimates be as realistic as possible and consider budget and schedule implications of environmental documentation, permitting and compliance monitoring, as well as engineering work.

Programming refines and prioritizes the list of proposed projects. The process is based on the recommendations gathered during Planning from community engagement activities and the costs and schedules developed during Project Scoping.

Scoping and programming fulfill the need for WSDOT to:

- Create and submit to the legislature a ten-year investment program as defined in [RCW 47.05.030](#). The legislature considers and approves this program along with a 2-year budget. The approved program and budget can include legislative modifications. For details, see WSDOT's [Project delivery plan](#) webpage.
- Create fiscally-constrained lists of projects to submit for inclusion on the Statewide Transportation Improvement Program (STIP) (that includes the Transportation Improvement Programs (TIP) developed by Metropolitan Planning Organizations (MPOs)) as required by [23 CFR 450.218](#). Projects on the STIP are eligible for federal funding. For details on this process, see WSDOT's [Statewide Transportation Improvement Plan](#) webpage.

Through this process:

- WSDOT creates a financially constrained list of projects for consideration by the legislature. The list is based on realistic schedules and cost estimates that include all phases of the work.
- The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) approve the STIP. A project must be included in the TIP and the STIP to be eligible for federal funding (Title 23 U.S.C. and the Federal Transit Act). For details on this process, see WSDOT's [Local Programs](#) webpage.
- The legislature considers and approves WSDOT's 6- to 10-year Capital Improvement and Preservation Program (CIPP) along with a 2-year budget. The approved plan and budget can include legislative modifications.

300.02 Project scoping

This section provides agency policies for project scoping. [Chapter 400](#) explains the importance of public and agency outreach (public scoping) during pre-NEPA and scoping of our environmental documents.

Practical Solutions is a two-part strategy that includes practical solutions planning and practical design, as defined in WSDOT Executive Order (EO) [E 1090.01](#) and *Design Manual Section 1100.02*. This process defines the method WSDOT uses to scope and design projects.

WSDOT's practical design process consists of seven primary procedural steps listed below, providing the basis for modal choice, alternative development, and selection of design elements. Minimize re-work by documenting the practical design process (*Design Manual Section 1100.04*) in enough detail to help fulfill National Environmental Policy Act (NEPA) documentation requirements.

WSDOT's practical design process steps include:

1. Assemble an advisory team. The Project Engineer will usually invite Environmental staff to participate on the Advisory Team (see *Design Manual Sections 1100.04* and [1100.03\(2\)](#)).
2. Clearly identify the baseline and contextual needs (see *Design Manual Chapter 1101*).
3. Identify the land use and transportation context for the project location (see *Design Manual Chapter 1102*), including the environmental, economic, and social demographic data that indicate livability and travel characteristics.
4. Select design controls compatible with the context (see *Design Manual Chapter 1103*).
5. Formulate and evaluate potential alternatives that resolve the baseline/contextual need and are bound by design controls (see *Design Manual Chapter 1104*).
6. Select design elements employed and/or changed by the selected alternative(s) (see *Design Manual Chapter 1105*).
7. Determine design element dimensions consistent with the alternatives' performance needs, context, and design controls (see *Design Manual Chapter 1106*).

The Basis of Design (BOD) is used to document the outcomes of applying these procedural steps. A BOD is required for all projects. The BOD should serve as the background and context for detailed environmental analysis and documentation.

One of the major responsibilities of the advisory team environmental staff is to assist the team in establishing appropriate environmental measures, such as the number of square feet of impact to Category I and II wetlands. The environmental staff also ensure:

- The process, participants and decisions made by the team comply with NEPA and State Environmental Policy Act (SEPA) requirements.
- The team considers all appropriate environmental disciplines (such as Section 4(f), Section 106, ESA, noise, etc.). See the [User Guide for Corridor Sketch Summaries](#) for additional key WSDOT environmental assets to consider.
- Decisions are included in the project's supporting documentation.

During project scoping, all major costs of the project are used to prepare a realistic schedule and cost estimate. Scoping is described in the *Design Manual* [Chapter 300](#). The process is documented in the Project Profile and identifies the transportation needs that have generated the project, the purpose or goal of the work and the recommended solution.

The Environmental Review Summary (ERS) is attached to the Project Profile as a part of the Project Summary package. The ERS:

- Documents known baseline environmental conditions.
- Describes potential environmental impacts, mitigation options and anticipated permits necessary for the project.
- Establishes project classification (see [Section 300.03](#)) and anticipated level of environmental documentation required (see [Chapter 400](#)) for the project. The Region Environmental Manager approves the ERS, which indicates concurrence with the anticipated project NEPA and/or SEPA Classification.

For many projects, the WSDOT Geographic Information System (GIS) Workbench coupled with a site visit provides sufficient information to complete the ERS for projects classified as Categorical Exclusions (CEs). Additional detailed analysis may be required for projects that require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The ERS database includes a help guide that provides detailed guidance for completing the ERS forms. Contact your Region Environmental Office and the [NEPA/SEPA Program](#) to get set up in the database.

For CE level projects, the information in the ERS is exported to the Environmental Classification Summary (ECS) database and becomes the basis for NEPA/SEPA environmental documentation (see [Chapter 400](#) for more information).

300.03 Project classification

The project classification determines the anticipated level of environmental documentation required for a WSDOT project. It is based on the information contained in the ERS and can change as more information is discovered.

State projects with a federal nexus are subject to NEPA and SEPA. Projects that have only state funding and no federal nexus follow SEPA guidelines. If future funding is undetermined, NEPA guidelines are usually followed so the project can qualify for federal funding in the future. See the [NEPA and SEPA](#) webpage for more information.

300.04 NEPA classifications

Projects with federal dollars or approvals are subject to NEPA and fall into one of the three classifications described below.

1. **NEPA Class I projects** – These actions are likely to have significant impact on the environment because of their effects on land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services or natural resources. They require preparation of an EIS (see [Chapter 400](#)) because the action is likely to have significant adverse environmental impacts. Projects that usually require an EIS, as defined in [23 CFR 771.115](#), are:

- New controlled-access freeways.
- Highway project of four or more lanes in a new location.
- New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit) not within the existing right of way.
- New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

Although examples are given, it is important to remember that the context and intensity of the potential impacts, and the level of controversy on environmental grounds, determine the need for an EIS, not the size of the project.

2. **NEPA Class II projects** – These actions are Categorical Exclusions (CEs). These actions are not likely to cause significant adverse environmental impacts, meet the definition contained in [40 CFR 1508.1](#), and are excluded from completing an EA or EIS. A completed ECS Form serves as the environmental documentation for these types of projects (see [Chapter 400](#)).

Each federal agency is required to identify its own categories of actions that qualify as CEs, although all USDOT agencies agree that Class II projects typically:

- Do not induce significant impacts to planned growth or land use.
 - Does not require the relocation of significant numbers of people.
 - Do not have a significant impact on any natural, cultural, recreational, historic, or other resource.
 - Do not involve significant air, noise, or water quality impacts.
 - Do not have significant impacts on travel patterns.
 - Do not otherwise, either individually or cumulatively, have significant environmental impacts.
- a. **FHWA** – CEs are described in [23 CFR 771.117](#). Under the 2024 [WSDOT/FHWA NEPA CE Programmatic Agreement \(PCE\)](#), WSDOT approves the NEPA documentation for all Class II (CE) projects described in [23 CFR 771.117 \(c\) and \(d\)](#). These actions normally do not require further approval or documentation by FHWA. If your project includes relocations, contact the [NEPA/SEPA program](#) to assist you in determining whether your project may require review by FHWA to determine the NEPA class of action.

Environmental documentation for CE projects is accomplished by completion of the ECS Form, which is approved by the Region Environmental Manager (see [Chapter 400](#)). The NEPA documentation process for Local Agencies is described in the WSDOT Local Programs [NEPA Categorical Exclusions Guidebook](#).

WSDOT may request FHWA review and signature for individual projects on a case-by-case basis ([PCE - Section IV\(B\)\(1\)](#)).

- b. **FTA** – CEs are described in [23 CFR 771.118](#). FTA has its own process and worksheets for documenting CEs.
 - c. **Federal Railroad Administration (FRA)** – CEs are described in [23 CFR 771.116](#). FRA has its own process and worksheets for documenting CEs. Contact the WSDOT Rail Division Environmental Compliance Manager for assistance.
 - d. **Federal Aviation Administration (FAA)** – CEs are described in [FAA Order 5050.4](#) Chapter 6. FAA has its own process for documenting CEs.
3. **NEPA Class III projects** – When the potential environmental impacts of a proposed project are not clearly understood, an EA is prepared. The EA determines the extent and level of environmental impact.

The content and complexity of an EA will vary depending on the project. See [Chapter 400](#) and the WSDOT [NEPA and SEPA](#) webpage for details on EA documentation and procedure.

300.05 SEPA classifications

[Chapter 400](#) explains WSDOT's SEPA responsibilities and how NEPA documentation can satisfy SEPA requirements. Many of our actions are exempt from the SEPA process. If an action is not exempt, it is either found to have non-significant or significant impacts.

WSDOT serves as the SEPA lead agency on actions undertaken by our agency. As such, we are required to determine the level of environmental review and documentation required for an action. The SEPA determinations fall into one of three broad categories: Determination of Significance (DS), Determination of Nonsignificance (DNS) and a Categorical Exemption (CE).

- **Determination of Significance (DS)** – Issued for actions that are likely to result in a probable significant adverse environmental impact. A DS requires that an EIS be completed for the action. **Note:** if an action has a probable significant adverse impact, the project team may immediately begin the EIS process without issuing a DS.
- **Determination of Nonsignificance (DNS)** – Issued for actions that are not likely to have a significant adverse environmental impact but are not categorically exempt.
- **Categorical Exemption (CE)** – Covers actions identified by statute or rule that are unlikely to cause significant adverse environmental impacts.

The types of projects that qualify as categorically exempt can be found in:

- [RCW 43.21C.470](#) – [43.21C.480](#) – Statutory Exemptions
- [WAC 197-11-800](#) – Categorical exemptions listed in state SEPA rules.
- [WAC 197-11-860](#) – Nine categorical exemptions specific to WSDOT.
- [WAC 468-12-800](#) – WSDOT categorical exemptions based on WSDOT's interpretation of the categorical exemptions listed in state SEPA rules.

Note: Fish passage projects typically qualify as Fish Habitat Enhancement Projects (FHEP), which follow a streamlined process under [RCW 77.55.181](#). For additional information, see the scoping tab on WSDOT's [Environmental guidance – Fish](#) webpage.

300.06 Revision of project scope and classification

If the scope of a project that was projected to be a CE changes substantially, a revised ERS is advised. This revised ERS may demonstrate that the project is no longer a SEPA CE and now requires a SEPA Checklist or is no longer a NEPA CE and now requires an EA.

See [Section 400.06](#) and WSDOT's [NEPA and SEPA](#) webpage (design tab) for details on project re-evaluations and preparation of supplementary environmental documentation.

300.06(1) NEPA Reclassification

The 2024 [WSDOT/FHWA NEPA CE Programmatic Agreement](#) (PCE) allows WSDOT to approve the NEPA classification for projects that are clearly categorically excluded in [23 CFR 771.117](#). However, CE projects that include unusual circumstances like residential or non-residential relocations must be reviewed by FHWA to determine the classification or reclassification. Project teams should communicate early and often with their regional or headquarters Real Estate Services team to identify any potential right of way activities that could result in residential or non-residential relocations.

A scope change may require a new ERS, and most minor project changes may be handled informally with a letter to the project file. However, for NEPA CE projects, once NEPA has begun, a revised NEPA ECS must be completed for any major change project change.

Contact the [NEPA/SEPA Program](#) if a scope change during NEPA requires a change in NEPA classification (CE to EA/EIS, or EA to EIS).

If the project scope changes *after a NEPA CE is complete, a re-evaluation process may be required*. See [Section 400.06](#) and WSDOT's [NEPA and SEPA](#) webpage (design tab) for details on project re-evaluations and preparation of supplementary environmental documentation.

300.06(2) SEPA Reclassification

A significant change in the scope of a state funded project with no federal nexus (SEPA only) usually requires revision of the ERS. This may include reassessment of the environmental classification. The Region Environmental Office, in coordination with the Region Program Management Office, determines if the ERS needs to be revised and the environmental classification changed. For example, if the scope of an anticipated CE project changes substantially, a revised ERS is advised. This revised ERS may demonstrate that the project is no longer a SEPA CE and now requires a SEPA Checklist. Any changes in classification are documented by a note to the file or a follow-up memo.

Contact the [NEPA/SEPA Program](#) if scope changes occur after SEPA has been completed on a project to discuss SEPA process and documentation revisions.

300.07 Highways over national forest lands

WSDOT and the United States Forest Service (USFS) established procedures through a [Memorandum of Understanding](#) (MOU) for coordination of transportation activities on national Forest lands in 1991 (updated in May 2019). The MOU covers coordination, project programming and planning, pre-construction, rights of way, construction/reconstruction, maintenance, signs, access control and third-party occupancy. The agreement does not apply to local agency projects. Elements that pertain to environmental analysis and documentation include the stipulation that:

- WSDOT will coordinate with USFS at project inception for projects using or affecting National Forest Service lands or interests.
- WSDOT and USFS will agree on needed environmental documents and lead agency responsibilities. WSDOT will have the primary responsibility for highway related projects.
- WSDOT and USFS will cooperate in development of a single set of environmental documents for each project and jointly seek public involvement when necessary.
- Draft and final environmental documents will be circulated to each agency for review before distribution for public comment.

300.08 Project types with special requirements

Fish passage and Chronic Environmental Deficiency (CED) projects follow a different planning and scoping process than standard transportation projects. These project types are constructed to improve fish habitat or access to fish habitat and have specific coordination and approval requirements with Washington Department of Fish and Wildlife (WDFW) and the Tribes.

Project scoping for Washington State Department of Transportation Ferries Division (WSF) projects is described in the *Terminal Design Manual* Chapters [200](#) and [205](#).

300.08(1) **Fish passage projects - Fish Passage Delivery Planning**

WSDOT created the fish passage program in 1991 to inventory, prioritize, and correct fish passage barriers along state highways.

WSDOT corrects fish passage barriers mainly through stand-alone projects or as part of larger transportation projects. Sometimes highway barriers are corrected in partnerships with local agencies, Tribes, regional fisheries enhancement groups and other project sponsors. Other barriers are corrected when culverts are replaced at the end of their useful life.

WSDOT's Fish Passage project delivery plans are updated quarterly, or sooner, based on new information. See WSDOT's [Fish passage](#) webpage for updated information on the delivery plan: [2030 Fish passage project delivery plans](#) webpage. You can also find the latest Fish Passage Delivery Plan updates on WSDOT's [Fish Passage](#) webmap. These lists include information on fish barrier corrections that are planned as stand- alone fish passage projects or through larger transportation projects.

300.08(2) Stand-alone I-4 Funded Fish Passage Projects

These projects are part of the WSDOT Environmental Retrofit Subprogram (I-4). The sole purpose of these projects is to correct fish passage barriers.

The Environmental Services Office (ESO) contracts with the WDFW's Fish Passage Program for project support for I-4 funded, injunction barrier corrections. WDFW's fish passage agreement does not include support for barriers corrected through larger transportation projects or barriers corrected outside of the culvert injunction case area. The Agreement is available on the [Fish Passage Program Delivery](#) tab in [WSDOT's Fish Passage Database](#). Contact FishPassageTeam@wsdot.wa.gov for assistance with the Fish Passage Database.

The following tasks are covered by the WDFW Agreement managed by ESO's Stream Restoration Program Manager:

- WDFW Fish Passage Biologists and engineers provide technical support
- Verify fish passage barrier status
- Verify fish species present and habitat information
- Attend interdisciplinary team site visits
- Review and comment on the preliminary hydraulic design (PHD)
- Identify fish work windows for permitting
- May provide input on design build Request for Proposals
- Biologists issue Hydraulic Project Approvals (HPAs)
- Biologists provide construction support

WDFW project support biologist and engineer assignments are found in the [Fish Passage Program Delivery](#) tab of [WSDOT's Fish Passage Database](#) (see `WSDOT_Fish_Passage_WDFW_Work` spreadsheet). This spreadsheet also includes project assignments for WSDOT staff working on fish passage projects, including the Project Engineering Offices (PEOs), Headquarters Hydraulics engineers and ESO Stream Restoration biologists.

Large Transportation Projects

Fish passage barriers often exist within the project boundaries of large transportation projects whose main objective is to alter the roadway, modify the road prism, or add infrastructure within the existing right of way. WSDOT is responsible for protecting and maintaining fish passage through WSDOT owned water/road crossings, and often corrects these barriers as part of these transportation projects.

Notify Stream Restoration Program staff early during the project scoping phase to screen for fish passage barriers in the vicinity of the project limits.

Use the 'WSDOT Sites' data layer in the GIS Workbench to locate known fish passage barriers and corrected barriers within or adjacent to the planning study area.

Contact WSDOT's Stream Restoration Program Manager to verify information and determine if the fish passage inventory needs an update. Updating fish passage inventories during planning helps us identify future funding needs.

Barriers corrected through larger transportation projects are permitted by WDFW Local Area Biologists, rather than WDFW Fish Passage Biologists.

ESO Stream Restoration Program biologists are available to provide technical assistance and support on fish barriers corrected through larger transportation projects, including culvert injunction compliance.

300.08(3) Chronic Environmental Deficiency (CED) Projects

A Chronic Environmental Deficiency (CED) is a coastal or stream-adjacent location along a state highway where recent, frequent emergency repairs or maintenance (typically 3 times in 10 years) to WSDOT infrastructure cause adverse impacts to fish habitat. During large storms, these sites are vulnerable to erosion, sedimentation, flooding, washouts or other environmental threats and can require expensive repairs, threaten safety, result in road closures, and repeatedly pull limited resources from other needs during emergencies.

In 2002 WSDOT signed a [Memorandum of Agreement](#) (MOA) with WDFW, in which WSDOT agreed to establish the CED Program. The purpose of the CED Program is to identify these chronic repair sites, prioritize and construct long-term, nature-based retrofits that protect the highway and reduce impacts to fish from repeat repairs and maintenance. This commitment satisfies WDFW's compensatory mitigation requirements under the HPA permitting process for highway maintenance activities identified in Section VIII of the MOA.

The [MOA](#) established a specific collaborative project scoping and implementation process to ensure CED retrofit projects are long-term, reduce impacts to fish from repetitive repairs and maintenance, improve fish habitat, and meet WSDOT's infrastructure preservation needs. To support this, WSDOT developed a funding category and an inventory, scoping, prioritization, and programming process for CED projects. The [MOA](#) was most recently updated in 2016.

See WSDOT's [Chronic Environmental Deficiencies](#) webpage for more information about the CED program and links to relevant documents and resources.

Addressing Chronic Environmental Deficiencies

The CED program is implemented from within WSDOT's Headquarters Stream Restoration Program by the CED Coordinator, who oversees and leads the inventory, assessment, scoping, and prioritization of CED projects and coordination with WDFW. This process includes four general steps:

1. Nomination and analysis
2. Interagency coordination and CED concept selection
3. Project funding and implementation
4. Post-project monitoring

The CED Coordinator works closely with WSDOT Hydrology and regional staff to identify, prioritize, and evaluate CED sites, develop project alternatives, and then facilitate a concurrence process with WDFW to select a preferred CED project concept. As appropriate, the CED coordinator invites tribal biologists, adjacent institutional landowners, restoration practitioners, and other potential project partners to participate in the site analysis and concept selection process.

Then, the CED Coordinator works with regional staff and CPDM to prioritize projects and request funds for project implementation. When funds are designated for a CED project, WSDOT regional staff become responsible for overseeing its design and construction.

Two project documents are produced by the CED program that document the proposed conceptual designs and agreement with WDFW on a proposed CED solution. These include:

- **Site and Reach Assessment** prepared by a geomorphologist or hydrologist, that defines the problem, evaluates the processes occurring in the watershed, and identifies the cause of the CED problem. It discusses alternative solutions and provides a feasible recommendation. The site and reach assessment also identifies actions to maintain the infrastructure until a permanent solution is constructed.
- **CED Concurrence form** signed by WDFW and WSDOT headquarters and regional staff. This form summarizes the problem, considered alternatives, and documents agreement with the proposed conceptual design.

WSDOT documents its progress addressing CEDs in the [CED Annual Report](#), which is published early each calendar year and distributed to WDFW and other interested parties.

CED Roles and Responsibilities

The CED process involves staff throughout WSDOT, including the following headquarters and regional staff:

- **Environmental Services Office (ESO)** – The CED Coordinator oversees the CED program and leads the CED process, including CED nomination, outreach to WDFW and other participants in the concept selection process, CED concurrence, prioritization, and reporting. They provide biological technical assistance and coordinate with regional staff and WDFW regarding CED nominations, conceptual designs, concurrences, and prioritization.
- **Hydraulics Office** – Hydrology Staff assist the CED coordinator in approving CED nominations and prioritizing CED sites. They prepare site and reach assessments, conceptual designs and provide technical assistance to regional staff throughout project development and implementation.
- **Capital Program Development and Management (CPDM)** – The CED Coordinator works with the Priority Programming Manager to communicate CED priorities and secure project design and construction funds. CPDM programs and approves funding for proposed CED projects and coordinates them with other agency priorities. They also manage the timing of funding availability to address changes in scope, project delays, and to commit matching funds for grant opportunities.
- **Regional Maintenance** – The Regional Maintenance Environmental Coordinators (RMEC) and Maintenance Superintendents recommend potential new CED sites, provide updates on the status of active CEDs, and assist with prioritization of CED projects.
- **Regional Environmental Manager** – Serves as the regional point of contact for the CED process, concurrence, and CED project implementation. They assist with regional, interagency, tribal, local, and early permit coordination.
- **Project Engineer** – Participates in CED project pre-scoping and scoping to ensure that CED proposals are constructable and feasible, and includes the CED Coordinator at major milestones throughout project design and construction.
- **Regional Program Management** – Scopes and proposes CED construction projects and provides preliminary cost estimates.

CED Project Scoping

The CED Coordinator ranks each CED project relative to other CEDs based on potential benefits to fish and aquatic habitat; risk to infrastructure and safety; maintenance burden; and WDFW, tribal, or local priorities, partnership, or grant opportunities. The prioritization is used by the Capital Program Development and Management (CPDM) to queue projects for funding approval.

As described in the [MOA](#), WSDOT is obligated to make a good-faith effort to fund and construct CED projects and can do so using any source. Most CED projects are funded through a stand-alone retrofit program in the Highway Construction Improvement (I-4) Program. CEDs are also repaired as part of [fish passage improvement projects](#), highway safety and mobility projects, and occasionally using other funding sources, such as emergencies, highway preservation, or through partnerships with other entities.

The scoping and design process for CED projects differs depending on the funds used for construction.

CEDs Corrected using Stand-alone CED I-4 Funds

1. CPDM issues scoping instructions to regional staff each fall for priority CED projects.
2. Regional program management contacts the CED coordinator for project documentation, and then scopes and programs the CED project based on the agreed-on conceptual design.
3. Once funding is received, the project is assigned to a Project Office for design, permitting, and construction with oversight from CED program staff. The Project Office notifies the CED Coordinator at major project milestones.
4. Prior to project advertisement, the Project Office submits the final design to the CED Coordinator for review to ensure the project meets the intent of the CED agreement prior to construction.

CEDs Corrected as part of Fish Passage Correction Projects

1. The CED Coordinator works closely with ESO Fish Passage Program staff to identify planned fish barrier removal projects that are also CEDs.
2. If an up-to-date concurrence form has not yet been approved for an active CED, the CED Coordinator will lead a concept selection and concurrence with WDFW and regional staff to identify and agree on an appropriate CED solution.
3. The CED problem is addressed in the Preliminary Hydraulic Design (PHD) for the Fish Barrier Removal Project based on the CED concurrence.
4. The project is scoped, designed, and constructed through WSDOT's Fish Passage process, with input from CED Coordinator. See [Section 300.08\(2\)](#) for more information.
5. The completed project is monitored through WSDOT's Fish Passage Monitoring program.

CEDs Corrected during Other Transportation Projects

1. The Region contacts the CED Coordinator early during the project scoping phase to screen for active CEDs in the vicinity of the project limits.
2. The CED Coordinator notifies the Region of CEDs located in the project vicinity and determines if a site and reach assessment was previously prepared, and a conceptual design agreed on by WDFW.
3. The Region determines which deficiencies would be addressed during the proposed transportation project.
4. If WDFW concurrence on a CED concept has not been completed or is out of date, the CED Coordinator may initiate a site and reach assessment and obtains WDFW agreement on a CED project concept.
5. The Region works with the CED Coordinator and hydrologist to ensure the scope is compatible with the concept in the CED site and reach assessment and concurrence.
6. The Project Office designs, permits, and constructs the CED project as part of the transportation project, with oversight from CED program staff.

CEDs Corrected during an Emergency Repair

1. During planning of an emergency construction project, the Project Engineer or the RMEC (depending on funding source of the emergency repair) contacts the CED Coordinator to determine if a site and reach assessment has been completed and if a concurrence form has been signed. If so, the CED Coordinator and Hydrologist may recommend incorporating the agreed-upon CED concept into the emergency repair.
2. The Project Office determines the feasibility of constructing the proposed CED concept during the emergency response. Construction of emergency projects often occurs during high flows and challenging conditions, and at times there are funding limitations associated with emergency funds.
3. The Region works with WDFW to design and permit the project under emergency conditions with input from the CED Coordinator.

300.09 Environmental database resources

300.09(1) WSDOT's GIS Workbench

WSDOT's GIS Workbench is an internal data system available for use by WSDOT staff in preparing the "Env Context" portion of the ERS. The Workbench is a user-friendly interface covering a wide range of environmental resources gathered from a variety of public agencies and WSDOT sources. The database has over 500 layers of environmental and natural resource management data, in the following major data categories:

- **General Reference** – Transportation routes, political and administrative boundaries, major public lands and geographic reference.
- **Environmental Data** – Air quality, fish and wildlife, priority species and habitats, geology and soils, groundwater and wells, hazardous materials, hydrography, plants, and water quality, WSDOT's Fish Passage and Chronic Environmental Deficiency (CED) inventories. WSDOT staff looking for environmental data should change the GIS Workbench's "Business Area" selection to "Environmental" before searching for any data.

The data provided to WSDOT staff through the GIS Workbench is usually sufficient for the Project Summary's ERS form. However, some data require field verification. For example, wetland data available from the GIS Workbench are not always reliable and may show wetlands as absent when they are present or may show wetlands as present when they are not. Field work by a qualified wetland biologist is necessary to determine the presence or absence of wetlands.

Expansion of GIS Workbench

GIS resources for environmental data are expanding rapidly. WSDOT staff work with federal, state, and local agencies to maintain a collection of the best available data for statewide environmental analysis. New data resources are continuously being incorporated into the WSDOT GIS Workbench. To facilitate getting the best data into the system, contact the [ESO Environmental Information Program](#) with information about newly identified data resources.

Citing a GIS Database

The GIS Workbench itself should not be cited as a data source or referenced on paper or digitally. Data source or reference citation should be specific to the exact dataset viewed using the GIS Workbench. The proper citation format for digital data is evolving, but typically includes the name of the data system, the name of the agency that maintains/updates the data, and the date of the data retrieval. If the data comes from an Internet website, the title of the site should be included with the full Uniform Resource Locator (URL). The citation information can be found in the Metadata (Item Description) for each Workbench dataset.

300.09(2) Other Online Resources

Other environmental data are included on the [WSDOT Geospatial Open Data Portal](#) and the [WSDOT Online Map Center](#).

Data about the status of WSDOT fish passage culverts and CEDs are available through [WSDOT's Fish Passage Inventory webmap](#). Additional information about the inventory and project delivery status of WSDOT fish passage projects and culverts that are CEDs are available internally through [WSDOT's Fish Passage Database](#). Updated delivery plan information can be found on the 2030 Fish passage project delivery plan webpage. The [Washington State Fish Passage webmap](#) provides WDFW's inventory of WSDOT and non-WSDOT fish passage sites throughout the state. WDFW's fish passage inventory protocols are described in the [Fish Passage Inventory, Assessment, and Prioritization Manual \(WDFW 2019\)](#).

300.10 Applicable statutes and regulations

- [42 United States Code \(U.S.C.\) 4321 National Environmental Policy Act of 1969 \(NEPA\)](#)
- [23 Code of Federal Regulations \(CFR\) Part 450 Planning Assistance and Standards](#)
- [23 Code of Federal Regulations \(CFR\) Part 771 Environmental Impact and Related Procedures](#)
- [23 CFR Part 774; 49 U.S.C Section 303 Policy on Lands, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites](#)
- [36 CFR Part 800 Protection of Historic and Cultural Properties](#)
- [40 CFR Parts 1500-1508 Council for Environmental Quality Regulations for Implementing NEPA](#)

- [Chapter 197-11 WAC](#) *SEPA Rules*
- [Chapter 468-12 WAC](#) *WSDOT Agency SEPA Procedures*
- [Chapter 43.21C RCW](#) *State Environmental Policy Act (SEPA)*
- [Chapter 47.05 RCW](#) *Priority Programming for Highway Development*
- [RCW 77.55.181](#) *Fish Habitat Enhancement Projects (FHEP)*

300.11 Abbreviations and acronyms

BOD	Basis of Design
CE	Categorical Exclusion (NEPA) or Categorical Exemption (SEPA)
CED	Chronic Environmental Deficiency
CIPP	Capital Improvement and Preservation Program
DNS	Determination of Nonsignificance (SEPA)
DS	Determination of Significance (SEPA)
EA	Environmental Assessment (NEPA)
ECS	Environmental Classification Summary
EIS	Environmental Impact Statement
EO	Executive Order
ERS	Environmental Review Summary
ESO	Environmental Services Office
FAA	Federal Aviation Administration
FHEP	Fish Habitat Enhancement Projects
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GIS	Geographic Information System
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
PCE	2024 FHWA/WSDOT NEPA CE Programmatic Agreement (PCE)
RCW	Revised Code of Washington
RTPO	Regional Transportation Planning Organization
SEPA	State Environmental Policy Act
STIP	Statewide Transportation Improvement Program
URL	Uniform Resource Locator
USDOT	United States Department of Transportation
USFS	United States Forest Service
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife

300.12 Glossary

Categorical Exclusion – A NEPA action defined by a specific agency through CFR or FR that does not individually or cumulatively have a significant environmental effect (see [Section 300.04](#)).

Categorical Exemption – A SEPA action defined through WAC that does not individually or cumulatively have a significant environmental effect (see [Section 300.05](#)).

Chronic Environmental Deficiency (CED) – A WSDOT designation defined in the WDFW-WSDOT Memorandum of Agreement that refers to a location along a state highway that is adjacent to a waterbody, and recent, frequent repairs or maintenance to WSDOT infrastructure cause adverse impacts to fish habitat. This designation is given by the CED Coordinator when the site is added to WSDOT's CED inventory (see [Section 300.08](#)).

Federal Nexus – A project has a federal nexus when a federal agency must take an action on a project. Before the federal agency takes an action, environmental impacts must be evaluated under NEPA. Common actions that create a Federal Nexus include:

- Federal land decision required within the project area.
- Federal money is used on the project.
- Federal permits or approvals are required.

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- 400.01 Environmental review in project development
- 400.02 Roles and responsibilities
- 400.03 Identifying the type of environmental document
- 400.04 NEPA/SEPA procedures and recent changes
- 400.05 Ensuring environmental document quality
- 400.06 Using existing environmental documents
- 400.07 Schedules, deadlines, and milestones
- 400.08 Documenting an Environmental Impact Statement (EIS)
- 400.09 Documenting an Environmental Assessment (EA)
- 400.10 Categorical Exclusions/Exemptions (CEs)
- 400.11 Environmental document legal considerations
- 400.12 Applicable statutes and regulations
- 400.13 Abbreviations and acronyms
- 400.14 Glossary

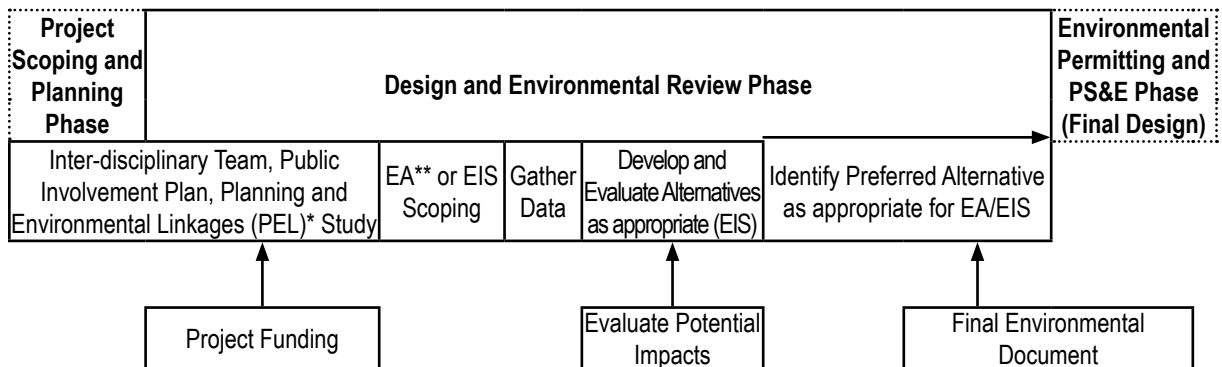
400.01 Environmental review in project development

WSDOT projects transition from transportation planning ([Chapter 200](#)) and project scoping and programming ([Chapter 300](#)) phases of the WSDOT transportation decision making process to the environmental review phase when the project receives federal or state funding (Exhibit 400-1). The environmental review phase includes:

- Building upon previous planning and outreach efforts to involve the public, tribes, and federal and state resource agencies in the decision-making process.
- Establishing the type of environmental documentation.
- Developing and analyzing alternatives.
- Analyzing and documenting environmental impacts.
- Selecting an alternative and making environmental commitments (work on permits begins in this phase).
- Finalizing and approving the project.

The environmental review phase is illustrated in Exhibit 400-1.

Exhibit 400-1 Environmental Review and Transportation Decision Making



***Note:** PEL studies consider environmental goals in planning and using work done in planning to inform the environmental process. See [\[link\]](#) for more information on PEL.

****Note:** Scoping for an EA is optional.

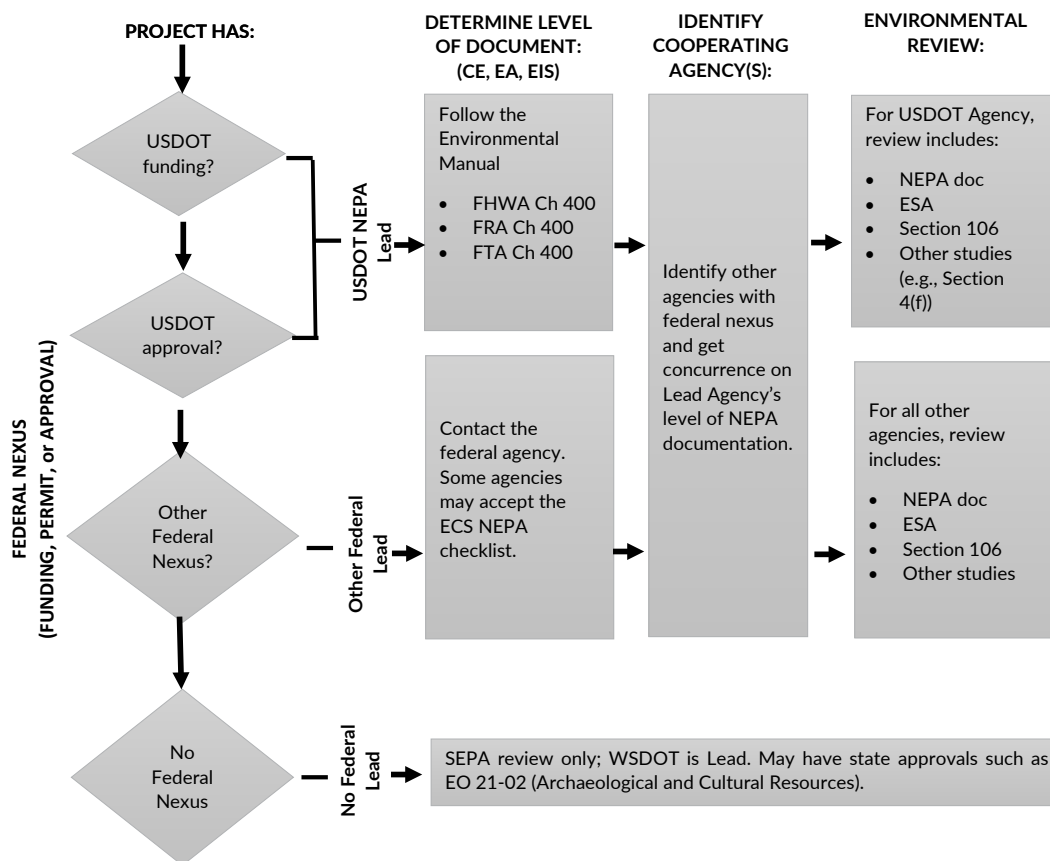
The environmental review phase ends with the federal lead agency issuing a decision document for the following environmental documents, as applicable, in addition to completion of the final environmental document:

- NEPA/SEPA (Chapter 400)
- Endangered Species Act (Chapter 436)
- Section 106 of the National Historic Preservation Act (Chapter 456)
- Section 4(f) of the United States Department of Transportation (USDOT) Act (Chapter 457)

For the traditional design-bid-build project delivery process, environmental documents are finalized, then environmental permits can be issued, and the plans, specifications, and estimates (PS&E) phase can begin. Also, if applicable, the federal Highway Administration (FHWA) can approve an Access Revision Report (formerly known as an Interchange Justification Report or IJR). Refer to *Design Manual Chapter 550* for a description of the required procedures, analysis, and coordination with the environmental documentation process. Contact WSDOT's [NEPA/SEPA Program](#) for questions about the environmental review process for design-build projects. Review Section 5-12 of WSDOT's *Design-Build Manual* for additional design-build information related to environmental processes.

WSDOT projects are required to comply with National Environmental Policy Act (NEPA) when those projects involve a federal action. That federal action could be an approval (land use, access break, etc.), funding, or a permit. When WSDOT initially scopes a project, it determines whether a project will require NEPA, and the likely documentation path (Exhibit 400-2). This decision is routinely made between the federal lead, Program Management, and the region/modal office.

Exhibit 400-2 Determining the lead agency and documentation needs



400.02 Roles and responsibilities

400.02(1) *The Council on Environmental Quality*

Congress created the [Council on Environmental Quality \(CEQ\)](#) when NEPA was signed by President Nixon in January 1970. CEQ is part of the Executive Office of the President, and it ensures that federal agencies meet their obligations under NEPA. CEQ oversees NEPA implementation, principally by issuing regulations and guidance ([40 CFR 1500-1508](#)). CEQ also reviews and approves federal agency NEPA procedures, approves alternative arrangements for compliance with NEPA for emergencies, and helps to resolve disputes between federal agencies and with other governmental entities and members of the public. Another of CEQ's major responsibilities is to develop and recommend national policies to the President that promote the improvement of environmental quality.

400.02(2) *Environmental Protection Agency*

The [Environmental Protection Agency \(EPA\)](#) has a responsibility under [Section 309](#) of the Clean Air Act to review Environmental Impact Statements (EISs) prepared by other federal agencies. EPA reviews Draft EISs to identify and recommend appropriate mitigation measures and to evaluate the adequacy of the information provided in the EIS. EPA also reviews Final EISs to ensure that the lead agency has taken EPA's comments into account.

[Section 309](#) of the Clean Air Act also requires that EPA makes their reviews public. EPA does this by posting EPA comment letters on EISs in the [EIS database](#). EPA also provides notices of availability of EISs in the [Federal Register](#).

400.02(3) *Lead agencies*

Federal and state laws require designation of an agency to lead the environmental review process. Factors to consider in determining federal lead agency are listed in [40 CFR 1501.7](#), as well as the process for resolving lead agency disputes. The primary role of the federal lead agency is decision making. They also provide guidance and independently evaluate the adequacy of the environmental document.

Federal lead agencies are determined by considering a project's federal nexus. A federal nexus involves a federal action including federal funding, permitting, or approval of the proposed action. Most WSDOT projects involve WSDOT serving as the joint lead agency with FHWA ([40 CFR 1501.7](#)). See Exhibit 400-2 above for additional process information. See the WSDOT's [NEPA and SEPA webpage](#) for more information on [Federal Nexus Requirements](#) and contact the [NEPA/SEPA Program](#) for assistance.

Agencies may co-lead the environmental review if the project is funded by more than one federal agency or if more than one federal agency has decision-making responsibilities.

Potential co-lead agencies include, but are not limited to:

- Federal Transit Administration (FTA)
- Federal Aviation Administration (FAA)
- Federal Railroad Administration (FRA)
- National Park Service (NPS)
- US Army Corps of Engineers (Corps)
- United States Coast Guard (USCG)
- United States Forest Service (USFS)

Each federal agency has its own unique regulations and processes to implement NEPA. The Code of Federal Regulations, or CFRs, are the federal agency regulations that implement the United States Code or U.S.C.. Section [42 U.S.C. 4321](#) is the NEPA code implemented by [40 CFR parts 1500-1508](#) (CEQ regulations) and supplemented by [23 CFR 771](#) for FHWA, FTA, and FRA.

If your project will require a US Coast Guard Bridge permit, refer to the Memorandum of Agreement between the US Coast Guard and FHWA for NEPA coordination requirements ([Appendix B](#)).

For local agency projects funded by FHWA, the local government agency, WSDOT, and FHWA, share co-lead agency status under NEPA. Together, the co-lead agencies approve and sign the NEPA environmental document. However, the local agency is generally the lead agency responsible for SEPA. Guidance for determining lead agency for State Environmental Policy Act (SEPA) is found in [WAC 197-11-922](#).

WSDOT is the SEPA lead agency for transportation projects it proposes on the state system ([WAC 197-11-926](#)). In accordance with state law, WSDOT has adopted its own rules and procedures for implementing SEPA in [Chapter 468-12 WAC](#). WSDOT's SEPA responsibilities are based on its authority to site, design, construct and operate state transportation facilities. WSDOT signs NEPA EAs and EISs as SEPA Lead and places the documents in the [SEPA Register](#).

Federal lead agencies are required to report projects in the [Federal Infrastructure Projects Permitting Dashboard](#) (permitting dashboard) within 90 calendar days of initiating a project (for example, via an EIS Notice of Intent (NOI) or Environmental Assessment (EA) Initiation Letter). See the current [Federal Permitting Dashboard Reporting Standard](#) for additional reporting requirements.

Within 21 calendar days of entering a project into the [permitting dashboard](#), the federal lead agency must invite other agencies with financial, environmental review, authorization, or other project responsibilities to become cooperating or participating agencies in NEPA ([42 U.S.C. 4370m-2](#)). The roles and responsibilities for cooperating and participating agencies are described in [Section 400.02\(4\)](#) and [Section 400.02\(5\)](#).

WSDOT staff is advised to contact the [NEPA/SEPA Program](#) to discuss federal lead or co-lead agency NEPA requirements and define the role of each co-lead before settling on a strategy to complete NEPA. The federal lead or co-lead will ultimately determine the process followed for NEPA documentation. More information on NEPA strategy is found on WSDOT's [NEPA and SEPA webpage](#).

400.02(4) Cooperating agencies

CEQ implementing regulations explain the federal agency purpose and responsibility to conduct "public and governmental engagement" in [40 CFR 1501.9](#). "The purpose of public engagement is to inform the public of an agency's proposed action, allow for meaningful engagement during the NEPA process, and ensure decision makers are informed by the views of the public. The purpose of governmental engagement is to identify the potentially affected Federal, State, Tribal, and local governments, invite them to serve as cooperating agencies, as appropriate, and ensure that participating agencies have opportunities to engage in the environmental review process, as appropriate."

Under NEPA, any federal agency with jurisdiction must be invited to become a cooperating agency ([Section 400.02\(3\)](#)). [40 CFR 1501.9](#) requires us to “invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies”.

By serving as a cooperating agency, the agency can ensure that any NEPA document needed for the project will be prepared to also satisfy the NEPA requirements for its jurisdictional responsibility. WSDOT’s policy is to also invite non-federal agencies and tribes to be cooperating agencies when they have jurisdiction or special expertise, including indigenous knowledge ([40 CFR 1501.8](#)). See [Exhibit 400-3](#) for examples of potential cooperating agencies.

Cooperating agencies participate in EIS or EA scoping to identify potential environmental impacts, alternatives, mitigating measures, and required permits. They review and comment on EA/EIS level projects and may also prepare special studies or share in the cost of the environmental documentation. For EIS level projects, concurrence on key milestones (see [Section 400.07](#) for key milestones) is required from cooperating agencies whose authorization is required for the project. The terms and requirements of agency involvement under SEPA are like that of NEPA. For regulatory guidance, see [40 CFR 1501.8](#), [23 CFR 771.111](#), [WAC 197-11-408\(2\)\(d\)](#), [WAC 197-11-410\(1\)\(d\)](#), [WAC 197-11-724](#), and [WAC 197-11-920](#).

For NEPA EISs, the lead agency, in coordination with the project sponsor and the cooperating agencies, develop and update the project schedule, develop a permitting timetable, identify a project point of contact, and define and agree on roles and expectations at the beginning of the project. See [Section 400.07](#) for additional information on developing a project schedule. Project teams will define the roles and expectations in a coordination plan. More information on coordination may be found in [Section 400.08\(1\)](#) on WSDOT’s [NEPA and SEPA](#) webpage.

Note: EISs must follow [23 U.S.C. 139](#), but this is optional for EAs.

- 1. Requesting Cooperation** – According to CEQ regulations, federal agencies with jurisdiction must accept cooperating agency status. The federal lead can accept an agency’s decision to decline cooperating agency status if the agency’s written response to the request states that its NEPA regulations do not require an EIS in response to the proposed action ([40 CFR 1501.8\(c\)](#)).
- 2. WSDOT as a Cooperating Agency** – Other agencies may ask WSDOT to become a cooperating agency for actions where WSDOT is not the lead agency. This could occur on projects when a landholding agency, such as the USFS, Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), or a Tribal government, proposes a project that could impact WSDOT facilities. County and municipal transportation organizations could also involve WSDOT as a cooperating agency for SEPA compliance. Coordinate non-WSDOT NEPA or SEPA reviews through the [WSDOT Development Services Office](#).
- 3. Local Agencies** – Local jurisdictions that receive funds through WSDOT’s Local Programs Office can be cooperating agencies as well. More information regarding Local Agencies can be found in the Local Programs [NEPA Categorical Exclusions Guidebook](#). Contact [WSDOT Local Programs](#) for additional information and assistance with local agency projects.

Exhibit 400-3 Potential Cooperating Agencies

Agency	Jurisdiction
Bureau of Indian Affairs (BIA)	Tribal trust lands
Environmental Protection Agency (EPA)	Clean Air Act, Hazardous Waste Sites, Sole Source Aquifers, Water Supply
Federal Agency Land Manager: Bureau of Land Management (BLM) Department of Defense (DoD) General Services Administration (GSA) National Park Service (NPS) US Fish and Wildlife Service (USFWS) US Forest Service (USFS)	Land transfer from: Public Lands Military Facilities Federal Buildings National Park System National Wildlife Refuge National Forest System
Federal Aviation Administration (FAA)	Airspace, hazardous wildlife, airport facilities, and other air transportation activities
Federal Emergency Management Agency (FEMA)	Regulatory floodway
Federal Motor Carrier Safety Administration (FMCSA)	Regulates trucking industry, provides funding to State DOTs for modernizing motor carrier infrastructure such as weigh-in-motion scale equipment
Federal Transit Administration (FTA)	Projects with transit funding
National Oceanic and Atmospheric Administration (NOAA) Fisheries	Endangered Species Act (ESA), fish and wildlife natural habitat, wetlands, stream relocations, estuaries
National Park Service (NPS)	Impacts to properties funded thru the Land and Water Conservation Fund (LWCF) Act (Section 6(f)) and review of some Section 4(f) Evaluations
USDA Rural Utilities Service (RUS)	Provides funding to improve water, electric, and telecommunication infrastructure.
Tribal Governments	Tribes with expertise or jurisdiction

Exhibit 400-3 Potential Cooperating Agencies

Agency	Jurisdiction
US Army Corps of Engineers (USACE)	Section 10 and Section 404 Permits, including wetland fill activities
US Coast Guard (USCG)	Projects involving water crossings (bridges or culverts)
US Fish and Wildlife Service (USFWS)	Areas funded under various fish and wildlife related grant programs or projects affecting threatened and endangered species (ESA)
Washington State Agencies: Dept. of Archaeology and Historic Preservation (DAHP) Dept. of Ecology (Ecology) Dept. of Fish and Wildlife (WDFW) Dept. of Natural Resources (WDNR)	Agency with expertise or jurisdiction: Historic, cultural, and archaeological sites Wetlands, water quality, stream relocations, estuaries Fish and wildlife natural habitat, wetlands, water quality, stream relocations, estuaries Use of state-owned aquatic lands

400.02(5) Participating agencies

Federal transportation law also allows “participating agency” status ([23 U.S.C 139\(d\)](#)). This term is unique to United States Department of Transportation’s (USDOT’s) compliance with NEPA. The intent of the participating agency is to encourage governmental agencies with an interest in the proposed project to be active participants in the NEPA EIS evaluation. Designation as a participating agency does not indicate project support. However, it does give invited agencies opportunities to provide input at key decision points in the process and allows for involvement in a project’s environmental review, coordination plan, and concurrence on project schedule. **Note:** EISs must follow [23 U.S.C. 139](#), but this is optional for EAs.

Any federal, state, tribal, regional, and local governmental agencies that may have an interest in the project should be invited to serve as participating agencies ([Section 400.02\(3\)](#)). Non-governmental organizations and private entities cannot serve as participating agencies.

A participating agency differs from a cooperating agency in the level of involvement that agency has in a project. An agency with jurisdiction by law or special expertise regarding environmental impacts should be more involved, and therefore invited to be a cooperating agency. An agency with limited interest, or a small action associated with the larger project should be invited to be a participating agency. **Note:** a cooperating agency is also a participating agency, but a participating agency is not a cooperating agency (See [FHWA Environmental Review Toolkit FAQ](#)).

Care should be taken when evaluating your list of potential participating agencies. It is not necessary to invite agencies that have only a hypothetical or remote interest in the project. The same agencies listed in [Exhibit 400-3](#) may be asked to be participating agencies.

The roles and responsibilities of participating agencies include but are not limited to:

- Identifying potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.
- Participating in the NEPA process, especially regarding the development of the Purpose and Need statement; range of alternatives; methodologies; and the level of detail for the analysis of alternatives.
- Providing meaningful and timely input on unresolved issues.

Expectations and commitments about agency participation should be addressed in a project coordination plan, which is optional for EAs (see the [NEPA and SEPA webpage](#) preliminary design tab for help on Preparing an EA and EIS). It is appropriate to tailor an agency’s participation to its area of interest or jurisdiction.

400.02(6) Tribal coordination

WSDOT recognizes the sovereign rights, interest, and expertise of tribes in the environmental review process. There are several state and federal laws regarding consultation and coordination with tribes during environmental review.

[Secretary's Executive Order 1025](#) directs WSDOT to enter Tribal Consultation with tribes who have ancestral homelands within the state boundaries, including those having reservations located outside of the state, on all decisions that may affect tribal rights and interests. The executive order is based on the Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington. The [Centennial Accord](#) is available on the Governor's [Office of Indian Affairs](#) website.

Tribes can be involved in four capacities under NEPA, as:

- Cooperating agencies (with expertise and/or jurisdiction).
- Participating agencies on EA/EIS projects.
- Consulted parties.
- Affected Communities.

See [Chapter 530](#) and the WSDOT [Model Comprehensive Tribal Consultation Process for NEPA](#) webpage for guidance on when and how to consult with tribes during the NEPA environmental review process on projects. Projects with a federal nexus should coordinate tribal engagement and government-to-government consultations through their federal lead agency. Federal lead agencies should also be informed of and involved with any potential agreements with tribes related to projects with a federal nexus with their agency.

400.02(7) Public involvement/community engagement

Public involvement is at the heart of NEPA, along with a systematic interdisciplinary approach.

NEPA requires federal agencies to: "encourage and facilitate public engagement in decisions that affect the quality of the human environment, including meaningful engagement with communities such as those with environmental justice concerns." ([40 CFR 1500.2\(d\)](#)). See [Chapter 460](#) for additional information about environmental justice.

WSDOT strives to engage affected communities before, during, and after projects. This includes under-represented and under-served communities. The goal is to ensure all voices are heard, with an emphasis on the fair and meaningful involvement of all people. FHWA, FRA, and FTA's regulations reinforce the idea that public involvement is essential to the project development process ([23 CFR 771.105\(d\)](#)).

Projects with a SEPA Checklist, EA, or EIS, require notification and circulation of environmental documents to allow consideration of public input before decisions are made. WSDOT's [NEPA and SEPA webpage](#) includes guidance on developing and circulating these documents, including the [NEPA/SEPA Documentation Distribution Matrix](#) to help develop distribution lists. Lack of public notice can justify an appeal of the procedural aspects of NEPA and SEPA processes and delay projects.

NEPA and SEPA public notices are not required for exempt projects (Categorical Exclusions (CEs)), but open houses, newsletters, and other virtual or in person public outreach are encouraged for any transportation projects. The project's complexity and/or level of controversy should be used to judge the right amount of public involvement.

WSDOT's agency guidance on public involvement is detailed in *Design Manual Exhibits 210-1 through 210-4* and in WSDOT's [Community Engagement Plan](#). Contact the [NEPA/SEPA Program](#) for more information about appropriate public involvement and community engagement.

400.02(8) WSDOT internal roles and responsibilities

See the [NEPA Roles Table](#) on WSDOT's [NEPA and SEPA webpage](#) for a summary of WSDOT and FHWA NEPA/SEPA agency and staff roles and responsibilities.

Projects with WSDOT as the Lead Agency

When WSDOT is the lead agency, the region and modal offices lead the project, manage the process, and conduct the analysis. The Environmental Services Office (ESO) supports the region and modal offices by developing policies, programs, and initiatives to implement the agency's environmental policy and to assist with project delivery. See WSDOT's [Environmental Policy Statement](#) for additional details.

The ESO Director is the Responsible Official for all NEPA EAs and EISs and SEPA EISs in draft, final, supplemental and adoption formats. This applies to all projects where WSDOT is the lead agency, including ferry and rail projects.

Projects with a Local Public Agency as the Lead Agency

WSDOT's [Local Programs Office](#) oversees the distribution of federal funds to cities and counties. WSDOT Local Programs office reviews NEPA environmental documents submitted by local governments for approval by FHWA. The [Local Agency Guidelines](#) M 36-63 provides more details on NEPA and SEPA procedures for local government projects. Consult the [Contact Support for Local Programs](#) webpage for help with local agency projects.

400.03 Identifying the type of environmental document

Projects are classified for environmental review during project scoping (See [Chapter 300](#)). This process is documented using WSDOT's Environmental Review Summary (ERS) form for WSDOT-led projects. Local agency scoping is handled differently, according to each local jurisdiction's process. [Chapter 300](#) contains a detailed description of the NEPA and SEPA classification systems. The NEPA or SEPA classification reflects the level of potential significant environmental impact or controversy and controls the type of environmental document as shown below.

- Class I projects are likely to have significant environmental impacts and require an EIS and result in a Record of Decision (ROD). See [Section 400.08](#) for more information on documenting EISs.
- Class II projects are referred to as Categorical Exclusions, or CEs. These are Categorically Excluded from the NEPA process or Categorically Exempt from the SEPA process because there are no anticipated significant impacts. For FHWA projects, NEPA CEs are documented with WSDOT's Environmental Classification Summary (ECS) form.

Over the years, WSDOT, the Washington State Department of Ecology (Ecology), and the legislature have worked to align transportation project CEs under SEPA with FHWA's NEPA CEs. However, some project development actions that are excluded from NEPA review may still require SEPA review. Likewise, some actions categorically exempt under SEPA may require additional documentation for the NEPA process. For more information on CEs, see [Section 400.10](#). FTA and FRA use CE worksheets to document their decisions – WSDOT staff complete these worksheets for FTA/FRA review. For local agency projects see the [Local Agency Guidelines](#) M 36-63. Contact the [NEPA/SEPA program](#) for access to the appropriate form to document a NEPA CE.

- Class III projects require a NEPA EA or a SEPA checklist to determine whether the project will have significant environmental impacts. Depending on level of impact indicated by these documents, an EA results in a Finding of No Significant Impact (FONSI) or an NOI to develop an EIS (if project impacts are found to be significant). Similarly, under SEPA, a SEPA checklist leads to a Determination of Non-significance (DNS), or a Determination of Significance (DS) and Scoping Notice to draft an EIS. ([WAC 197-11-315](#)). For additional information on documenting EAs and SEPA Checklists, see [Section 400.09](#).

400.03(1) Determining NEPA significance

Almost every transportation project that would be recognized as major federal action, no matter how limited in scope, has some effect on the environment. As seen above in [Section 400.03](#), identifying the type of environmental document required for NEPA is generally a matter of potential impact. Each project is assessed during the scoping phase of project delivery to determine the anticipated level of environmental impact and the corresponding path forward for NEPA.

The significance of a potential impact on the natural or built environment depends upon context and intensity. In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect.

In assessing context and intensity, agencies should also consider the duration of the effect and the extent to which an effect is adverse sometimes and beneficial at other times. For example, short-term harm during construction vs long-term benefits once a project is implemented. However, one beneficial effect cannot offset another action's adverse effects. For instance, a project may not offset adverse effects on one species with beneficial effects to another species.

Significance of an action should be analyzed in several contexts:

- The characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns. For more information about environmental justice, see [Chapter 460](#).
- Depending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects.

Agencies must analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship to one another:

- The degree to which the action may adversely affect public health and safety.
- The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- Whether the action may violate relevant federal, state, tribal, or local laws or other requirements or be inconsistent with federal, state, tribal, or local policies designed for the protection of the environment.
- The degree to which the potential effects on the human environment are highly uncertain.
- The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.
- The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.
- The degree to which the action may adversely affect communities with environmental justice concerns.
- The degree to which the action may adversely affect rights of tribal nations that have been reserved through treaties, statutes, or executive orders.

Additional information and examples for determining significance is found in [40 CFR 1501.3\(d\)](#), and [40 CFR 1508.1](#).

400.03(2) NEPA Tiering and PEL

Some projects that will eventually become an EA or EIS, but do not have a defined Purpose and Need or range of alternatives, may choose to conduct a Planning and Environmental Linkages (PEL) study. PEL can help define the project, conduct public, agency, and tribal outreach, narrow the project focus, and increase the efficiency of the NEPA timeline and project delivery. See [Chapter 200](#) and the [PEL webpage](#) for more information.

PEL also takes the place of a Programmatic or Tier 1 EA/EIS for pre-NEPA corridor-level planning.

400.04 NEPA/SEPA procedures and recent changes

Project teams should follow the direction in this *Environmental Manual* and follow the online procedures that support these policies, found on the [NEPA and SEPA webpage](#). The webpage allows the reader to follow a step-by-step process for completing NEPA and SEPA documentation.

NEPA for transportation projects often changes with each reauthorization of federal surface transportation acts. In other words, it is important to keep in mind that USDOT funding or policy changes can modify or add new requirements to NEPA. Over the last 20 years, Congress has focused on streamlining environmental review to expedite transportation projects. USDOT agencies then update their implementing regulations, policies, and guidance. WSDOT's Environmental Services Office updates this manual and WSDOT environmental guidance websites to reflect changes in federal law.

In July 2020, CEQ comprehensively updated its NEPA regulations ([40 CFR 1500-1508](#)). The final rule became effective September 14, 2020, and applied to all new NEPA efforts starting after that date. The new rule did not apply to NEPA efforts that were already underway before September 14, 2020.

Major changes from the 2020 rulemaking to NEPA include creating a Coordinated Project Plan with all Participating Agencies, establishing a permitting timetable with a comprehensive schedule of completion dates, and tracking projects on the [permitting dashboard](#). This also included several limitations on judicial review, requiring challenges to be filed within two years of a ROD (compared to the default six-year limit), limiting litigants to only those that commented on the original NEPA document, and requiring the courts to consider impacts of the court decision on jobs and the economy when issuing a project stay during litigation.

In 2022, CEQ issued a Phase I Final Rule revising their 2020 [NEPA implementing regulations](#) to restore some of the basic elements of its 1978 NEPA regulations. One of these was restoring the requirement for federal agencies to evaluate all relevant environmental impacts of projects and decisions, including cumulative effects. **Note:** WSDOT did not change its policies regarding cumulative effects after the 2020 rule went into effect. Instead, WSDOT continued to consider cumulative effects in NEPA documents (EAs and EISs).

In early 2023, CEQ released the [National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#), as directed by the 2021 EO 13990 [Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#).

In 2023, CEQ began Phase 2 revisions to the 2020 regulations to include changes that further support commitments to environmental justice and climate change. These Phase 2 CEQ implementing regulation revisions were finalized in their *Bipartisan Permitting Reform Implementation Rule* in May 2024 which became effective July 1, 2024. These changes revised CEQ regulations for implementing the procedural provisions of NEPA, including the recent amendments to NEPA in the Fiscal Responsibility Act.

CEQ made these revisions to provide for an effective environmental review process; ensure full and fair public engagement; enhance efficiency and regulatory certainty; and promote sound federal agency decision making that is grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. These changes are grounded in NEPA's statutory text and purpose, including making decisions informed by science; CEQ's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; and case law interpreting NEPA's requirements.

See [Chapter 460](#) for information on environmental justice and [Chapter 415](#) for climate change.

400.05 Ensuring environmental document quality

NEPA requires agencies to disclose environmental impacts of their decisions in a way that is understandable to the public and to decision-makers. Your project's environmental document should be well written and technically accurate. Clear writing helps the public and agency reviewers understand the project and its impacts.

400.05(1) Document standards and Plain Talk

WSDOT's environmental documents follow the agency-wide standards set in the [Communications Manual M 3030](#). Documents prepared for external audiences, especially those that circulate to the public and agencies for review and comment, also must use the agency-wide standards.

EAs and EISs should be as concise as possible. The text of a NEPA EA shall be no more than 75 pages ([40 CFR 1501.5\(g\)](#)). The text of a final EIS shall be 150 pages or fewer ([40 CFR 1502.7](#)). EIS proposals of unusual scope and complexity shall be 300 pages or fewer. See [40 CFR 1502.10](#) for specific information on required standard format for EISs.

[40 CFR 1500.1\(b\)](#) states: "Most importantly, environmental documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail." [40 CFR 1500.2\(b\)](#) includes that to the extent possible, federal agencies should "implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize important environmental issues and alternatives. Environmental documents shall be concise, clear, and supported by evidence that agencies have conducted the necessary environmental analyses."

Note: These page limits apply only to text. Graphics, figures, tables, citations, and appendices do not count toward the page limit for EAs and EISs ([40 CFR 1501.5\(g\)](#), [40 CFR 1502.7](#)).

The [SEPA handbook](#) found on Ecology's [SEPA-guidance webpage](#) states that SEPA EISs should not exceed 75 pages unless the proposal is of unusual scope or complexity, in which case it may not exceed 150 pages. Page limits serve as useful reminders that the objective is to summarize the relevant information and not to include every detail.

The main body of the EA or EIS document (whether it is for NEPA or SEPA) should focus on what is relevant to the decision and include enough information to support the decision without having to refer to additional supporting materials.

Supporting materials for technical and legal reviewers, such as technical memos and discipline reports, correspondence, public and agency comments, etc., should be provided in the appendices, or incorporated by reference. Guidance for determining when, and procedures for how, to write discipline reports can be found on the [NEPA and SEPA webpage](#).

The American Association of State Highway and Transportation Officials' (AASHTO's) [Handbook on Preparing High-Quality NEPA Documents for Transportation Projects](#) provides additional resources for preparing environmental documents. The handbook focuses on the preparation of EAs and EISs, but many of the tips in the handbook also apply to CEs.

Discipline reports intended for specific technical audiences do not need to follow the standard reader friendly format. However, they should be clearly written following the plain language principles ([Washington State Plain Language policy page](#)). National examples of high-quality NEPA documents are posted on AASHTO's [Center for Environmental Excellence](#).

400.05(2) Publication standard messages

Several standard messages must be included in all environmental documents to meet federal requirements. Standard messages include:

- Availability of environmental document
- Title VI information and policy
- Americans with Disabilities Act (ADA) information and policy

Consultant logos are not allowed in WSDOT environmental documents because those documents are owned by the agency.

400.05(3) Document accessibility

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)) requires state agencies that received federal funds to provide accessible websites and documents. See WSDOT's [Web accessibility](#) webpage and the [federal Section 508](#) webpage for guidance on making webpages and pdfs accessible.

400.05(4) Methods and data accuracy

WSDOT NEPA documentation must include high-quality information. [40 CFR 1500.1\(b\)](#) states: "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."

[40 CFR 1506.6\(a\)\(b\)](#) details the methodology and scientific accuracy required in NEPA documents. This includes professional and scientific integrity, reliable data and resources, models, and indigenous knowledge. Existing information may be used as well as new information collected from reliable data sources to inform the analysis.

The document must explain any relevant assumptions or limitations of the information, or the models or methods selected for use. Methodologies used must be identified in the NEPA document as well as any scientific or other sources that were relied upon for the NEPA conclusions. This methodology information may be included in an appendix ([40 CFR 1506.6\(c\)](#)).

Where appropriate, the NEPA document should include projections when evaluating reasonably foreseeable effects, including climate change effects ([40 CFR 1506.6\(d\)](#)). See [Chapter 415](#) for more information on documenting climate change effects, and [Chapter 412](#) for indirect and cumulative impact policy.

400.06 Using existing environmental documents

CEQ's NEPA regulations and SEPA rules allow the use of existing documents to reduce duplication and unnecessary paperwork ([RCW 43.21C.034](#) and [WAC 197-11-600](#)). If an analysis has already been done for the proposed project or a similar project, use it if it is still up to date. Existing documents can be used in any of the following ways:

- Adoption ([40 CFR 1506.3](#) and [WAC 197-11-630](#))
- Addendum ([40 CFR 1502.9](#) and [WAC 197-11-625](#))
- Incorporation by reference ([40 CFR 1501.12](#) and [WAC 197-11-635](#))
- Supplemental EIS ([40 CFR 1502.9](#) and [WAC 197-11-620](#))

400.06(1) Re-evaluations

1. NEPA – WSDOT conducts NEPA re-evaluations, in compliance with [23 CFR 771.129-130](#) and [2019 Joint NEPA Re-evaluation Guidance for FHWA, FRA and FTA](#), when it is necessary to determine whether existing documents adequately address environmental impacts of a project. It is important to have conversations early with the federal lead agencies to determine if a formal re-evaluation is required.

WSDOT or the federal lead can initiate a NEPA re-evaluation. FHWA will likely re-evaluate environmental documentation at key points of the project development: final design, right of way acquisition, and construction.

In practice, WSDOT and FHWA re-evaluate the NEPA documentation when:

- There is a substantial change in regulations, existing conditions, project scope (including project area and selected construction staging areas), or proposed action, and it is uncertain if a supplemental environmental document is required before proceeding with the project. These changes must be addressed regardless of the time since the last FHWA approval. Examples include added access likely to require a review of the traffic, air quality and noise impacts, or shifts in alignment. Likewise, changes in ESA-listed species that are impacted by the project may create the need to develop a supplemental environmental document (see [Section 400.06\(2\)](#)).
- New environmental laws or regulations have been enacted or substantively updated or there are changes in listed species and/or their critical habitats.
- WSDOT re-evaluates NEPA documents if major steps to advance the action have not occurred within three years of the most recent federal action. This applies only to projects with an identified path forward. No action is needed until projects are advancing through the project delivery process. Following approval of the FHWA decision document (CE, ROD, or FONSI), WSDOT must consult with FHWA prior to further FHWA approvals to determine if the NEPA document is still valid. An example of an FHWA approval is the authority to undertake final design, acquisition of a significant portion of right of way, or approval of the PS&E.
- Major steps to advance the project (such as right of way or construction funding authorizations) have not occurred within three years of a ROD, FONSI, or issuance of the environmental document. Factors that may contribute to the need for a re-evaluation include an outdated traffic analysis (affecting the noise and air analysis) or wetland delineation.

EAs may also be re-evaluated to determine that a supplemental EA and new FONSI or EIS is not required ([40 CFR 1501.5\(2\)\(i\)](#)).

Consult with the [NEPA/SEPA Program](#), as needed, to ensure your re-evaluation effectively considers the need for further environmental analysis.

There is no required format for a written re-evaluation. NEPA re-evaluations can be documented with a letter, memo, or for CEs, with a new categorical exclusion. In this case, document the re-evaluation in the ERS/ECS database within the Environmental Documentation tab (when printed, Part 2 of the ECS form will identify the document as a re-evaluation). When determining which method to use, consider how much explanation is needed, how extensive the changes are, and whether action has already been taken on the project (e.g., acquisition).

Answers to relevant questions in a NEPA re-evaluation should be brief and to the point. A two to three sentence explanation may be adequate. However, project teams should incorporate as much additional information as required to explain changes in environmental impacts and support conclusions. For example, a re-evaluation of a CE project may look very different from a re-evaluation of an EA or EIS project.

The re-evaluation needs to evaluate the environmental analysis conducted within the NEPA document and consider how the impacts have or have not changed. If there are changes, the supporting updated analysis is attached to the re-evaluation showing that the new impacts are not adverse (or significant). One of the purposes of the re-evaluation is to demonstrate for the administrative record, if appropriate, that there is no need for a supplemental document (such as a Supplemental CE, EA, or EIS) and to ask the federal lead agency if they concur.

WSDOT conducts and signs re-evaluations of programmatic CEs. See the 2024 [WSDOT/FHWA NEPA CE Programmatic Agreement](#) (PCE) in [Appendix B](#) of the *Environmental Manual* for additional information on CE re-evaluation.

FHWA or other federal lead agencies review, approve, and sign EA and EIS re-evaluations. WSDOT may be an optional signatory on EA and EIS re-evaluations, but this is not required.

Note: a re-evaluation is required to assess the impacts from a project scope change on the original environmental analysis and projected environmental effects, regardless of whether the scope change reduces project environmental effects. Contact the [NEPA/SEPA Program](#) for additional re-evaluation guidance.

2. **SEPA** – ([Chapter 197-11 WAC](#), [WAC 197-11-600\(4\)](#), [WAC 197-11-620](#)) SEPA requires a re-evaluation if changes occur to a project or its surroundings, or if potentially significant, new, or increased adverse environmental impacts are identified during other phases of project development. SEPA has no specific requirements for re-evaluation. The region or modal office determines if the approved environmental document or exemption designation is still valid:

- If the project changes and the analysis of new information does not change the significance of the project's impacts, the changes are noted in an addendum to the original environmental documentation or determination.
- If project changes result in significant adverse environmental impacts, changes are documented with supplemental environmental information (i.e., through an EIS, or Supplemental EIS). See [Section 400.14](#) for a comprehensive explanation of "significance."

The re-evaluation process is not used for SEPA CEs. Project changes are documented with a new categorical exemption or an addendum may be used if changes do not substantially change the analysis of significant impacts and alternatives and do not result in any new significant adverse impacts ([WAC 197-11-600\(4\)\(c\)](#) and [WAC 197-11-625](#)).

400.06(2) Supplemental documents

1. **NEPA** – supplemental documents include Supplemental Environmental Assessments (SEA), Supplemental Draft Environmental Impact Statement (SDEIS), or Supplemental Final Environmental Impact Statement (SFEIS). A new Draft Environmental Impact Statement (DEIS) may be warranted if, for example, there has been a fundamental change in the Purpose and Need. EAs can also be supplemented by following the same rules. The FHWA Area Engineer or other federal lead will determine when a NEPA supplemental document is required.

Supplemental documents are drafted when existing environmental documents do not cover the full breadth or scope of impacts of a project. Supplemental documents are generally required ([23 CFR 771.130](#) and [40 CFR 1502.9](#)):

- When there are substantial changes to the proposed action relevant to the environmental concerns.
- (For EAs) - When there is substantial new information about significance that may impact whether a FONSI or EIS are pursued.
- When changes are made to the proposed action that would result in substantial environmental impacts that were not evaluated in the original environmental document. For example, expansion of the original footprint that changes the scope of the analysis.
- When changes to resources within the project vicinity occur that may result in impacts not previously evaluated in the original environmental document. For example, newly listed endangered species or changes in development within the project vicinity.

There is no required format for a supplemental NEPA EIS. Because the process is like that of an EIS, there is a Draft and a Final SEIS. However, the FHWA Technical Advisory [T 6640.8A](#) directs that the supplemental NEPA document:

- Provides sufficient information to briefly describe the proposed action.
- Explains the reason why the SEIS is being prepared.
- Includes the status of a previous DEIS or FEIS.
- Only addresses changes that required the SEIS to be written and new information that was not previously available.
- References and summarizes previous EIS as appropriate.
- Updates status of compliance with NEPA and the results of any re-evaluations.

Supplemental environmental documents shall be reviewed and distributed in the same manner as the original document. See the WSDOT [NEPA and SEPA webpage](#) for additional guidance.

2. **SEPA** – supplemental documents include a Supplemental EIS (SEIS), or an addendum to a DEIS or FEIS ([WAC 197-11-620](#)). Scoping is not required for a SEPA SEIS or supplementing and adopting an EA, but it is required for a new DEIS.

400.06(3) Using NEPA documents for SEPA

All WSDOT projects with a federal nexus must consider NEPA and SEPA documentation requirements. WSDOT's procedures align NEPA and SEPA so that WSDOT's NEPA documentation meets the requirements of SEPA. If a project does not trigger NEPA, then WSDOT will still need to comply with SEPA requirements using the direction in this chapter.

If a NEPA EIS is prepared, then a SEPA EIS is not required ([RCW 43.21C.150](#) and [WAC 197-11-610\(3\)](#)). The NEPA EIS documentation satisfies all SEPA requirements and there is no need to formally adopt the NEPA EIS for SEPA. However, WSDOT is responsible for sharing the final NEPA EIS with Ecology so it can be posted on the SEPA Register for public review per SEPA rules ([Chapter 197-11 WAC](#)). SEPA-only EISs for state transportation projects are very rare. Significant impacts are likely to involve federal permits or approvals, thus triggering NEPA. See [Section 400.14](#) for a comprehensive explanation of "significance".

A NEPA EA is the functional equivalent of the SEPA checklist. For SEPA compliance, WSDOT projects should issue a DNS concurrent with the EA (using a DNS/Adoption form from Ecology's [SEPA document templates webpage](#)), but no separate SEPA checklist is necessary ([WAC 197-11-610\(2\)](#)). Please see note below. Any major changes that occur with the issuance of the NEPA decision document must be reflected in the project file; a memo will suffice as documentation.

WSDOT uses the ECS form to document NEPA CEs. SEPA allows the lead agency to use NEPA documents such as an ECS instead of preparing a SEPA checklist, per [WAC 197-11-610\(2\)](#). Project teams that choose to use a WSDOT ECS in place of a SEPA checklist should contact the NEPA/SEPA Program for guidance.

Note: all WSDOT NEPA documents used in place of a SEPA Checklist (i.e., EIS, EA, ECS) must ensure the elements of [WAC 197-11-444](#) are adequately addressed within the NEPA document and are posted on the SEPA Register for public review per SEPA rules ([Chapter 197-11 WAC](#)). Refer to the [Ecology SEPA Guidance webpage](#) for additional information on SEPA process and the [NEPA and SEPA webpage](#) for SEPA DNS procedural guidance.

See [Section 400.09\(2\)](#) for more information on SEPA checklists. Projects with no federal nexus (i.e., no NEPA requirement) should follow SEPA guidance in [Section 400.09\(2\)](#), [Section 400.10\(2\)](#), and on the [NEPA and SEPA](#) webpage.

400.07 Schedules, deadlines, and milestones

It is important to carefully develop documentation schedules. Missed documentation deadlines are reported to Congress. Review [40 CFR 1501.10\(d\)](#) for additional details on establishing the project schedule, which includes the following factors to consider:

1. Potential for environmental harm.
2. Size of the proposed action.
3. State of the art of analytic techniques.
4. Degree of public need for the proposed action, including the consequences of delay.
5. Number of persons and agencies affected.

6. Availability of relevant information.
7. The degree to which a substantial dispute exists as to the size, location, nature, or consequences of the proposed action and its effects.
8. Time limits imposed on the agency by law, regulation, Executive order, or court ordered deadlines.
9. Time necessary to conduct government-to-government Tribal Consultation.

Environmental Impact Statement deadlines and milestones

[40 CFR 1501.10\(b\)](#) states that agencies shall complete EISs within two years unless the lead agency extends the deadline in writing and establishes a new deadline. Two years is measured from the date of the issuance of the NOI to the publication of the final EIS or the date the federal agency makes the final EIS available.

[40 CFR 1501.10\(e\)](#) includes the following list of milestones to include in EIS schedules:

1. The publication of the notice of intent.
2. The issuance of the draft EIS.
3. The public comment period on the draft EIS, consistent with [40 CFR 1506.10](#).
4. The issuance of the final EIS.
5. The issuance of the ROD.

Environmental Assessment deadlines and milestones

WSDOT's EA initiation letter is used to establish the NEPA start date. [40 CFR 1501.10\(b\)](#) states that agencies shall complete EAs within one year unless the lead agency extends the deadline in writing and establishes a new deadline. One year is measured from the date of agency decision to prepare an EA (FHWA's response to the initiation letter) to the publication of the final EA document or issues an NOI to prepare an EIS.

[40 CFR 1501.10\(f\)](#) includes the following list of milestones to include in EA schedules:

1. Decision to prepare an EA.
2. Issuance of a draft EA, if applicable.
3. The public comment period on the draft EA consistent with [40 CFR 1501.5](#), if applicable.
4. Issuance of the final EA and decision on whether to issue a FONSI and an NOI to prepare an EIS.

400.08 Documenting an Environmental Impact Statement (EIS)

An EIS is prepared for projects that are likely to significantly affect the environment or when there is substantial controversy on environmental grounds. The EIS process is similar for both NEPA and SEPA. See [Section 400.14](#) for a comprehensive explanation of "significance". See the [NEPA and SEPA webpage](#) for step-by-step guidance.

400.08(1) Scoping process

To determine the scope of issues relating to a proposed action, a NEPA EIS must go through a scoping process ([40 CFR 1501.9](#), [23 CFR 771.123](#), [WAC 197-11-408](#)). Scoping is not required for a NEPA supplemental EIS; however, the co-lead agencies may decide to hold an open house early in the supplemental EIS process. Scoping may be helpful during the preparation of an EA, but it is not required.

CEQ implementing regulations explain the reason for scoping in [40 CFR 1501.9](#). “The purpose of public engagement is to inform the public of an agency’s proposed action, allow for meaningful engagement during the NEPA process, and ensure decision makers are informed by the views of the public.” In other words, a robust scoping process must be conducted for meaningful engagement to be possible.

The purposes of scoping may include:

- Presenting the project Purpose and Need and range of alternatives, including the agency’s environmentally preferable alternative(s) ([40 CFR 1502.14\(f\)](#)) to be considered in the environmental document and soliciting comments.
- Initiating the public involvement process, including inviting and soliciting comments from affected persons, businesses, organizations, agencies, and tribes.
- Identifying potential environmental impacts and benefits of the proposed action.
- Beginning to document the rationale for subsequent decisions.

[40 CFR 1501.9](#) specifies that agencies “shall use public and governmental engagement, as appropriate, to inform the level of review for and scope of analysis of a proposed action” consistent with [40 CFR 1501.3](#) (determining the appropriate level of NEPA review).

WSDOT’s federal projects must “invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies” ([40 CFR 1501.9](#); see also [Section 400.02\(4\)](#)). [40 CFR 1501.9](#) requires projects to ‘consider whether outreach and notification methods are necessary and appropriate, based on:

- The likely affected entities and persons.
- The scope, scale, and complexity of the proposed action and alternatives.
- The degree of public interest.
- Other relevant factors.

When selecting appropriate methods for providing public notification, agencies shall consider the ability of affected persons and agencies to access electronic media and the primary languages of affected persons.” Access to media includes accessible access to media. For example, the agency should include as an option email notification lists or other similar methods for the public to easily request electronic notifications for a proposed action. Consideration for the way communities receive their information should be planned to be as inclusive as possible.

Inclusive and accessible planning for scoping activities should be used when determining formats for publications, outreach, public hearings and public meetings. For example, whether in-person or virtual meetings, formal hearings, or listening sessions are most appropriate should be discussed with the needs of affected communities in mind.

Essential elements of the EIS scoping process

1. **Notice of Intent (NOI)** – NEPA CEQ regulations require that an NOI to prepare an EIS be published in the Federal Register prior to initiating EIS scoping. Project teams may include the scoping notice in the NOI. Once complete, the federal lead sends the NOI to be published in the Federal Register. Include a notice statement in the DEIS that a combined FEIS/ROD might be prepared. Refer to [40 CFR 1502.4](#) for more information about the NOI.
2. **Coordination plan** – [23 U.S.C. 139\(g\)\(1\)\(A\)](#) requires the development of a coordination plan for public and agency participation in, and comment on, the environmental review process. The coordination plan is developed no more than 90 days after publication of the NOI. [23 U.S.C. 139\(g\)\(1\)\(B\)\(i\)](#) requires that a schedule for the completion of the environmental review process be included as part of the coordination plan.

Concurrence on the project schedule from each of the project's participating agencies is required. Refer to the [Preparing an EIS](#) document on WSDOT's [NEPA and SEPA webpage](#) preliminary design tab for more information. See [Section 400.07](#) for additional information on developing a project schedule. **Note:** EISs must follow 23 U.S.C. 139, but this is optional for EAs.

3. **Purpose and need statement** – The Purpose and Need Statement is a key component of NEPA scoping. It explains the importance of and reason for the project and demonstrates problems that exist or will exist if a project is not implemented. The Purpose and Need Statement drives the process for alternative development, analysis, and selection. It should clearly demonstrate that a “need” exists and should define the “need” in terms understandable to the public such as mobility, safety, economic development, etc. WSDOT considers multimodal and environmental context and assets in a project's need. The lead agency (or agencies) makes the final decision on the project's Purpose and Need. However, they must provide opportunities for participating agencies and the public to comment on the Purpose and Need, and they must consider the input provided by these groups. Opportunities for agency and public involvement occur throughout the NEPA process, including during formal scoping. FHWA guidance on developing a draft Purpose and Need statement is found on their [Environmental Review Toolkit](#) website. Also see [AASHTO Practitioner's Handbook 07](#) on defining the Purpose and Need. Refer to [Section 400.08\(2\)](#) and [400.09\(1\)](#) for document-specific Purpose and Need policy.
4. **Alternatives to the proposal** – “The alternatives section is the heart” of the EIS ([40 CFR 1502.14](#)). The NEPA process should “identify and assess the reasonable alternatives to the proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” ([40 CFR 1500.2\(e\)](#)). For example, “alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice concerns.” See [Chapter 415](#) for more information on climate change and [Chapter 460](#) for environmental justice.

More information on alternatives and their analysis is included in [Section 400.08\(2\)\(2\)](#) below.

Although the lead agencies make the final decision on the project's range of alternatives, they must provide opportunities for involvement by participating and cooperating agencies and the public. Opportunities for agency and public involvement occur throughout the NEPA process, including during formal EIS scoping. Comments and responses are documented during the scoping process.

The DEIS evaluates the alternatives to the action and discusses why other alternatives, that may have been initially considered, were eliminated from further study.

- a. **NEPA criteria for alternatives** – The no-build alternative must be included and serves as the baseline condition for comparison of all other alternatives. The no-build alternative may include improvements that have not been constructed but are already funded in a separate project. Normal maintenance activities (such as safety improvements) that are part of routine operation of an existing roadway also may be included. Alternatives must have logical termini, independent utility, and must not restrict consideration of alternatives for other reasonably foreseeable transportation improvements ([23 CFR 771.111\(f\)](#)). Typical alternatives may include:
 - Improvements to the existing facility.
 - Multimodal transportation alternatives.
 - Alternative routes and/or locations.
 - A combination of the above alternatives.
 - For guidance on alternative development, see FHWA Technical Advisory T 6640.8A.
 - b. **SEPA criteria for alternatives** – If a NEPA EIS is prepared, then a SEPA EIS is not required ([RCW 43.21C.150](#) and [WAC 197-11-610\(3\)](#)). Still, it is useful to note that the SEPA Rules ([WAC 197-11-440\(5\)](#)) require an EIS to describe and present the proposal and other reasonable alternative courses of action. The use of the word reasonable is intended to limit the number and range of alternatives and the level of analysis required for each alternative. Reasonable alternatives include:
 - Actions that could easily attain or approximate a proposal's objectives at a lower environmental cost, or decreased level of environmental degradation.
 - The “no action” alternative, which shall be evaluated and compared to other alternatives.
 - Alternatives over which an agency has authority to control impacts, either directly or indirectly, through requirement of mitigation measures.
5. **Evaluate scoping comments** – All scoping comments received from the public and other agencies must be evaluated to determine the relevance of each comment. All relevant issues must be addressed in the environmental document.

[40 CFR 1501.9](#) requires comments to be accepted electronically, by regular mail, or by other appropriate methods.

Lead agencies are not required to send a written response to every individual comment received. However, to maintain credibility during the environmental process, all scoping comments – whether relevant or not – need to be evaluated and addressed.

Comments may be listed individually or grouped and summarized under general headings. Responses may be as simple as stating that the issue will be addressed in detail in the environmental document. If an issue raised during scoping will not be addressed in the environmental document, the response should explain the reason why it will not be included.

Comments received during scoping and responses to those comments may be documented in a scoping report for the project file. Discuss the scoping process and the comments received in the section of the environmental document that describes public and agency participation and comments received. Comments and responses may also be summarized in handouts at public meetings and in newsletters.

Scoping comments must be taken into consideration before developing the final Purpose and Need Statement and the range of alternatives that will be evaluated in the environmental document.

400.08(2) Draft Environmental Impact Statement (DEIS)

A DEIS identifies project alternatives, which are compared to each other to present an analysis of the alternatives' relative impacts on the environment. It may identify a recommended course of action if one alternative is clearly preferred by the lead agency, although a preferred alternative is not required. The DEIS should identify the environmentally preferable alternative(s) that will be considered in the environmental analysis ([40 CFR 1502.14\(f\)](#)). The DEIS summarizes the early coordination and EIS scoping process, defines the project's purpose and need, identifies the alternatives considered, including the agency's preferred alternative if one has been identified and the environmental preferable alternative, any analysis, and presents pertinent information obtained through these efforts.

1. **Purpose and Need** – NEPA implementing regulations require EISs to include a Purpose and Need for the proposed action ([40 CFR 1501.5](#)). The Purpose and Need generally appears as the first chapter of an EIS to provide a brief overview of information that must be considered in defining the purpose and need statement for the project. The statement must specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action ([40 CFR 1502.13](#)).

The Purpose and Need statement explains to the public, decision makers, and interested parties why the project should be implemented and is the foundation for determining which alternatives will be considered. Evaluation criteria for screening EIS alternatives must be developed based upon the Purpose and Need. See [Section 400.08\(1\)](#), the [NEPA and SEPA webpage](#), and contact the [NEPA/SEPA Program](#) for additional information on Purpose and Need.

2. **Proposed alternatives** – [Section 400.08\(1\)\(4\)](#) above provides detail on requirements for proposed alternatives and analysis.

The reasonable range of alternatives must meet the Purpose and Need for the proposed action. The draft EIS should define the issues and provide a clear basis for choice among the alternatives ([40 CFR 1502.14](#)). Agencies shall:

- Rigorously explore and objectively evaluate all reasonable alternatives to the proposed action.
- Briefly discuss alternatives that were eliminated from detailed study and explain why they were not considered for further analysis.

- Discuss each alternative considered in detail, including the proposed action, so reviewers may evaluate their comparative merits.
- Include a discussion of the no-build (or no action) alternative.
- Identify the agency's preferred alternative(s).
- Include appropriate mitigation measures not already included in the proposed action or alternatives.
- Identify the environmentally preferable alternative(s) within the range of alternatives considered in the EIS.

The alternatives section should identify the reasonably foreseeable environmental effects of the proposed action and compare the alternatives, including the no-build alternative, based on the information and analysis presented in the sections on affected environment and environmental consequences in the EIS (40 CFR 1502.14).

The comparative analysis between reasonable alternatives should "sharply define the issues for the decision maker and the public and provide a clear basis for choice among options."

40 CFR 1502.14(f) requires an EIS to identify the environmentally preferable alternative or alternatives within the range of alternatives to be analyzed. This regulation highlights that the environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by:

- maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns;
- protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders;
- or causing the least damage to the biological and physical environment.

The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative. **Note:** the agency is not required to choose the environmentally preferable alternative as the agency's *preferred alternative*.

3. **Affected environment – NEPA regulations (40 CFR 1502.15)** require environmental documents to succinctly describe the existing environment of the area(s) to be affected or created by the proposed action. Descriptions should be no longer than is necessary for the reader to understand the relative impacts of the alternatives. Data and analysis should correspond with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

Agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information. This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area should inform the agency's analysis of environmental consequences and mitigation measures.

It is recommended that the description of the affected environment and the discussion of impacts and mitigation measures be combined in the same chapter of the environmental document.

4. **Environmental consequences – Under CEQ regulations (40 CFR 1502.16)**, the discussion of impacts forms the scientific and analytical basis for a comparison of alternatives. The severity of environmental consequences and the type, size, and location of the action will dictate the scope of the impact analysis. Project teams may elect to complete discipline reports if additional information or technical detail are needed to support the analysis presented in the EIS or EA. These reports should be “right-sized” to adequately address the issues without over analysis. Guidance for completing a discipline report can be found on WSDOT’s [NEPA and SEPA webpage](#) and on individual discipline webpages.

FHWA allows flexibility in the level of design detail that can be added to a DEIS or FEIS. More detailed design may be necessary to evaluate impacts, mitigation, or issues raised by agencies or the public ([FHWA Technical Advisory T 6640.8A Section V, Part E-G](#)).

The environmental document must discuss impacts on both the natural (air, water, wildlife, etc.) and built (historic, cultural, social, etc.) environment for each alternative. Impacts may be temporary, such as the short-term impacts associated with the construction phase of a project, or permanent, such as the long-term impact of increasing runoff and contamination from a widened highway. A summary of adverse impacts remaining after mitigation should follow the discussion of all impacts.

NEPA and SEPA require analysis of reasonably foreseeable effects and the significance of those effects, focusing on the significant or important effects. This includes analysis and discussion of direct, indirect, and cumulative effects. The EIS should analyze the effects of the no-build alternative, including any adverse environmental effects.

See [Chapter 412](#) for guidance on analysis of indirect and cumulative effects, including climate change implications, as appropriate. See [Chapter 415](#) and the WSDOT [cumulative effects and climate resiliency webpage](#) for the most recent climate change guidance and contact information.

Where applicable, the alternatives analysis should incorporate relevant risk reduction, resiliency, or adaptation measures into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions ([40 CFR 1502.16](#)). Where applicable, disproportionate and adverse human health and environmental effects on communities with environmental justice concerns should be evaluated within the alternatives analysis.

It’s important to also document the project’s beneficial effects and efforts to minimize impacts. It is recommended that the project team keep a list of adverse effects that were avoided or minimized as part of project development. As the team develops the EIS, make sure to document benefits associated with the project and clearly present them in the EIS.

5. **Mitigation of impacts –** The environmental document must discuss the proposed means to mitigate the identified environmental impacts. Mitigation may include:
 - Avoiding the impact altogether.
 - Minimizing impacts by limiting the scale of the action.
 - Mitigating the impact by repairing, rehabilitating, or restoring the affected environment.
 - Avoiding and minimizing the impact over time through preservation and maintenance operations.
 - Compensating for the impact by replacing or providing substitute resources or environments.

6. **Publish and circulate the DEIS** – Circulation of a Draft EIS is required under federal and state regulations ([23 CFR 771.123](#), [WAC 197-11-455](#) and [WAC 468-12-455](#)). All copies sent out during the circulation of the DEIS are free of charge. After initial circulation, a fee may be charged, which is not more than the cost of printing.

The project office must distribute NEPA DEISs before the document is filed with the Environmental Protection Agency (EPA) for publication in the Federal Register. To ensure the document is distributed before filing, the documents should be distributed to the EPA at the same time it is distributed to the public and agencies. FHWA will post EIS projects to the permitting dashboard, as described in the Preparing an EIS procedure located on WSDOT's NEPA and SEPA webpage under the preliminary design tab.

The date of issuance/filing/publication of the DEIS, is the date that the EPA publishes its Notice of Availability (NOA). The date of the NOA is the date used to track the 45-day comment period.

7. **Public hearing** – Under NEPA, public hearings are required for all NEPA EIS projects ([40 CFR 1501.9](#)). Under SEPA, public hearings are held when ([WAC 197-11-502](#), [WAC 197-11-535](#), [WAC 468-12-510](#)):
- The lead agency determines that a public hearing would assist in meeting its responsibility to implement the purposes and policies of SEPA.
 - When two or more agencies with jurisdiction over a proposal make written requests to the lead agency within 30 days of the issuance of the draft EIS.
 - When 50 or more persons residing within a jurisdiction of the lead agency, or who would be adversely affected by the environmental impacts of the proposal, make written requests to the lead agency within 30 days of issuance of the draft EIS.

Note: [40 CFR 1501.9](#) says that agencies “should make a draft environmental document available to the public at least 15 days in advance when it is the subject of a public hearing or meeting unless the purpose of such hearing or meeting is to provide information for the development of the document.”

Refer to *Design Manual Chapter 210* for hearing requirements and procedures.

400.08(3) Final EIS (FEIS)

The FEIS contains FHWA and WSDOT's final recommendation and preferred alternative(s), including analysis of alternatives, lists or summarizes (by group) the comments received on the DEIS and WSDOT's response to them, summarizes public involvement, and describes procedures required to ensure that mitigation measures are implemented. The FEIS needs to identify specific mitigation commitments, or it needs to describe the process that will be used to finalize the mitigation commitments, why those commitments can't currently be finalized, and the time frame in which they will be finalized. The FEIS also documents compliance with environmental laws and Executive Orders.

All NEPA/SEPA and permit commitments must be incorporated into subsequent project contracts. [Chapter 590](#) provides guidance on how to incorporate environmental commitments into project contracts.

CEQ implementing regulations ([40 CFR 1502.11](#)) requires NEPA environmental documents to have a unique identification number that follows the documentation throughout the process. This number is required to be included on the cover of the document and in any notifications like the NOI.

The FEIS is prepared after the close of the 45-day public comment period for the DEIS. Public and agency comments on the DEIS are evaluated to determine if:

- The document sufficiently identifies and analyzes the impacts and mitigation of a proposed action or if additional studies are required.
 - Impacts of the preferred alternative fall within an envelope of impacts for alternatives described in the DEIS (especially if a modified or hybrid alternative is selected as preferred).
1. **Review and publication of the FEIS** – The FEIS is reviewed for legal sufficiency ([23 CFR 771.125\(b\)](#)) prior to FHWA formal approval of the document. The review is conducted by FHWA legal staff. Legal counsel has 30 days to review the document, and additional time may be required to address their comments and determine if the revisions are acceptable. The document is reviewed for compliance with FHWA and CEQ NEPA laws and regulations to minimize opportunities for procedural challenges in court. Comments are incorporated into the text and the document is signed by WSDOT.
 2. **Notice of Availability (NOA) and distribution of the FEIS** – After approval, the region or modal office distributes copies of the FEIS or a notice that it is available ([40 CFR 1502.19\(d\)](#), [WAC 197-11-460](#)).
 - A NEPA FEIS must be distributed before the document is filed with EPA for publication of the FEIS NOA in the Federal Register.
 - A SEPA FEIS is issued within 60 days of the end of the comment period of the DEIS unless the proposal is unusually large in scope, the environmental impact associated with the proposal is unusually complex, or extensive modifications are required to respond to public comments.

400.08(4) Record of Decision (ROD)

Under NEPA, the lead federal agency issues a ROD following the FEIS. The ROD explains the reasons for the project decision, summarizes any mitigation measures that will be incorporated in the project, and documents any required [Section 4\(f\)](#) approval ([40 CFR 1505.2](#)). Where relevant and appropriate, the mitigation measures should “address significant human health and environmental effects of proposed federal actions that disproportionately and adversely affect communities with environmental justice concerns” ([40 CFR 1505.3\(b\)](#)). NEPA implementation may require a monitoring and compliance plan for mitigation. See [40 CFR 1505.3\(c\)](#) for additional information.

The ROD must be made available to the public with appropriate public notice provided as required by [40 CFR 1506.6\(b\)](#). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere. It is WSDOT’s practice to publish an NOA for the ROD in the same newspapers previously used for other project notices.

A draft ROD is generally created by WSDOT for FHWA and is written based on the FEIS. The draft ROD is submitted to FHWA along with the draft FEIS during the environmental review and approval process. See the [NEPA and SEPA webpage](#) for procedures.

After circulation of the DEIS and consideration of comments received, the ROD should be combined with the FEIS into a single document ([23 CFR 771.124](#)), eliminating the 30-day public review period between the final EIS and ROD, unless:

1. The FEIS makes substantial changes to the proposed action relevant to the environmental or safety concerns that were documented in the DEIS or
2. There are significant new circumstances or information relevant to environmental concerns that bear on the impact of the proposed action (as compared to the DEIS).

In April 2019, the USDOT issued [guidance on the use of a combined FEIS/ROD and errata sheets in NEPA review](#). This assists with implementation of the combined FEIS/ROD process and errata sheet provisions in [49 U.S.C. 304a](#) and [23 U.S.C. 139\(n\)\(1\)](#).

400.09 Documenting an Environmental Assessment (EA)

400.09(1) NEPA Environmental Assessments (EA)

1. **Prepare the EA** – The purpose of the EA is to determine the extent and severity of environmental impacts. As described for an EIS, the EA should be succinct, describe impacts to both the natural and built environment, and account for direct, indirect, and cumulative effects. If the analysis identifies significant environmental impacts, an EIS must be prepared. See [Section 400.14](#) for a comprehensive explanation of “significance”. Refer to the Preparing an EA document on WSDOT’s NEPA and SEPA webpage for additional information. **Note:** Coordination Plans are optional for EAs under 23 U.S.C. 139, whereas they are mandatory for EISs.
 - a. **Scoping** – Scoping is recommended, but not required for an EA ([40 CFR 1501.9](#), [23 CFR 771.119](#)). Because scoping is optional for an EA, an NOI is not required. However, projects that choose to include optional scoping in their EA process should publicly notify the public, agencies, tribes, and other interested parties of the scoping details. If a draft EA is published, this outreach should still apply and WSDOT should consider any comments collected during this optional process in preparing the final EA ([40 CFR 1501.5\(e\)](#)). Advertisement of the optional scoping meeting in a local newspaper or on the project website is sufficient. For more information on the project scoping process, see [Chapter 300](#).
 - b. **Purpose and Need** – NEPA implementing regulations require EAs to include a Purpose and Need for the proposed action ([40 CFR 1501.5](#)). The Purpose and Need generally appears as the first chapter of an EA to provide a brief overview of information that must be considered in defining the purpose and need statement for the project. The statement must specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

The Purpose and Need statement explains to the public, decision makers, and interested parties why the project should be implemented and is the foundation for determining which alternatives will be considered. Evaluation criteria for screening EA alternatives must be developed based upon the Purpose and Need. See [Section 400.08\(1\)](#), the [NEPA and SEPA webpage](#), and contact the [NEPA/SEPA Program](#) for additional information on Purpose and Need.

- c. **Alternatives to the proposal** – The environmental document includes a comparison of impacts for different alternatives to the proposal. An EA must discuss the no-build alternative but may include only one build alternative.

The EA must include high-quality information ([40 CFR 1506.6](#)). This includes reliable data and resources, models, and indigenous knowledge. Existing information may be used as well as new information collected from reliable data sources to inform the analysis.

2. **Issue Notice of Availability (NOA)** – (30 day public review period) After approval of an EA, the region or modal office distributes copies of the EA or a notice that an EA is available to interested parties ([23 CFR 771.119](#)). Project teams should also issue a SEPA DNS concurrent with the release of the EA (using a DNS/Adoption form from Ecology’s SEPA document templates webpage), since the EA functions as a SEPA checklist. **Note:** the SEPA DNS only has a 14-day comment period, but project teams may elect to extend that to 30 days to match the NEPA EA comment period. For procedures see the WSDOT [NEPA and SEPA webpage](#) or contact the [NEPA/SEPA Program](#) for assistance.
 - a. The lead agency determines if a formal public hearing is required for an EA. Factors for consideration:
 - There are identified environmental issues (e.g., heavy traffic volumes on local streets, visual quality), which should be discussed in a public forum.
 - WSDOT has a substantial interest in holding a hearing to further public comment and involvement.
 - An agency with jurisdiction over the proposal (permitting agency) requests a hearing.
3. **Finding of No Significant Impact (FONSI)** – The federal lead issues the FONSI. The FONSI describes why the action does not have a significant impact and that further environmental evaluation is not needed. It includes or references the EA and identifies any mitigation commitments on the project and the authority to enforce them ([40 CFR 1501.6](#)). For example, terms and conditions or other measures in a relevant permit, incidental take statement, or other agreement. A monitoring and compliance plan for the mitigation is also required, consistent with [40 CFR 1505.3\(c\)](#). The FONSI includes any decisions or agreements that led to the FONSI. See [Section 400.14](#) for a comprehensive explanation of “significance.”

The FONSI is issued by sending an NOA to affected resource agencies, tribes, and interested public. For procedures and timing considerations see the WSDOT [NEPA and SEPA webpage](#) or contact the [NEPA/SEPA Program](#) for assistance.

400.09(2) SEPA Checklist

If a project is subject to NEPA, then NEPA documentation may satisfy WSDOT’s SEPA obligations (see [Section 400.06\(3\)](#) Using NEPA documents for SEPA). If your project does not trigger NEPA, then you must determine the appropriate SEPA compliance path. Either WSDOT’s ECS form or a SEPA checklist may be used. Project teams that would like to use an ECS in place of a SEPA checklist should contact the [NEPA/SEPA Program](#) for guidance. If a project team decides to use the SEPA checklist, refer to Ecology’s [SEPA document templates webpage](#) and refer to the [NEPA and SEPA webpage for SEPA DNS procedural guidance](#).

At WSDOT, region and modal staff find much of the information needed to complete the SEPA checklist on the Geographic Information Systems (GIS) Environmental Workbench.

Note: GIS information can also be found on WSDOT's [Community Planning Portal](#).

Region and modal Environmental Managers review the SEPA checklist (or ECS) and determine the significance of project impacts. If the project's adverse impacts are minor, the region issues a DNS. If the project is likely to result in significant adverse environmental impacts, the agency issues a DS and begins scoping for an EIS (see [Section 400.08](#)). However, SEPA-only EISs are very rare. Projects with significant impacts are likely to involve federal permits or approvals, thus triggering NEPA. See [Section 400.06\(3\)](#) for additional information on using NEPA for SEPA.

Agency procedures for completing SEPA are listed in [Chapter 468-12 WAC](#). Those procedures, along with [Chapter 197-11 WAC](#), and [Chapter 43.21C RCW](#) define the SEPA process.

400.10 Categorical Exclusions/Exemptions (CEs)

NEPA Categorical Exclusions and SEPA Categorical Exemptions (both abbreviated as CEs) are defined as projects that do not individually or cumulatively have a significant environmental effect (see [Chapter 300](#) for descriptions and detailed explanation). Some projects are /n Categorical Excluded from the NEPA process and Categorical Exempt from the SEPA process, and some include a CE from one Act but not the other. NEPA and SEPA each identify conditions that might elevate an action from its exempt status.

FHWA NEPA environmental procedures in [23 CFR 771.117](#), describe conditions when otherwise excluded activities require further documentation to justify the CE. Likewise, Ecology conditions each category of SEPA exemption in [WAC 197-11-800](#) to describe when the exemption does not apply. SEPA rules also do not allow the use of certain exemptions in designated critical areas ([WAC 197-11-908](#)).

Within WSDOT, the authority to determine that a project meets the criteria/category of being a CE rests with the region or modal Environmental Manager, and the Local Program Environmental Engineer for Local Programs projects. A CE is documented in WSDOT's ERS/ ECS database for highway projects. FTA and FRA use CE worksheets to document their decisions – WSDOT staff complete these worksheets for FTA/FRA review. Whereas FHWA has delegated some decisions regarding CEs to WSDOT, FTA and FRA have not and must sign the CE as a NEPA document.

400.10(1) NEPA CEs (Categorical Exclusions)

Categorical Exclusions are projects that, by definition ([23 CFR 771.117\(a\)](#)), do not have significant environmental impacts. The 2024 [FHWA/WSDOT NEPA CE Programmatic Agreement \(PCE\)](#) allows WSDOT to approve NEPA Categorical Exclusions ([23 CFR 771.117\(c\)](#)) or “c-list” projects and [23 CFR 771.117\(d\)](#) or “d-list” projects). Projects with unusual circumstances as described in [23 CFR 771.117\(b\)](#) require review and approval by FHWA. D-list projects require some additional documentation to verify that the CE designation is appropriate. Subject-specific analysis should be “right-sized” to reflect the level of environmental impact. This can usually be accomplished within WSDOT's ECS form, or with a letter to the file with a very short summary of analysis to support the CE status. This analysis should be included in the project file and attached to the NEPA documentation.

Environmental documentation for c-list and d-list CE-level projects is accomplished in the ERS/ECS. A signed copy of the ECS serves as the official NEPA documentation for the project file. Guidance for completion of the form and who can sign the document is provided in ERS/ECS “help” screens accessible within the database. Contact the [NEPA/SEPA Program](#) for assistance if you do not have access to the ERS/ECS database.

Projects that include utility installations along or across a transportation facility are typically considered c-list projects covered by [23 CFR 771.117\(c\)\(2\)](#), although FHWA requires verification of the CE for each installation. Within the interstate system these projects also require ESA Section 7 and NHPA Section 106 documentation that show no impacts to their respective resources will result from the project. Refer to WSDOT’s *Utilities Manual* [Section 120.12](#) (Environmental Considerations) for additional information about utilities.

400.10(2) SEPA CEs (Categorical Exemptions)

There is no requirement to document exemptions in SEPA, but it is WSDOT’s practice to document in the ECS form to ensure SEPA was considered. SEPA categorical exemptions are listed in SEPA law ([Chapter 43.21C RCW](#)) in the State SEPA Procedures ([WAC 197-11-800](#)), within the State SEPA Procedures under Agency Specific Procedures ([WAC 197-11-860](#)), and in WSDOT’s Agency SEPA Rules ([WAC 468-12-800](#)). The region or modal Environmental Manager determines if a project is exempt from SEPA.

Note: Fish passage projects typically qualify as Fish Habitat Enhancement Projects (FHEP), which follow a streamlined process under [RCW 77.55.181](#). For additional information, The FHEP Summary sheet found on the preliminary design tab of WSDOT’s [Environmental guidance - Fish](#) webpage provides more guidance on the FHEP process.

400.10(3) Emergencies

According to FHWA’s Environmental Review Toolkit, most emergency work can be documented under a CE. The Toolkit section entitled [How is the NEPA Process different in an Emergency?](#) provides information on documenting emergency projects and repairs, both as a CE and if the action requires a higher level of review.

Many emergency repairs involve simple solutions that don’t require permitting and won’t impact sensitive resources. These may not even need a completed ECS form because they likely fall under various normal maintenance and repair programmatic agreements.

Many emergency repairs involve simple solutions that don’t require permitting and won’t impact sensitive resources. These may not even need a completed ECS form because they likely fall under various normal maintenance and repair programmatic agreements.

If there is an immediate threat to public health or safety, emergency repairs should begin as soon as it is safe to do so. Emergency repairs involving water resources (e.g., wetlands, creeks, rivers, and jurisdictional ditches) may require after-the-fact consultation and permitting once the imminent threat has subsided (e.g., landslide or undermined/lost roadway section).

These activities can almost always be classified as CEs under [23 CFR 771.117\(c\)\(9\)](#) or other applicable c-listed categories. This documentation often occurs after the event and after the repair is made.

Most Emergency Relief projects and emergency repairs qualify as a categorical exclusion under [23 CFR 771.117\(c\)\(9\)](#), which includes the repair, reconstruction, restoration, retrofitting, or replacement of eligible facilities if the work:

- Occurs within the existing right of way.
- Conforms to the pre-existing design, function, and location as the original.
- Is commenced within two years of the date of disaster.

Emergencies may also prompt permanent repairs to restore the roadway to its pre-disaster condition (e.g., permanent restoration), which could involve other non-emergency actions like removing a fish barrier. This type of work may start after environmental documentation and permitting is complete.

In either of the scenarios above, the project team will consult with applicable local, state, federal, or tribal agencies to determine the appropriate path forward.

Although some repair actions qualify as NEPA CEs, the exclusion does not apply to other regulations such as the ESA, Section 106, the Clean Water Act, or Section 4(f). There are different criteria for each of these in emergency situations, where what constitutes an emergency varies based on the regulation. See the FHWA's Environmental Review Toolkit for more information.

400.11 Environmental document legal considerations

400.11(1) Statute of Limitations

1. **NEPA Statute of Limitations (SOL)** – [23 CFR 771.139](#) establishes a 150-day statute of limitations on claims against USDOT and other federal agencies for permits, licenses, or approval actions taken by a federal agency if:
 - The action relates to a highway project funded or approved by FHWA.
 - A statute of limitations notification was published in the Federal Register announcing the action.
 - The action is final under the federal law.

If no statute of limitations notice is published, the period for filing claims is determined by the applicable federal law. If no statute of limitations is specified, then a 6-year claims period applies.

It is WSDOT's policy to publish a Statute of Limitations (SOL) notice in the Federal Register to expedite the resolution of issues affecting transportation projects. Typically, an SOL will be issued for all EAs and EISs. An SOL should also be issued for CEs that have known controversy.

2. **SEPA Notice of Action Taken (NAT)** – This is an optional process for the purpose of **limiting potential court challenges** of an environmental document. Publishing a NAT limits the appeal period to 21 days after the last newspaper publication of the NAT.

WSDOT's practice is to publish a NAT any time there is reason to believe challenges to the environmental document will be filed. Substantial controversy or known threats of challenges by project opponents are indicators that judicial review is likely. By limiting appeals to a certain duration, project schedules are less likely to be disrupted. The decision to publish a NAT is made by the project office. Normally the Environmental Manager of a region or modal office will write and sign the NAT.

[RCW 43.21C.080](#) describes the process for publishing the NAT.

400.11(2) Administrative record

The administrative record is a formal catalogue documenting the agency's decision-making process for a project and is required when a project challenge will be resolved in the courts. It reflects the project history, environmental evaluation, and prior decisions. A good administrative record shows the public and the courts that project decisions were not made in an arbitrary and capricious manner. It is important to include electronic and paper records that support why project decisions were made, as well as agency and public comments and responses to comments to document how opposing views were considered.

Individuals (region, modal, and HQ environmental staff) who have participated in and supported decision-making should maintain electronic and paper files appropriately.

You must maintain the records that support your administrative decision before, or at the same time as, the decision. It is not appropriate to reconstruct a record after a decision is made. This section identifies the appropriate content and structure of an administrative record. More procedures and helpful guidance on maintaining an Administrative Record can be found on the [NEPA and SEPA webpage](#).

1. **When to prepare a formal administrative record** – All projects must be documented to support key decisions. A formal administrative record must be prepared for projects requiring an EIS where substantial controversy exists or in the likelihood of a legal challenge. Formal documentation is optional for other projects.

Project files on all projects should be kept in an orderly manner throughout the life of the project, whether an administrative record is prepared. As decisions are made on the project, they should be recorded and filed.

2. **Who prepares an administrative record** – Preparing an administrative record is a collaborative effort between the Attorney General's Office (AGO) and the WSDOT project team. In many cases the federal Lead agency may also be named in a legal challenge, in which case the State's AG will work with the federal agency's legal counsel to compile the administrative record. If the federal agency is named as a defendant, the case will usually be defended by the US Attorney in federal court. The AGO is ultimately responsible for defending our decisions in court. As such, project teams should give the AGO due deference in determining what should go into the record. Once documents are identified and organized by the project team, the AGO will determine the contents of the Administrative Record.
3. **Administrative record contents** – An administrative record should contain all federal, state, regional, or local actions. These include corridor approval, corridor adoption, design approval, and region-approved transportation master plans or programs. It may also contain other related material.

Project teams can support the administrative record by:

- Documenting the decisions on how it approached environmental review and the information that supported those decisions.
- Including the name of the project in the subject line of emails related to the project.
- Keeping track of your individual emails and files that show a change in direction for a project – you do not need to save every email about a project if it doesn't add substantive merit to the record (e.g., meeting logistics, side notes tacked onto an email string that aren't relevant to the subject matter of the communication). Although you must keep relevant information, it is okay to clean your email folders of items that are not substantive.

- Retaining Substantive emails that contain direction on a course of action. These emails are public records – DO NOT DELETE THEM.
- Realizing the project team is the focal point for retaining project records. (Keep in mind that public record requests are different from the administrative record.)
- The administrative record of an EIS should contain the following elements, as applicable, in chronological order:
 - Table of contents
 - Project prospectus
 - Environmental Classification Summary (ECS)
 - Regional transportation plans or studies
 - Route studies
 - Notice of Intent (NOI)
 - Minutes of EIS scoping meeting(s)
 - Discipline specific and Interdisciplinary Team meeting minutes and recommendations
 - Agency meeting minutes and phone call summaries
 - Comments from public open houses
 - Public hearing transcript
 - Correspondence from agencies or the public and responses to them (both letters and emails)
 - Interoffice communications relating to project development
 - Discipline reports
 - Draft and final EIS
 - Copy of all references cited in the DEIS and FEIS
 - Official notices
 - Record of Decision (ROD)
 - Corridor, design, and access plan approvals
 - Affidavit of publication of Notice of Action Taken (NAT)
 - Other relevant evidence such as local zoning or planning reports, government studies, questionnaires, or university studies

The administrative record need not include every item in the project file. Generally, items that do not relate to a major project decision should not be included. Project teams should consult with the Attorney General's Office to determine if the project will need an administrative record. If the AG's Office recommends that an administrative record be prepared, the project team should coordinate closely with an Assistant Attorney General when preparing the record.

400.11(3) Reporting Requirements

[23 U.S.C. 157](#) requires lead agencies to report the number of CEs (c-list and d-list, separately), EAs, and EISs issued each year, as well as the number of d-list CEs, EAs, and EISs that were pending at the time of reporting, and the length of time it took to complete each EA and EIS. For EAs and EISs that were pending at the time of reporting, the lead agency must also report the percentage of the proposed actions that have identified funding and all other required federal, state, and local activities that are completed (i.e., only remaining approval is the approval of NEPA itself).

400.12 Applicable statutes and regulations

400.12(1) National Environmental Policy Act (NEPA)

President Nixon signed NEPA in January 1970 as the “national charter for protection of the environment” (PL 91 190, as amended; [42 U.S.C. 4321](#)). The intent of NEPA ([40 CFR 1500 – 1508](#)) is to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. NEPA procedures also inform the public of the environmental information before federal actions or decisions are made.

NEPA implementing regulations applicable to all federally aided projects were developed by the CEQ and are codified as [40 CFR 1500 – 1508](#). FHWA regulations applicable to federally aided highway projects are codified in [23 CFR 771](#).

400.12(2) Other Federal Environmental Statutes

In addition to NEPA, there are several other federal statutes that govern federal-aid highway projects. FHWA and other federal leads require documentation of compliance with the following laws prior to completing NEPA (i.e., approval of the ECS, or publishing a FONSI or FEIS) for a project.

1. **Endangered Species Act – Section 7 of ESA** requires federal agencies to confer with the US Fish and Wildlife Service or National Marine Fisheries Service (see [Chapter 436](#) for details).
2. **Section 106** – Section 106 of the National Historic Preservation Act applies to transportation projects affecting historic property listed on or eligible for listing on the National Register of Historic Places (see [Chapter 456](#) for details).
3. **Section 4(f) Evaluation** – Projects requiring funding or approval from a USDOT agency must comply with Section 4(f) of the USDOT Act of 1966 which established the requirement for consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites when siting transportation facilities. The law, codified in [49 U.S.C. 303](#) and [23 U.S.C. 138](#), is implemented by the FHWA through [23 CFR 774](#) (see [Chapter 457](#) for details).
4. **Section 6(f) – Outdoor Recreation Resources** – Section 6(f) of the Land and Water Conservation Fund (LWCF) Act of 1965 prohibits the conversion of property acquired or developed with LWCF grant funds to a non-recreational purpose without the approval of the NPS (see [Chapters 455](#) and [457](#) for details).
5. **Title VI** – Under [49 CFR 21.5](#) a federal aid recipient may not select a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin.

400.12(3) **State Environmental Policy Act (SEPA)**

SEPA ([Chapter 43.21C RCW](#)), adopted in 1971, directs state and local decision makers to consider the environmental consequences of their actions. State SEPA Rules are maintained by Ecology.

The SEPA Rules ([Chapter 197-11 WAC](#)), and Ecology's guidance, the SEPA Handbook, are posted on the [Ecology SEPA](#) webpage.

The WSDOT's Agency SEPA procedures ([Chapter 468-12 WAC](#), as amended) are located at the [Office of the Code Reviser](#) website.

400.13 **Abbreviations and acronyms**

AASHTO	American Association of State Highway and Transportation Officials
AGO	Attorney General's Office
BIA	Bureau of Indian Affairs
CE	Categorical Exclusion (NEPA) or Categorical Exemption (SEPA)
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement (NEPA/SEPA)
DNS	Determination of Nonsignificance (SEPA)
DS	Determination of Significance (SEPA)
EA	Environmental Assessment (NEPA)
Ecology	Washington State Department of Ecology
EIS	Environmental Impact Statement (NEPA/SEPA)
EPA	Environmental Protection Agency
ERS/ECS	Environmental Review Summary/Environmental Classification Summary
ESA	Endangered Species Act
ESO	Environmental Services Office
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact (NEPA)
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
LWCF	Land and Water Conservation Fund Act
MOU	Memorandum of Understanding
NAT	Notice of Action Taken (SEPA)
NEPA	National Environmental Policy Act
NOA	Notice of Availability (of a NEPA document)
NOI	Notice of Intent (to prepare a NEPA EIS)
NPS	National Park Service
OFD	One Federal Decision
PEL	Planning and Environmental Linkages

RCW	Revised Code of Washington
ROD	Record of Decision (NEPA)
SDEIS	Supplemental Draft Environmental Impact Statement (NEPA/SEPA)
SEIS	Supplemental Environmental Impact Statement (NEPA/SEPA)
SEPA	State Environmental Policy Act
SFEIS	Supplemental Final Environmental Impact Statement (NEPA/SEPA)
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USCG	United States Coast Guard
USDOT	United States Department of Transportation
USFS	United States Forest Service
WAC	Washington Administrative Code

400.14 Glossary

Categorical Exclusion/Exemption – An action that does not individually or cumulatively have a significant environmental effect, as defined in NEPA/SEPA regulations, and is classified as excluded (NEPA) or exempt (SEPA) from requirements to prepare an EA/SEPA checklist or EIS. See [40 CFR 1508.1\(e\)](#) for NEPA definitions and [Chapter 300](#) (sections 300.04 and 300.05) for more information on scope and classification.

Communities with Environmental Justice Concerns – are those communities that may not experience environmental justice (see definition below). See [Chapter 460](#) for additional information on Environmental Justice and affected communities.

Cumulative Effect – Effects on the environment that result from the incremental effects of the action when added to other past, present, and reasonably foreseeable actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time ([40 CFR 1508.1\(i\)](#)). See [Chapter 412](#) for additional guidance on cumulative effects.

Degree (of Significance) – In considering the degree of the effects, consider:

- Short- and long-term effects.
- Beneficial and adverse effects.
- Effects on public health and safety.
- Effects that would violate federal, state, tribal, or local law protecting the environment.

Direct Effect – Direct effects are caused by the proposed action and occur at the same time and place. Direct effects may occur during construction or operation of the project. Effects may be ecological, aesthetic, historic, cultural, economic, social, or health related ([40 CFR 1508.1\(i\)](#)).

Discipline Report – A detailed WSDOT report or memo to document the environmental analysis in the rare cases where the environmental impacts are so substantial, the required analysis is so complex, or the pertinent dataset is so large, that the analysis cannot reasonably be included within the environmental document. A discipline report is typically included in the appendix of the environmental document. A discipline report may also be written if the specific analysis is needed to support some other permit or approval requirement independent of the NEPA/SEPA process.

Effects (or Impacts) – Changes to the human environment that are from the proposed action or alternatives that are reasonably foreseeable, including direct effects, indirect effects, and cumulative effects. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative. Effects also include effects on tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives. Effects may also include those resulting from actions which may have both beneficial and adverse effects, even if on balance the agency believes that the effects will be beneficial. See [40 CFR 1508.1\(i\)](#).

Environmental Document – Includes documents prepared in response to state and federal environmental requirements such as: Environmental Impact Statements (NEPA and SEPA), Environmental Assessments (NEPA), SEPA Threshold Determinations (DS, DNS, and MDNS) and associated SEPA checklists, Section 4(f) Evaluations, Section 106 Reports, Environmental Justice Reports, and other documents. See [40 CFR 1508.1\(k\)](#).

Environmental justice – means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people: (1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (2) Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices. See [Chapter 460](#) for additional information on Environmental Justice and affected communities.

Environmentally Preferable Alternative – means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA ([40 CFR 1502.14\(f\)](#); [40 CFR 1508.1\(n\)](#)).

Environmental Review – Is the consideration of environmental factors required by NEPA and SEPA. The “environmental review process” is the procedure used by agencies and others to consider the environment in decision making.

Federal Nexus – A determination that a federal agency:

- Is a proponent of a specified proposal (usually by providing funding)
- Must issue a federal approval (for example a permit, license, or other entitlement such as a request to use federal funds or federal land) for the proposal to proceed.

A federal nexus (even on an otherwise non-federal proposal) typically triggers the need for the federal agency or agencies to comply with various federal statutes. These include but are not limited to NEPA, Section 106 of the National Historic Preservation Act, Section 4(f) of the USDOT Act, Section 6(f) of the LWCF Act, and Section 7 of ESA. See the [Federal Nexus Requirements](#) on WSDOT’s [NEPA and SEPA webpage](#) (Scoping tab) for more information.

Indirect Effect (NEPA) – Indirect effects are caused by the proposed action or alternative and occur later in time or are farther removed in distance but are still reasonably foreseeable. Indirect effects may include effects related to changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems ([40 CFR 1508.1\(i\)](#)). See [Chapter 412](#) for additional guidance on indirect effects.

Joint Lead Agency – means a federal, state, tribal, or local agency designated in [40 CFR 1501.7\(c\)](#) that shares the responsibilities of the lead agency for preparing the environmental impact statement or environmental assessment.

Logical termini – Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. The environmental impact review frequently covers a broader geographic area than the strict limits of the transportation improvements.

Mitigation – NEPA ([40 CFR 1508.1\(y\)](#)) and SEPA ([WAC 197-11-768](#)) mitigation means avoiding, minimizing, rectifying, rehabilitating, restoring, reducing or eliminating the environmental impact over time by preservation and maintenance operations during the life of the action. Mitigation can also mean compensating for the impact by replacing or providing substitute resources or environments for those impacted by the project.

Planning and Environmental Linkages (PEL) – A collaborative and integrated approach to transportation decision-making that (1) considers environmental, community, and economic goals early in the planning process, and (2) uses the information, analysis, and products developed during planning to inform the environmental review process. See [Chapter 200](#) and WSDOT's [PEL webpage](#) for additional PEL guidance.

Potentially Affected Environment – The affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act.

Purpose and Need – The Purpose and Need statement explains to the public, decision makers, and interested parties why the project should be implemented. The Purpose and Need statement is the foundation for determining which alternatives will be considered.

Reasonable Alternatives – Reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action. ([40 CFR 1508.1\(hh\)](#)).

Responsible Official – Official of the lead agency who has been delegated responsibility for complying with NEPA and SEPA procedures.

Scoping (public and agency scoping) – A formal process for engaging the public and agencies to comment on the project Purpose and Need statement, identify the range of alternatives, environmental elements and impacts, and mitigation measures to be analyzed in an EIS or an EA. It should not be confused with internal scoping to set a project's budget.

SEPA Checklist – A standard form used by state and local agencies to obtain information about a proposal and to assist them in making a threshold determination. It includes questions about the proposal, its location, possible future activities, and questions about potential impacts of the proposal on each element of the environment. The SEPA rules under [WAC 197-11-960](#) list the information required in an SEPA checklist.

Significant Impact (also Significant Effects) – Under NEPA ([40 CFR 1501.3\(d\)](#)), agencies must analyze both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Other considerations include: setting, likelihood of occurrence, and severity, magnitude, or duration of the impact. Almost every transportation project that would be recognized as major federal action, no matter how limited in scope, has some effect on the environment. Additional information and examples for determining significance is found in [Section 400.03\(1\)](#), [40 CFR 1501.3\(d\)](#), and [40 CFR 1508.1](#).

Under SEPA, [WAC 197-11-330](#) specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

Threshold Determination (SEPA) – The threshold determination process is the process used to evaluate the environmental consequences of a proposal and determine whether the proposal is likely to have any “significant adverse environmental impacts.” The SEPA lead agency makes this determination and documents it as either a DNS, or a DS. A DS requires preparation of an EIS. State and local agencies use the SEPA checklist (see above) to help make a threshold determination.

Tribal Consultation – As defined in WSDOT Executive Order [E 1025](#), Tribal Consultation means respectful, effective communication in a cooperative process that works towards a consensus, before a decision is made or action is taken on actions that affect identified tribal rights and interests.

Chapter 412 **Indirect and cumulative effects**

412.01	Introduction
412.02	Applicable statutes, regulations, executive orders, and policies
412.03	Considerations during project development
412.04	Analysis and documentation requirements
412.05	External engagement
412.06	Internal Roles and responsibilities
412.07	Mitigation
412.08	Applicable permits and approval process
412.09	Abbreviations and acronyms
412.10	Glossary

412.01 Introduction

This chapter provides the policy direction regarding the assessment of indirect and cumulative effects for projects requiring a National Environmental Policy Act (NEPA) Environmental Assessment (EA) or a NEPA/State Environmental Policy Act (SEPA) Environmental Impact Statement (EIS).

NEPA requires that any agency proposing a major federal action that may significantly affect the environment, consider the environmental effects of the proposed action, any unavoidable adverse environmental impacts, and the relationship between local short term uses and long-term productivity of the environment ([42 USC 4332\(c\)](#)). Definitions of major federal actions are found in [40 CFR 1508.1\(w\)](#).

SEPA rules direct state agencies to identify and evaluate probable impacts, alternatives, and mitigation measures, emphasizing important environmental impacts and alternatives (including cumulative, short-term, long-term, direct and indirect impacts).

The Council on Environmental Quality (CEQ) NEPA regulations require federal agencies to evaluate three types of effects in environmental reviews ([40 CFR 1508.1\(i\)](#)): (i) direct effects, which are “caused by the action and occur at the same time and place;” (ii) indirect effects, which are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable;” and (iii) cumulative effects, which result from “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions”.

Exhibit 412-1 Highlights the distinctions between direct, indirect and cumulative

Distinctions between direct, indirect, and cumulative effects			
Type of Effect	Direct	Indirect	Cumulative
Nature of effect	Typical, predictable	Reasonably foreseeable, probable	Reasonably foreseeable
Cause of effect	Project	Project's direct effects	Project's direct and indirect effects <i>together with</i> effects of other activities
Timing of effect	Project construction and implementation	At some future time after direct effects	Past, present, or in the future
Location of effect	Within project impact area	Within boundaries of systems affected by project	Within boundaries of systems affected by the project

Adapted from: NCHRP Report 403, *Guidance for Estimating the Indirect Effects of Proposed Transportation Projects* (1998), reprinted in AASHTO Practitioner's Handbook #12 (2016)

412.01(1) Recent changes

In 2024, CEQ revised its NEPA implementing regulations to restore some of the basic elements of its 1978 NEPA regulations that had been eliminated by the 2020 rulemaking. The 2024 rule change:

- Established NEPA Environmental Impact Statements (EISs) must include an environmentally preferred alternative. Environmentally preferable alternative or alternatives will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources; or causing the least damage to the biological and physical environment. CEQ also notes that this can be different from the proposed action ([40 CFR 1502.14\(f\)](#)). See [Chapter 400](#) for more information on environmentally preferred alternative.
- Clarified incomplete and unavailable information and requires an EIS to include an explanation when information is lacking ([40 CFR 1502.21](#)). See [Chapter 400](#) for more information on changes to environmental review and transportation decision making, including to NEPA documentation and processes.
- Established CEQ's NEPA regulations as the floor rather than the ceiling so federal agencies could customize their NEPA procedures consistent with CEQ NEPA regulations, as needed.
- Extended considerations of climate change beyond cumulative effects to occur in multiple points throughout the environmental review process. See [Chapter 415](#) and WSDOT's [Air Quality, Energy and Greenhouse Gas Emissions](#) and [Cumulative Effects and Climate Change](#) webpages for more information on updates relating to considerations of climate change.
- Established for the first time in NEPA, environmental justice is defined ([40 CFR 1508.1](#)). See the environmental justice definition in [Section 412.10](#) and refer to [Chapter 460](#) for more information on updates relating to environmental justice.

The proposed rule adds direction related to cumulative effects in [40 CFR 1502.15](#), stating: “Agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge, to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information consistent with [40 CFR 1502.21](#). This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area, should inform the agency’s analysis of environmental consequences and mitigation measures ([40 CFR 1502.16](#)).”

At the state level, WSDOT has new direction because of the passage of the Healthy Environment for All (HEAL) Act codified in [Chapter 70A.02 RCW](#). This state law directs the consideration of cumulative health impacts, climate-related effects and more. Project teams should follow the direction in Chapters [458](#) and [460](#) regarding the use of the Environmental Health Disparity tool and consider cumulative human health effects. Environmental justice is an important topic that should be considered during the assessment of direct, indirect, and cumulative effects.

412.02 Applicable statutes, regulations, executive orders, and policies

412.02(1) *Federal*

- National Environmental Policy Act (NEPA), [42 U.S.C. 4321](#), 42 U.S.C. 4332(c) re: relationship to long term productivity of the environment.
- CEQ NEPA Implementing Regulations – [40 CFR 1500 - 1508](#) (*Note:* WSDOT refers to the 1978 version).
- FHWA, FRA, and FTA Rules – [23 CFR 771](#).

412.02(2) *State*

- State Environmental Policy Act (SEPA), [Chapter 43.21C RCW](#), and [RCW 43.21C.031](#).
- SEPA implementing regulations are [WAC 197-11-792](#) and [WAC 197-11-060\(4\)](#).
- [Chapter 70A.02 RCW](#) State environmental justice law, also referred to as the HEAL Act.

412.02(3) *Local*

- Local requirements will vary by jurisdiction.

412.03 Considerations during project development

412.03(1) *Planning*

[Chapter 200](#) explains how planning products such as Purpose and Need or a range of reasonable alternatives, can consider environmental issues. Cumulative effects include long-term issues like climate change and land use conversion. These issues can be effectively considered at a planning level to inform the proposed solutions.

412.03(2) **Scoping**

Chapter 300 explains the importance of public and agency outreach during pre-NEPA and scoping of our environmental documents. Concerns around issues that may seem outside the project are common. These concerns may indicate cumulative effects that should be captured early and considered as important context for the project. For example, a pattern of development in the floodplain, increased flooding, and concerns surrounding future climate change projections.

412.03(3) **Design**

Project NEPA documents should disclose all the effects and respond to public and agency concerns. The proposed project should highlight ways to address the direct and indirect effects, and ways to be resilient to climate and other hazards.

Where appropriate, the NEPA document should include projections when evaluating reasonably foreseeable effects, including climate change effects (40 CFR 1506.6(d)). See Chapter 415 for more information on documenting climate change effects and WSDOT's [Cumulative Effects and Climate Change](#) webpage for additional guidance.

412.03(4) **Construction**

- N/A

412.03(5) **Maintenance and Operations**

- N/A

412.04 **Analysis and documentation requirements**

412.04(1) **Right size to classification (CE, EA, EIS)**

Indirect effects

Any project regardless of NEPA classification may have indirect effects. These should be assessed and described alongside direct effects. This is consistent with both the 1978 and the 2020 versions of the CEQ NEPA regulations. WSDOT project teams should follow the AASHTO's guide [Practitioner's Handbook #12: Assessing Indirect and Cumulative Impacts Under NEPA](#).

Cumulative effects

The level of the environmental document being prepared will dictate whether a cumulative effects analysis should be prepared. If so, the scope of the cumulative effects analysis should be limited to those resources that are directly affected by the proposed action. If a project will not directly or indirectly impact a resource, it will not contribute to a cumulative effect on the resource. The one exception to this is climate change impacts. For guidance on climate change-related effects, refer to [Chapter 415](#).

- **Categorical Exclusion (CE): Not Required** – These projects are minor projects without significant environmental impacts, and as such should not require a cumulative effects analysis. There may be unusual circumstances requiring such an analysis, but this should be very rare.

- **Environmental Assessment (EA): Required** – These are projects in which the significance of environmental impacts is unknown. As one of the primary purposes of the EA is to help decision makers and the public understand whether an EIS is needed, you need to consider potential cumulative effects. The degree to which resources may be impacted will determine the extent of the cumulative effects analysis needed. Where direct and indirect effects are found to be present, you will need to complete a cumulative effects analysis.
- **Environmental Impact Statement (EIS): Required** – These are projects in which there are anticipated significant environmental impacts, and a cumulative effects analysis may assist decision makers and the public in making informed decisions. The cumulative effects analysis should include substantial information about affected resources, past actions that have contributed to trends, and reasonably foreseeable effects.

412.04(2) Analysis and Methodology

The NEPA project lead determines the approach for documenting cumulative effects. Options are to:

1. Prepare a separate chapter or section on cumulative effects.
2. Integrate the disclosure of cumulative effects within the individual discipline studies and report within those chapters or sections.

In either case, a separate cumulative effects discipline report or technical memo may help to keep the document size to a minimum.

Below is an example from the [SEPA Handbook](#) on the Washington State Department of Ecology [SEPA guidance](#) webpage.

“When describing the environmental impacts of a proposal, the lead agency should consider direct, indirect, and cumulative impacts. For example:

- A new residential development may propose to place fill in a wetland to construct a road (a direct impact).
- The new road may encourage increased development in the area because of the improved access (an indirect impact).

Note: that if the development is already forecast by a locally approved plan, the road project is not inducing the growth, but the relationship can be noted.

- Increased runoff and contaminants from the development would be added to the volumes and levels of contamination from similar developments surrounding the wetland (cumulative impacts).”

Recommended resources

WSDOT follows CEQ NEPA regulations related to indirect and cumulative effects analysis.

WSDOT project teams should use the AASHTO guidance for cumulative effects analysis. AASHTO’s guide [Practitioner’s Handbook #12: Assessing Indirect and Cumulative Impacts under NEPA](#) recommends five general stages, and five analytical steps:

- I. Information gathering
- II. Initial assessment of cumulative effects
- III. Determining the scope and methodology (count what counts)

IV. Conducting the analysis

- 1) Describe resource conditions and trends
- 2) Summarize proposed project's effects on key resources
- 3) Describe other actions and their effects on key resources
- 4) Estimate combined effects
- 5) Consider minimization and mitigation (be sure to reflect the distinction between the proposed action and other actions)

For guidance on climate change-related effects, refer to [Chapter 415](#).

V. Documentation

WSDOT has useful information in GIS on several topics, including climate change and natural hazards. Local agencies maintain land use information as well as emergency management plans that contain valuable information on flooding and other natural hazards. Transportation planners can reach out to locals, tribes, and representatives from traditionally underrepresented, underserved, and overburdened communities to find out what issues are of most concern. The State Department of Health's [Environmental Health Disparities tool](#) is a great resource.

Indirect effects

Any project, regardless of NEPA classification, may have indirect effects. Analysis of indirect effects is needed when effects are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. These should be assessed and described alongside direct effects consistent with CEQ NEPA regulations ([40 CFR 1500 - 1508](#)). A separate indirect effects analysis is not recommended, except in rare cases when a project is likely to cause otherwise unplanned changes in land use patterns.

Most indirect effects are derived from project-related changes in land uses. Under the Growth Management Act, land use changes are controlled by local planning decisions. However, indirect effects may be associated with a transportation project if the project affects the rate and pattern of land use development. For example, if WSDOT constructs a bypass route around a town, the rate of planned growth around the new route may increase. WSDOT's projects should consider the potential indirect effects, including whether there is a likelihood that development and economic vitality along the original route may decline. Other examples of indirect effects include changes in wildlife habitat selection or migration patterns due to direct project-related effects on habitat, for example – increased park use due to improved access.

It is very important to determine if the project is likely to support planned land use. Ask whether the project will alter the type, rate, or timing of planned growth. Consider whether there is potential for indirect effects on either the natural or the human environments (including environmental justice communities). See [Chapter 460](#) for environmental justice guidance.

To evaluate the potential for indirect effects, consider the likelihood of development in the project area following project construction. Carefully examine the land use discipline study for your project (See [Chapter 455](#) for land use analysis). Consider the following:

- Look at population and land use trends in the project area and region or subarea. How has the area developed? How fast is it planned to develop? Will the project affect the rate of development? Are people building in the area? Look at the pattern of zoning. Has it recently changed or is it about to change?
- Review the local comprehensive plans. Is the project area within the urban growth boundary or outside it? Is the local jurisdiction considering changes in the urban growth boundary to allow for growth or are they concentrating on infill? Confirm that the proposed project is aligned with the transportation element of the plan. Would the transportation project support other modal decisions contained within adopted plans? Do the city planners expect the project to support or encourage development?

Document your conclusion and describe the indirect effects associated with the proposed action. If your project is likely to induce growth that is not planned, refer to AASHTO's guide [Practitioner's Handbook #12: Assessing Indirect and Cumulative Impacts under NEPA](#) for direction and national best practices.

Cumulative effects

For EAs and EISs, potential cumulative effects should be considered as early as possible in the NEPA process. Use information from existing environmental documents and other relevant information such as natural resource plans, local comprehensive plans, existing zoning, recent building permits, and interviews with local government. These may also be good sources for information on past actions.

Quantifying cumulative effects may be difficult, since a large part of the analysis requires projections about what may happen in a project area. The analyst must develop a list of reasonably foreseeable future actions taken by governmental and private entities. We recommend coordinating with the authors of the social, environmental justice, and land use and transportation studies to capture the information they have on future actions. Coordinate your outreach to other agencies and the public so that you understand the likely future context for the project and the surrounding area.

A cumulative effect analysis builds upon information derived from direct and indirect effect. This makes it tempting to postpone the identification of cumulative effects until the direct and indirect effect analyses are well under way. However, early consideration of cumulative effects may facilitate the design of alternatives to avoid or minimize impacts. Do not defer the consideration of cumulative effects. Instead, as you begin to consider a project's potential direct and indirect effects, start outlining the potential cumulative effects as well. As more information about direct and indirect effects becomes available, use it to further refine the cumulative effects analysis. If you determine that cumulative effects are not an issue, document that decision along with the reasons for the decision.

The cumulative effects analysis includes cumulative climate change-related effects of the proposed action. For more information on climate change-related effects, see [Chapter 415](#).

Reasonably Foreseeable Determination

When determining and analyzing reasonably foreseeable actions, it can be helpful to review language from court decisions in formulating questions and criteria as practitioners proceed with analysis to determine which actions may be reasonably foreseeable. Courts have recognized that “An environmental impact is considered ‘too speculative’ for inclusion in an EIS (Environmental Impact Statement) if it cannot be described at the time the EIS is drafted with sufficient specificity to make its consideration useful to a reasonable decision maker.” *Dubois v. US. Dept. of Agriculture*, 102 F.3d 1273,1286 (1st Cir. 1996).

Factors that indicate whether an action or project is “reasonably foreseeable” for the purposes of cumulative effects analysis include: whether the project has been federally approved; whether there is funding pending before any agency for the project; and whether there is evidence of active preparation to make a decision on alternatives to the project. *Clairton Sportmen’s Club v. Pennsylvania Turnpike Commission*, 882 F. Supp 455 (W.D. Pa 1995). EPA’s [Consideration of Cumulative Impacts in EPA Review of NEPA Documents](#) (May 1999) states:

“Court decisions . . . have generally concluded that reasonably foreseeable future actions need to be considered even if they are not specific proposals. The criterion for excluding future actions is whether they are “speculative.” The NEPA document should include discussion of future actions to be taken by the action agency. The analysis should also incorporate information based on the planning documents of other federal agencies, and state and local governments. For example, projects included in a 5-year budget cycle might be considered likely to occur while those only occurring in 10–25-year strategic planning would be less likely and perhaps even speculative.”

412.04(3) Required documentation for cumulative effects

WSDOT projects that are preparing a NEPA EA or EIS should document the analysis of cumulative effects in the same way they did under the 1978 CEQ NEPA regulations. WSDOT project teams should follow the documentation requirements described in:

- AASHTO’s guide [Practitioner’s Handbook #12: Assessing Indirect and Cumulative Impacts under NEPA](#). That direction is consistent with WSDOT policy and SEPA rules.
- WSDOT’s procedures for climate change-related effects discussed in [Chapter 415](#).

Cumulative effects can either be discussed in individual sections on each element of the environment or included in a separate section. A separate section is most appropriate when there are a lot of cumulative effects that are interrelated across disciplines. Most project teams find it useful to have a separate discipline report or technical memo to document the details of methodology and findings. In some cases where there are few cumulative effects, a project team can write cumulative effects entirely within the EA or EIS.

Whatever approach you take, be sure that the reader can find your discussion of cumulative effects.

412.05 External engagement

Public involvement and inclusive engagement are central to NEPA and SEPA. It is part of how you successfully identify direct, indirect, and cumulative effects of a proposed project. We must reach out to others. Work with your project team, communications, tribal liaison, and the other subject matter experts to find out what they've heard about cumulative effects. Tribal leaders and staff have very deep knowledge of the trends that have adversely impacted tribal resources. This information is very useful in preparing the cumulative effects analysis and in identifying potential mitigation. Environmental justice community members and local government staff have very valuable insights as well.

412.06 Internal Roles and responsibilities

The following offices have a key role in indirect and cumulative effects analysis. See the [NEPA Roles Table](#) on the [NEPA and SEPA](#) webpage for more information about general NEPA documentation roles.

412.06(1) *Region/Modal Planning Office*

Conduct environmental screening to locate WSDOT assets that are vulnerable to climate threats. Consult with local planning partners to determine availability of additional area-specific climate data. Use this information to document how climate change and extreme weather vulnerability are considered and to propose practical long-term solutions that improve resilience. Provide documentation and recommendations to environmental staff. See [Chapter 415](#) for information on additional climate change considerations.

412.06(2) *Region/Modal Environmental Office*

Identify resource areas that require a cumulative effects analysis under NEPA. Prepare analysis or review analysis prepared by environmental technical experts.

412.06(3) *Environmental technical experts*

Perform technical analysis to determine effects, including cumulative effects, for the range of environmental disciplines evaluated under NEPA. Consultants may also fulfill this role. WSDOT environmental technical experts can help develop consultant scopes of work. WSDOT environmental technical experts review consultant work to ensure requirements are met and the analysis is technically sound.

412.06(4) *Headquarters Environmental Services Office*

The Environmental Services Office (ESO) keeps the indirect and cumulative effects guidance current and consistent with rules and regulations. The ESO NEPA Specialist provides support and technical assistance with EA and EIS projects. The [NEPA/SEPA Program](#) is available to consult on cumulative effects. See [Chapter 415](#) for contacts on consideration of climate change.

412.07 Mitigation

It is the project team's responsibility to define mitigation for direct and indirect effects. Mitigation requirements are discussed within the other discipline chapters. With regard to cumulative effects and potential mitigation, refer to the [AASHTO practitioners guide](#).

412.08 Applicable permits and approval process

There are no permits or approvals associated with indirect or cumulative effects.

412.09 Abbreviations and acronyms

AASHTO	American Association of State Highway and Transportation Officials
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
NEPA	National Environmental Policy Act
SEPA	State Environmental Policy Act

412.10 Glossary

Communities with environmental justice concerns – means those communities that may not experience environmental justice ([40 CFR 1508.1](#)).

Cumulative Effect – Effects on the environment that result from the incremental effects of the action when added to other past, present, and reasonably foreseeable actions, regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from actions with individually minor but collectively significant effects taking place over a period of time ([40 CFR 1508.1](#)).

Cumulative Effects (ESA) – Effects of future state or private activities, not involving federal activities, that are reasonably certain to occur within the action area of the federal action subject to consultation ([50 CFR 402.02](#)). **Note:** NEPA and ESA share a common threshold for determining whether to consider the potential for the action to change the rate of growth thereby increasing the indirect effects of an action. Therefore, the same causal relationship should be used for writing the NEPA document as for writing the biological opinion for ESA compliance (see [Section 436.05](#)).

Direct Effect – Direct effects are caused by the proposed action and occur at the same time and place that may occur during construction or operation of the project. Effects may be ecological, aesthetic, historic, cultural, economic, social, or health related ([40 CFR 1508.1](#)).

Effects (or Impacts) – Changes to the human environment that are from the proposed action or alternatives that are reasonably foreseeable, including direct effects, indirect effects, and cumulative effects. Effects include:

- Ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative.
- Effects also include effects on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives.
- Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial (40 CFR 1508.1).

Environmental justice – means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people: (1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (2) Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices (40 CFR 1508.1).

Environmentally preferable alternative means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA (40 CFR 1508.1).

Indirect Effect (NEPA) – Indirect effects are caused by the proposed action or alternative and occur later in time or are farther removed in distance but are still reasonably foreseeable. Indirect effects may include effects related to changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems (40 CFR 1508.1).

Induced Growth or Growth Inducing Effect – Terms used as examples of an indirect effect related to changes in the pattern of land use, population density, or growth rate. (WSDOT discourages the use of these terms because they are vague and confuse the local decisions regarding planned growth under the Washington State Growth Management Act with project-specific effects).

Irretrievable – Impossible to retrieve or recover.

Irreversible – Impossible to reverse.

Mitigation – According to 40 CFR 1508.1(y), includes: (a) avoiding the adverse effect; (b) Minimizing adverse effects by limiting the degree or magnitude; (c) rectifying the adverse effect by repairing, rehabilitating, or restoring; (d) reducing or eliminating the adverse effect over time; and (e) compensating by replacing or providing substitute resources.

Reasonably Foreseeable – An action is reasonably foreseeable if it is considered likely to occur and isn't too speculative. Reasonably foreseeable impacts are predictable and probable. They are not impacts that are just merely possible.

Resource – Resources are defined by NEPA and SEPA implementing regulations as “natural or depletable” resources ([40 CFR 1502.16](#), [WAC 197-11-440\(6\)](#)) and renewable or nonrenewable resources ([WAC 197-11-444](#)). Resources are defined by FHWA [Technical Advisory T 6640.8A](#) as “natural, physical, human, and fiscal resources” in guidance on irreversible and irretrievable commitments of resources.

Resource Study Area – A Resource Study Area is specific for each resource and focused on the area where cumulative effects on the resource are expected to occur. It may be the same or larger than the study area for direct and indirect effects.

Significance – The significance of a potential impact on the natural or built environment depends upon context and intensity. In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Other considerations include: setting, likelihood of occurrence, and severity, magnitude, or duration of the impact. Almost every transportation project that would be recognized as major federal action, no matter how limited in scope, has some effect on the environment. Additional information and examples for determining significance is found in [40 CFR 1508.1](#).

Chapter 415 Considerations of Climate Change

415.01	Introduction
415.02	Applicable statutes, regulations, executive orders, and policies
415.03	Considerations during project development
415.04	Analysis and documentation requirements
415.05	External engagement
415.06	Internal Roles and responsibilities
415.07	Mitigation
415.08	Applicable permits and approval process
415.09	Abbreviations and acronyms
415.10	Glossary

415.01 Introduction

This chapter provides the policy direction regarding the incorporation of climate change considerations and climate change-related effects throughout the environmental planning, review, and design process. The Council on Environmental Quality (CEQ) updated their National Environmental Policy Act (NEPA) implementing regulations ([40 CFR 1500-1508](#)) in 2024. This rule change includes new direction for federal agencies to pivot from only considering climate change impacts within Environmental Assessment (EA) and Environmental Impact Statement (EIS) cumulative effects analyses to integrating climate change considerations throughout the project delivery process (see [Chapter 100](#)).

NEPA requires that any agency proposing a major federal action ([40 CFR 1508.1\(w\)](#)) that may significantly affect the environment, to consider:

- Environmental impacts of the proposed action.
- Any unavoidable adverse environmental impacts.
- Alternatives to the proposed action.
- The relationship between local short term uses and long-term productivity of the environment.
- Any irreversible and irretrievable commitment of resources if the action is implemented.

CEQ NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout their environmental review process, including affected environment, impact assessment, transportation resilience, cumulative effects, and mitigation strategies. See [Chapter 412](#) for information on requirements for indirect and cumulative effects.

State Environmental Policy Act (SEPA) rules direct state agencies to identify and evaluate probable impacts, alternatives, and mitigation measures, emphasizing important environmental impacts and alternatives.

415.01(1) **Recent changes**

In 2024, CEQ revised its NEPA regulations to restore some of the basic elements of its 1978 NEPA regulations that had been eliminated by the 2020 rulemaking. The 2024 rule change establishes:

- Climate Change is contained in the definition of “Effects or Impacts.” CEQ does not define climate change, but the term is used throughout the rule ([40 CFR 1508.1](#)).
- Alternatives analysis now must include documentation of climate change-related effects along with all the other effects ([40 CFR 1502.14](#), [40 CFR 1502.16](#)). Previously, WSDOT considered climate change-related effects (resilience/vulnerability) under cumulative effects, not in the analysis of alternatives (although we have been including greenhouse gas emissions within alternatives analysis).
- NEPA Environmental Impacts Statements (EIS) must include:
 - *Climate effects* - “where applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the projected action and alternatives and the effects of climate change on the proposed action and alternatives.” (See [40 CFR 1502.16\(6\)](#))
 - *Adaptation measures* - “where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions.” (See [40 CFR 1502.16\(9\)](#))
 - *Environmentally preferred alternative* - Environmentally preferable alternative or alternatives include those that address climate change-related effects, [40 CFR 1502.14\(f\)](#). CEQ also notes that this can be different from the proposed action. See [Chapter 400](#) for more information on environmentally preferred alternative.
- CEQ clarified the use of reliable data and resources to include Indigenous Knowledge to describe reasonably foreseeable environmental trends including climate-related changes to the environment (See [40 CFR 1502.15](#)).
- CEQ provides guidance to agencies on the use of climate change projections. “Where appropriate, agencies shall use projections when evaluating the reasonably foreseeable effects, including climate change-related effects. Such projections may employ mathematical or other models that project a range of possible future outcomes, so long as agencies disclose the relevant assumptions or limitations.” (See [40 CFR 1506.6\(d\)](#))
- CEQ clarified incomplete and unavailable information and requires an EIS to include an explanation when information is lacking ([40 CFR 1502.21](#)). See [Chapter 400](#) for more information on changes to environmental review and transportation decision making, including to NEPA documentation and processes.
- For the first time in NEPA, “Environmental Justice” is defined ([40 CFR 1508.1](#)). See [Chapter 460](#) for more information on updates relating to environmental justice.

On January 9, 2023, the CEQ published updated [Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#) on the Federal Register. This was directed by Presidential Executive Order 13990 [Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#). For more information about this CEQ guidance, see the Consideration of Climate Change subsection in 415.04(2).

Environmental justice is an important topic that should be considered during the assessment of climate change-related effects. Project teams should follow the direction in Chapters 458 and 460 regarding the use of the [Environmental Health Disparity tool](#) to consider cumulative human health effects. At the state level, the Healthy Environment for All (HEAL) Act ([Chapter 70A-02 RCW](#)) includes requirements to consider cumulative health impacts and climate-related effects.

WSDOT also received direction from the Integrated Climate Change Response Strategy codified in [Chapter 70A-05 RCW](#). This state law requires the following:

“State agencies shall consider current and future climate change impacts to the extent allowed under existing statutory authority and incorporate climate resilience and adaptation actions as priority activities when planning, designing, revising, or implementing relevant agency policies and programs. Agencies shall consider: The integrated climate change response strategy when designing, planning, and funding infrastructure projects; and incorporating natural resource adaptation actions and alternative energy sources when designing and planning infrastructure projects,” [RCW 70A-05-040](#).

415.02 Applicable statutes, regulations, executive orders, and policies

415.02(1) *Federal*

- 42 United States Code (U.S.C.) 4321 National Environmental Policy Act of 1969 (NEPA) - [42 U.S.C. Section 4321](#)
- CEQ NEPA Implementing Regulations – [40 CFR 1500 - 1508](#).
- FHWA, FRA, and FTA Rules – [23 CFR 771](#).

415.02(2) *State*

- SEPA [Chapter 43.21C RCW](#), and [RCW 43.21C.031](#).
- SEPA implementing regulations [WAC 197-11-792](#) and [WAC 197-11-060\(4\)](#).
- [Chapter 70A.02 RCW](#) Environmental Justice, also referred to as the HEAL Act.
- [Chapter 70A.05 RCW](#) Integrated Climate Change Response Strategy.

415.02(3) *Local*

- Local requirements will vary by jurisdiction.

415.03 Considerations during project development

415.03(1) *Planning*

Climate change-related effects to consider include current and future issues like increase in average winter precipitation and more extreme precipitation, impact on GHG emissions, and sea level rises. These issues can be effectively considered at a planning level to inform the proposed solutions. The WSDOT [Environmental Guidance for Planning Studies](#) webpage and [Chapter 200](#) include guidance for climate change considerations in planning studies, such as climate vulnerability and greenhouse gas emissions, during the planning process.

415.03(2) Scoping

[Chapter 300](#) explains the importance of public and agency outreach during pre-NEPA and scoping of our environmental documents. Often the members of the public raise concerns around issues that may seem outside the project. These concerns may indicate climate change-related effects that should be considered and integrated throughout the environmental review. For example, a pattern of development in the floodplain, increased flooding, and concerns surrounding future climate change projections.

415.03(3) Design

NEPA documents developed during project design should disclose all climate change-related effects and respond to public and agency concerns, as appropriate and applicable to the environmental document. The proposed project should address the climate change-related effects, and include resiliency to address climate change impacts and other hazards. See WSDOT's [Climate Change-Related Effects](#) webpage for additional guidance.

If the action requires a HEAL Act Environmental Justice Assessment (EJA), consideration of climate change-effects will need to be included. See [Chapter 460](#) for more information on environmental justice.

415.03(4) Construction

- N/A

415.03(5) Maintenance and Operations

- See [Chapter 425](#) for more information on maintenance and operations and climate change-related effects from greenhouse gas emissions.

415.04 Analysis and documentation requirements

415.04(1) Right size to classification (CE, EA, EIS)

The level of the environmental document being prepared will dictate whether a climate change-related effects analysis should be prepared. Regardless of project impacts, WSDOT's EAs and EISs should include a discussion of climate change-related effects as presented below.

- **Categorical Exclusion (CE): Not Required** – These are minor projects without significant environmental impacts that are not required to document consideration of climate change-related effects. Documentation is optional. There may be unusual circumstances requiring such an analysis.
- **Environmental Assessment (EA): Required** – These are projects in which the significance of environmental impacts is unknown. EAs must consider and document climate change-related effects to determine whether an EIS is required.
- **Environmental Impact Statement (EIS): Required** – These are projects in which there are anticipated significant environmental impacts. EISs must consider and document climate change-related effects.

The following section provides more information on analysis and documentation of climate change-related effects.

415.04(2) Analysis and documentation for NEPA

Per new NEPA rulemaking, climate change is now included under the definition of effects or impacts. The NEPA project lead determines the approach for documenting climate change-related effects. Options include:

1. Preparing a separate chapter or section on climate change-related effects.
2. Integrating the disclosure of climate change-related effects within the individual discipline studies in the applicable chapters or sections.

In either of the cases above, a separate climate change-related effects discipline report or technical memo may help to keep the document size to a minimum.

Recommended resources

WSDOT follows CEQ NEPA regulations on climate change-related effects. WSDOT GIS includes data to evaluate climate change and natural hazards. Local agencies maintain land use information as well as emergency management plans that contain valuable information on flooding and other natural hazards. Engagement with local communities, local agencies, tribes, and representatives from traditionally underrepresented, underserved, and overburdened communities to discover issues of most concern. The State Department of Health's [Environmental Health Disparities tool](#) is a great resource. For a list of resources, see WSDOT's [Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#) on the [Climate Change-Related Effects](#) webpage.

Considerations of Climate Change

For EAs and EISs, consideration of climate change must be documented throughout the NEPA process. The following consideration should occur in multiple points throughout the process, including affected environment, impact assessment, transportation resilience, and cumulative effects:

1. **Affected Environment:** The CEQ updated ruling incorporates climate change into the definition of affected environment and observing both past and future considerations of climate change-related effects.
2. **Alternatives Analysis:** The CEQ final rule requires the environmentally preferable alternatives to address climate-change related effects. Refer to [Chapter 400](#) for more information on environmentally preferred alternatives. This ruling also requires the proposed actions, any identified alternatives, and the no action scenario to evaluate past and future climate change-related effects.
3. **Impact Analysis:** The CEQ ruling further directions agencies to incorporate climate change considerations into the analysis of impacts, requiring WSDOT to look at both past trends and future predictions to assess how climate change may exacerbate impacts from the proposed projects and alternatives.
4. **Transportation Resilience:** When reviewing the proposed project and alternatives, WSDOT should consider potential climate change co-benefit results from actions if completed.
5. **Cumulative effects:** Climate change-related effects should be addressed and included under cumulative effects. Refer to [Chapter 412](#) for more information on cumulative effects.

Climate change-related effects

Climate change-related effects is not defined by CEQ, but is a term used throughout the rule (40 CFR 1500 - 1508). WSDOT interprets CEQ's use of the term in alignment with National Cooperative Highway Research Program's (NCHRP) description from [Considering Greenhouse Gas Emissions and Climate Change in Environmental Reviews: Conduct of Research Report](#) as follows:

- Impacts to the completed project, such as more frequent or severe inundation and damage caused by sea level rise or coastal flooding.
- Effects on travel, safety, the economy, etc. due to climate-related disruptions to the facility.
- The project's potential impact on the built and natural environmental, to the degree that these impacts may be worsened by climate change.
- Beneficial effects of a project to climate resilience.

For the purposes of environmental reviews, WSDOT has divided climate change-related effects into to topic areas: greenhouse gas emissions and climate change resiliency. CEQ directs climate change-related effects on vulnerable and overburdened communities to be considered and documented. Refer to [Chapter 460](#) for more information on vulnerable and overburdened communities and environmental justice at WSDOT.

Greenhouse gases emissions – The emission of greenhouse gases (such as carbon dioxide) and issues related to global climate change should be discussed in EAs and EISs. The discussion should include efforts currently underway in Washington State to reduce GHG emissions and the effects of current projects on GHG emissions. For quantifying GHG climate change-related effects, see [Chapter 425](#). More information is also available on WSDOT's [Air Quality, Energy and Greenhouse Gas Emissions](#) and [Climate Change-Related Effects](#) webpages.

Climate Change Resiliency – Project teams are expected to examine reliable data and resources about climate trends and consider ways to make their proposed projects more resilient to both past and future climate impacts and severe storm events. Past trends for a specific resource (water, habitat, air) alone may not be accurate predictions for the future; instead, we need to look at science-based projections of the changing climate throughout the environmental review process. WSDOT advises project teams to follow the direction in [WSDOT's Guidance for Project-Level Climate Change Evaluations](#), or contact the Climate Mitigation and Adaptation Branch Manager.

415.04(3) Analysis and documentation for SEPA only (No federal nexus)

Projects without a federal nexus should follow procedures for climate change-related effects impact analysis like NEPA (above) to satisfy SEPA requirements. For more information on SEPA guidance for indirect and cumulative impacts, see [Chapter 412](#).

415.04(4) Required documentation for climate change-related effects

WSDOT projects that are preparing a NEPA EA or EIS should document the analysis of climate change-related effects per the current CEQ and federal lead agency NEPA regulations. WSDOT project teams should follow the documentation requirements described in WSDOT's webpages for [Climate Change-Related Effects](#) and [Air Quality, Energy and Greenhouse Gas Emissions](#).

Climate change-related effects can either be discussed in each element of the environmental analysis or included in a separate section of the environmental document. A separate section is most appropriate when there are many climate change-related effects that are interrelated across disciplines. Most project teams find it useful to have a separate discipline report or technical memo to document the details of methodology and findings. In some cases where there are few climate change-related effects, a project team can write climate change-related effects entirely within the EA or EIS rather than within a separate technical memo or discipline report.

Whatever the approach, ensure the discussion of climate change-related effects is easy to find.

415.05 External engagement

Public involvement and inclusive engagement are central to NEPA and SEPA. It is part of successfully identifying climate change-related effects of a proposed project. Tribal leaders and staff have very deep knowledge of the trends that have adversely impacted tribal resources. This information is useful in preparing the climate change-related effects analysis and in identifying potential mitigation. Environmental justice community members and local government staff are also useful resources.

415.06 Internal Roles and responsibilities

The following offices have a key role in climate change-related effects analysis. See the [NEPA Roles Table](#) on the [NEPA and SEPA](#) webpage for more information about general NEPA documentation roles.

415.06(1) *Region/Modal Planning Office*

Conduct environmental screening to locate WSDOT assets that are vulnerable to climate threats. Consult with local planning partners to determine availability of additional area-specific climate data. Use this information to document how climate change and extreme weather vulnerability are considered and to propose practical long-term solutions that improve resilience. Provide documentation and recommendations to environmental staff.

415.06(2) *Region/Modal Environmental Office*

Identify resource areas that require a climate change-related effects analysis under NEPA. Prepare analysis or review analysis prepared by environmental technical experts.

415.06(3) *Environmental technical experts*

WSDOT environmental staff or consultants perform technical analysis to determine climate change-related effects for the range of environmental disciplines evaluated under NEPA. WSDOT environmental technical experts can help develop consultant scopes of work and should review consultant work to ensure requirements are met and the analysis is technically sound.

415.06(4) Headquarters Environmental Services Office

The Environmental Services Office (ESO) keeps the climate change-related guidance current and consistent with rules and regulations. The [NEPA/SEPA Program](#) is available to consult on the climate analysis. ESO NEPA Specialists provide support and technical NEPA assistance with CE, EA, and EIS documentation.

415.07 Mitigation

It is the project team's responsibility to define mitigation for climate change-related effects. Mitigation requirements are discussed within the other discipline chapters. For more information on cumulative effects and potential mitigation, see [Section 412.07](#). For guidance on climate change-related effects mitigation strategies, WSDOT advises project teams use Chapter 5.6 of [NCHRP's Considering Greenhouse Gas Emissions and Climate Change in Environmental Reviews: Conduct of Research Report](#).

415.08 Applicable permits and approval process

There are no permits or approvals associated with climate change-related effects.

415.09 Abbreviations and acronyms

AASHTO	American Association of State Highway and Transportation Officials
CEQ	Council on Environmental Quality
CE	Categorical Exclusion
CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJA	Environmental Justice Assessment
ESA	Endangered Species Act
GHG	greenhouse gases
HEAL Act	Healthy Environment for All Act
NCHRP	National Cooperative Highway Research Program
NEPA	National Environmental Policy Act
SEPA	State Environmental Policy Act

415.10 Glossary

Affecting – Affecting means will or may have an effect on ([40 CFR 1508.1\(b\)](#)).

Effects – Effects include ([40 CFR 1508.1\(i\)\(4\)](#)):

- Ecological, aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative;
- Impacts on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives; and
- Those resulting from actions which may have both beneficial and adverse effects, even if on balance the agency believes that the effects will be beneficial.

Environmentally preferable alternative – The alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA ([40 CFR 1508.1\(n\)](#)).

Extraordinary circumstances – Projects with extraordinary circumstances may include factors or circumstances that raise impacts from a normally categorically excluded action to a significant effect. Examples include potential substantial effects on sensitive environmental resources, historic properties, or cultural resources; potential substantial disproportionate and adverse effects on environmental justice communities; and potential substantial effects associated with climate change ([40 CFR 1508.1\(o\)](#)).

Irretrievable – Impossible to retrieve or recover.

Irreversible – Impossible to reverse.

Mitigation – According to [40 CFR 1508.1\(s\)](#), includes: (a) Avoiding the adverse effect; (b) Minimizing adverse effects by limiting the degree or magnitude; (c) Rectifying the adverse effect by repairing, rehabilitating, or restoring; (d) Reducing or eliminating the adverse effect over time; and (e) Compensating by replacing or providing substitute resources.

Reasonably Foreseeable – Outcomes that are sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision ([40 CFR 1508.1\(ii\)](#)).

Resource – Resources are defined by NEPA and SEPA implementing regulations as “natural or depletable” resources ([40 CFR 1502.16](#), [WAC 197-11-440\(6\)](#)) and renewable or nonrenewable resources ([WAC 197-11-444](#)). Resources are defined by FHWA [Technical Advisory T 6640.8A](#) (October 30, 1987) as “natural, physical, human, and fiscal resources” in guidance on irreversible and irretrievable commitments of resources.

Significance – The significance of a potential impact on the natural or built environment depends upon context and intensity. In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Other considerations include: setting, likelihood of occurrence, and severity, magnitude, or duration of the impact. Almost every transportation project that would be recognized as major federal action, no matter how limited in scope, has some effect on the environment. Additional information and examples for determining significance is found in [Chapter 400](#). [40 CFR 1508.1](#).

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420.01	Introduction
420.02	Applicable statutes, regulations, executive orders, and agreements
420.03	Considerations during project development
420.04	Analysis and documentation requirements
420.05	External engagement
420.06	Internal roles and responsibilities
420.07	Applicable permits and approval process
420.08	Mitigation
420.09	Abbreviations and acronyms
420.10	Glossary

420.01 Introduction

Geology and soils discussions are primarily focused on hazards to the highway or hazards that the highway may pose on existing hazards. However off-highway activities such as development of borrow pits or mitigation sites also need to be evaluated.

Geologic hazards include seismic activity: ground shaking, surface rupture, liquefaction and differential settlement that must all be considered in the design of highway structures. Other geologic hazards include shallow and deep landslides. Soil related hazards may include high shrink-swell soils and saline soils that require consideration when designing highway structures.

Highway projects may cause or reactivate landslides by removing materials that support the slope or removing the vegetation and changing the local runoff patterns so that slopes vulnerable to landslides receive additional water.

Highway development may cover over mineral resources or important farmlands, irreversibly committing the resources to the highway system.

Finally, off-highway development is sometimes needed to create borrow pits, mitigation sites, and construction sites. Geologic hazards and resources effects need to be evaluated at these locations as well as within the highway corridor.

Although soil erosion is a concern, protecting soils and stabilizing them to prevent erosion is covered in the surface water chapter of this manual and the design of temporary and permanent erosion control and stormwater facilities are covered in the [Hydraulics Manual M 23-03](#) and the [Highway Runoff Manual M 31-16](#).

In 2024, CEQ revised its NEPA implementing regulations ([40 CFR 1500-1508](#)). Prior to this update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses and mitigation strategies sections of the documentation.

For incorporation of climate change in Geology and Soils discipline reports, see the Geology and Soils [Discipline Report Checklist](#). Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

420.02 Applicable statutes, regulations, executive orders, and agreements

- [42 United States Code \(U.S.C.\) Chapter 55. National Environmental Policy Act of 1969 \(NEPA\)](#)
- [23 CFR 771 Environmental Impact and Related Procedures](#)
- [40 CFR 1500-1508 National Environmental Policy Act Implementing regulations](#)
- [7 CFR 658 Farmland Protection Act](#)
- [30 CFR 700 Surface Mining Reclamation and Enforcement](#)
- [USDOT Policy statement on climate change adaption. \(2011\)](#)
- [USDOT Climate Adaption Plan - Ensuring Transportation Infrastructure and System Resilience \(2021\)](#)
- [FHWA Order 5520. Transportation System Preparedness and Resilience to Climate Change and Extreme Weather Events \(2014\)](#)
- [Executive Order 12898 - Environmental Justice](#)

420.02(1) State

- [RCW 47.01.260 Authority of WSDOT on state highway system design](#)
- [WAC 197-11 SEPA Rules](#)
- [WAC 468-12 Transportation Commission and Transportation Department State Environmental Policy Rules](#)
- [Governor's Directive on Acquisitions of Agricultural Resource Land](#)

420.02(2) Local

- Grading Permit – Specifics vary for each jurisdiction

420.03 Considerations during project development

420.03(1) Planning

During the planning phase it would be expected that the Regions use geologic and soil mapping to identify areas of potential geologic hazards and prime and important farmlands, as well as soil indicators such as soil chemistry, depth to groundwater, etc. that may influence the engineering design of the project. Hydric soils may serve as gross level mapping of wetlands if other wetland mapping is not available. The Region must use the information to develop alternatives that minimized impacts to resources as well as limit threats to the highway from geologic hazards to the greatest extent possible.

420.03(2) Scoping

During scoping the Regions must use the information developed in planning to develop a project concept that considered the constraints put forward and identify additional specialized studies and required permits.

420.03(3) Design

The Regions must use the preliminary and specialized studies to develop a design using the guidance provided in the [Geotechnical Design Manual M 46-03](#) and other applicable design manuals to develop a project that is resilient through its design life. It would be expected that the Region develop information: drawings quantities and other information needed for local permitting efforts.

The design team shall consider the effects climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

Construction

During construction best management practices are implemented to prevent and minimize erosion of soil to protect water resources. Certified inspectors check the BMPs regularly and after precipitation events. These practices are described in greater detail in [Chapter 430](#) as well as the [Highway Runoff Manual M 31-16](#). [Chapter 456](#) covers the protection of Cultural and Archeological Resource protection during construction. [Chapter 600](#) covers other environmental requirements during construction.

Maintenance and Operations

Maintenance and operations requirements for geology and soil are generally limited to the safety of the public and WSDOT structures. For example, a seismic event would trigger the need for bridge inspections, then depending on the severity of the event, the highway may need to be closed until it is inspected and deemed to be safe. Similarly, landslides may force a highway closure until the site can be inspected and determined to be safe before debris can be removed and the highway reopened.

420.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

420.04(1) Analysis and documentation for NEPA

The National Environmental Policy Act (NEPA) requires that all actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations are given due weight in project decision making.

At a minimum the general topographic and geologic setting, significant features and landforms, soil types and their properties, and known geologic hazards within the project area should be identified. Geologic hazards include such things as highly erodible soils, landslides, debris flows, seismic hazards (e.g., faults and areas subject to liquefaction), volcanic hazards, subsidence, rockfall and other critical/sensitive areas.

The analysis evaluates the potential for direct construction and operations impacts on identified geologic and soil conditions for all project alternatives, including the “no-build” option. Potential impacts to mineral resources and prime farmlands should also be evaluated.

The analysis should also describe the potential for identified geologic hazards to impact project alternatives. Mitigation measures, commitments, and monitoring procedures associated with geologic hazards should be described. If no geologic hazards or potential impacts are anticipated, the conclusion should be stated in the environmental documents.

The results of the analysis should be written directly into the project’s environmental document (EIS, EA, or CE) with supporting information included in the appendices if needed. In rare cases when warranted by the nature of the project, the analysis can be documented in a separate discipline report, which supplements the environmental document.

For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and [WSDOT’s Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#).

420.04(2) Analysis and documentation for SEPA only (No federal nexus)

The SEPA requirements are the same as the federal requirements.

420.04(3) Analysis and documentation for local permits

Permitting information is located in [Chapter 500](#).

420.05 External engagement

Geology and soils impact analyses typically do not require a specialized external engagement process beyond the standard NEPA/SEPA scoping, public noticing, accepting agency and public comments, and responding to comments appropriate to the level of the environmental review process.

420.06 Internal roles and responsibilities

420.06(1) Region/Modal Environmental Manager

The Region/Modal environmental manager’s role is to oversee the general preparation of environmental review documents, provide expert guidance to Region staff as to the type of analysis needed and identify the need for specialized analysis. The manager’s responsibilities are to provide quality assurance and quality control, to distribute new or updated guidance, and to verify that the guidance is being followed. The manager is also responsible to report to ESO when guidance is not adequate, confusing, or in need of revision.

420.06(2) Project Engineer

It is the project engineer’s role and responsibility to oversee that all engineering studies and technical reports are prepared consistent with [Geotechnical Design Manual M 46-03](#) and provide appropriate levels of analysis to support the environmental review process and permitting activities to the environmental staff.

420.06(3) Region Environmental Coordinator

The region environmental coordinator's role is to oversee the development of the environmental review documents and apply for permits. The coordinator is responsible to for exchange of information between the project engineer and the environmental review specialists on the team and to ensure that any environmental requirements are incorporated into the project design as well as engineering information needed for permits and other agency approvals is provided. The coordinator is also responsible for tracking environmental commitments.

420.06(4) ESO

ESO's role is primarily to keep the guidance current with existing laws and regulations. ESO staff also provide expert assistance for developing scopes of work for consultants and internal WSDOT staff as well as reviewing environmental documents.

ESO's Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

420.07 Applicable permits and approval process

Permitting information is located in [Chapter 500](#).

420.08 Mitigation

Impacts to geologic and soil resources are minimized to the extent practicable by adjusting the project alignment to avoid these resources or issues. Mitigation of any residual impacts is sometimes in the form of financial compensation to the owner of the property for loss of future income. For example, a highway project may bisect a farmer's land, leaving a portion of his land inaccessible to his equipment. If the farmland could not be avoided by a realignment, the mitigation would likely be to purchase the land and/or provide compensation for lost revenue. In more extreme cases, segregating a farmer's land may make the whole operation impractical from a financial perspective and the entire site may need to be purchased.

Geologic hazards are usually avoided to the extent practicable by adjusting the alignment, but many hazards such as ground shaking are regional and not avoidable. The [Geotechnical Design Manual](#) M 46-03 provides specific guidance on engineering solutions to address geologic hazards.

420.09 Abbreviations and acronyms

420.10 Glossary

Hydric soil – a soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

Prime and important farmland – includes all land that is defined as prime, unique, or farmlands of statewide or local importance.

Saline soils – Soils with high concentrations of salts in the soil profile

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425.01	Introduction
425.02	Applicable statutes, regulations, executive orders, and agreements
425.03	Considerations during project development
425.04	Analysis and documentation requirements
425.05	External engagement
425.06	Internal roles and responsibilities
425.07	Applicable permits and approval process
425.08	Mitigation
425.09	Abbreviations and acronyms
425.10	Glossary
425.11	Exhibits

425.01 Introduction

This chapter contains policies to be followed when state transportation projects trigger air quality, greenhouse gas (GHG), or energy analyses.

WSDOT ensures our projects meet all state and federal air quality requirements. The federal Clean Air Act (CAA) requires conformity determinations for projects in nonattainment and maintenance areas and addresses criteria pollutants. A conformity determination ensures a project will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) set by EPA to protect human health and welfare. Pollutant concentrations can increase, as long as the result does not exceed the standard.

The National Environmental Policy Act (NEPA) requires documenting and, as applicable, comparing air quality, climate change, and energy effects of project alternatives. The NEPA requirement may encompass criteria pollutants, mobile source air toxics (MSAT), greenhouse gases, and energy, depending on the project. In addition, temporary construction emissions (e.g., fugitive dust), are evaluated qualitatively for larger projects and WSDOT commits to construction best management practices to reduce fugitive dust emissions through NEPA.

425.02 Applicable statutes, regulations, executive orders, and agreements

U.S. Environmental Protection Agency (EPA), Washington State Department of Ecology (Ecology), and regional clean air agencies regulate ambient air quality in Washington. Permits and approvals required pursuant to these statutes are listed in [Section 425.07](#).

425.02(1) Federal

- NEPA [42 U.S.C. 4321-4370](#) and federal implementing regulations [23 CFR 771](#) (Federal Highway Administration (FHWA)) and [40 CFR 1500-1518](#) (Council on Environmental Quality (CEQ)).
- [NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#) (CEQ, January 2023)
- CAA [42 U.S.C. 7401-7431](#) et seq. and [Clean Air Act and Amendments](#) (CAAA) of 1990.
- [40 CFR 93](#) Federal conformity regulations, including exempt projects in [40 CFR 93.126](#).
- [23 CFR 450](#) FHWA regulations for statewide and metropolitan transportation planning and programming are defined in Planning Assistance and Standards

- FHWA [Technical Advisory T 6640.8A](#) for NEPA documents, Section 8 for Air Quality and Section 22 for Energy.
- President's [Executive Order 13423](#) *Strengthening Federal Environmental, Energy, and Transportation Management*.
- U.S. Department of Transportation Guidance on Fuel Consumption and Air Pollution, including [USDOT Order 5610.1C](#) and Energy Requirements for Transportation Systems

425.02(2) State

- State Environmental Policy Act (SEPA) and state implementing regulations [WAC 197-11](#) and [WAC 468-12](#).
- Washington Clean Air Act, [RCW 70A.15](#).
- [WAC 173-420](#) state conformity regulations, including exempt projects in [WAC 173-420-110](#) and [WAC 173-420-120](#).
- [WAC 173-400-040\(9\)](#) state fugitive dust regulations.
- [RCW 39.35D](#) requires that new “major facility projects” achieve the Leadership in Energy and Environmental Design (LEED) silver building rating standard.

425.02(3) Local

- [Memorandum of Agreement on Fugitive Dust from Construction Projects](#) (1999) between WSDOT and the Puget Sound Clean Air Agency (PSCAA).
- [Guide to Handling Fugitive Dust from Construction Projects](#) (1997) from Construction Projects by the Associated General Contractors (AGC) of Washington

425.03 Considerations during project development

425.03(1) Planning

Conformity

Regional conformity is determined for MPO Transportation Improvement Plans (TIP) when the MPO includes a maintenance or nonattainment area. See External Engagement below for more information.

Greenhouse Gas Emissions

Transportation sector GHG emissions are best addressed at the region, state, and transportation systems level where multiple projects can be analyzed in aggregate. Most current plans at these broader levels, however, do not yet provide the emissions analysis that would put a proposed transportation improvement project in a larger context. WSDOT recognizes the public’s interest in these issues and the need to disclose GHG emissions at the project level for major public projects. The differences in GHG emissions between project alternatives are typically small and closely follow changes in VMT.

WSDOT is working with other agencies to improve the methods and tools to evaluate transportation emissions reduction strategies, including electrification and mode shift to reduce vehicle miles travelled.

Planning and Environmental Linkages (PEL) Studies

Federal PEL studies use a collaborative and integrated approach to transportation decision making that considers environmental, community, and economic benefits and impacts early in the transportation planning process. PEL uses information, analysis, and products developed during planning to inform environmental review. PEL is a bridge (or “link”) between planning and environmental studies. When project level data, including traffic data, required for emissions modeling is available, a quantitative air quality and GHG analysis will be conducted for the PEL study.

425.03(2) Scoping

During the scoping stage, determine which type of analysis is likely to be needed for your project. Note that the analysis of air quality, energy, and greenhouse gas emissions typically uses the same tools and inputs related to traffic.

Public scoping comments on large projects also informs the analysis. [Chapter 400](#) explains the importance of public and agency outreach for environmental documents. Often the members of the public raise concerns around issues that may seem outside the project. These concerns may indicate cumulative effects, that should be captured early and considered as important context for the project. A project team may decide to address greenhouse gas emissions as both a direct effect and a cumulative effect as regards future climate change.

425.03(3) Design

Follow the guidance that is posted on the [Air quality, energy and greenhouse gas emissions](#) webpage.

Prepare conformity demonstration, if needed, and address relevant environmental requirements.

Project environmental documents should disclose all the effects and respond to public and agency concerns. The proposed project should highlight ways to address the direct and indirect effects.

425.03(4) Construction

Track and manage commitments across project stages.

Take measures to reduce fugitive dust and use fuel efficiently. As appropriate, consider materials choices to reduce embodied emissions.

425.03(5) Maintenance and Operations

Ensure compliance with environmental commitments made during project development. Maintain and operate the facility for longevity and efficiency to reduce operational and embodied emissions.

425.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine the level of detail based on project complexity and size, expected severity of impacts, and potential for public controversy.

The [decision tree](#) identifies the triggers for conformity, MSAT, GHG, and energy analyses.

425.04(1) **Analysis and documentation for NEPA**

NEPA requires documenting and comparing project alternative environmental effects, including air quality, energy, and greenhouse gas emissions. The type of analysis and discussion required for a project depends on a variety of factors, including, but not limited to, project location, conformity status, traffic volume, and documentation type (EA, EIS, etc.).

The WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) and [decision tree](#) help analysts determine which analyses are required for their project and provide guidance in completing the required analyses.

In addition to text included in a project's environmental document, a discipline report or technical memo should be prepared when a quantitative analysis requiring EPA's Motor Vehicle Emissions Simulator (MOVES) is conducted and for most projects requiring an EA or EIS. There may be projects classified at an EA or EIS level that do not require a full discipline report, such as when there are concerns over just one element. In all cases, the level of detail in a discipline report should reflect the complexity and concerns of the proposed project.

A single discipline report should address all air quality, energy, and greenhouse gas analyses conducted for a project. For each alternative, describe the affected environment, current conformity status, latest planning assumptions, analysis methodology and results, potential operational and construction impacts, recommended mitigation, and the results of any interagency coordination. Refer to the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) for specific information to include in the discipline report and use the [WSDOT Air Quality, Greenhouse Gas, and Energy Discipline Report Template](#) to document a project.

Refer to the WSDOT [Air quality, energy and greenhouse gas emissions webpage](#) for more information.

Criteria Pollutants

To ensure that transportation projects do not cause or contribute to a violation of the NAAQS, NEPA documentation must demonstrate that a project meets all applicable conformity requirements and include a full conformity statement. See the analysis and documentation for conformity section below. Refer to the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) for information on conformity statements.

Mobile Source Air Toxics (MSATs)

WSDOT follows the FHWA requirements for MSATs. Refer to their [2023 Updated Interim Guidance on MSATs](#). Information on how to apply the requirements are available in the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) along with current thresholds and text to include in environmental documentation.

Greenhouse Gas Emissions (GHG)

It is WSDOT policy to address climate change and greenhouse gas emissions in our environmental documentation. Find information on climate adaptation on our [Addressing climate change in planning and project documents webpage](#).

WSDOT follows CEQ's [NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#). Refer to their [2023 NEPA GHG Guidance](#). Information on how to apply the requirements are available in the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) along with text to include in environmental documentation.

Exhibit 1 identifies the recommended analysis for each documentation type. There may be instances when deviating from these recommendations is warranted. Such circumstances should be discussed with [WSDOT headquarters air quality and climate staff](#).

Because of the overlap in triggers, tools, and inputs, GHG analysis should be completed at the same time as air quality and energy analyses. It is appropriate to include the results of the GHG analysis in the direct effects section in conjunction with air quality and energy results.

Refer to the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) for template language to use at each documentation level and for details on how to complete and document these analyses.

Exhibit 425-1 GHG analysis based on NEPA or SEPA classification

Documentation	Operational	Construction	Maintenance
NEPA and SEPA CE	No evaluation	No evaluation	No evaluation
Documented CE (DCE)/ SEPA Checklist	Qualitative	Qualitative	Qualitative
EA	Quantitative	Quantitative	Quantitative
EIS	Quantitative	Quantitative	Quantitative

Energy

WSDOT follows the direction in [FHWA's Energy Technical Advisory](#). Energy analysis is not typically required for non-EIS level documentation because energy consumption is typically not a key decision-making criterion. More often, other project benefits like congestion reduction, improved travel time, and improvements in safety are project goals and reduction of energy consumption is an additional effect.

Information on how to complete and document an energy analysis is in the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) document.

Temporary Construction Effects

EA and EIS documents must address construction effects:

- For criteria pollutants (including PM, specifically fugitive dust) and MSAT emissions, a simple qualitative description is sufficient.
- Estimate GHG and energy using FHWA's Infrastructure Carbon Estimator (ICE) Tool. ICE accommodates most project types. However, in the case of project that may not be compatible with ICE, consult with the WSDOT headquarters air [quality and climate staff](#) to identify an alternate approach. Typical projects report construction GHG emissions at both the EA and EIS level. Construction-related energy use should only be included in EIS-level documents. The current version of the ICE Tool is hosted by Minnesota Department of Transportation (MnDOT) and can be found on the [MnDOT Greenhouse Gas Analysis webpage](#). Direct any questions about tool versions to the WSDOT headquarters air quality and climate staff.
- If project construction will last more than five years at one location, additional requirements must be met. This is a very rare occurrence; consult with the WSDOT headquarters air quality and climate staff for more information.

Requirements on handling and disposing of asbestos are covered in [Chapter 447](#).

425.04(2) Analysis and documentation for SEPA only (No federal nexus)

Projects without a federal nexus should follow procedures similar to NEPA (above) for SEPA.

425.04(3) Analysis and documentation for Conformity

Transportation conformity requirements ([40 CFR 93](#)) in the CCA apply in nonattainment and maintenance areas to ensure that transportation projects do not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS). Transportation projects must be found to conform before they are adopted, accepted, approved, or funded. Projects not exempt from conformity require a conformity determination regardless of the type of NEPA document they are evaluated with.

WSDOT's GIS workbench includes air quality maps showing current nonattainment and maintenance areas. In recent years, several areas have had maintenance requirements expire and requirements in several other areas will expire in the next few years. Check that conformity requirements are current before undertaking an analysis. If you are uncertain of the status of the project's area, contact the [WSDOT headquarters air quality staff](#).

Conformity must be redetermined for any [FHWA or FTA project](#) if one of the following occurs:

- A significant change in the [project's design concept](#) and scope
- Three years elapse since the most recent major step to advance the [project](#)
- Initiation of a supplemental environmental document for air quality purposes

Major steps include NEPA [process](#) completion, start of final design, acquisition of a significant portion of the right-of-way, and construction (including Federal approval of plans, specifications, and estimates). ([40 CFR 93.104\(d\)](#))

In addition to WSDOT-specific guidance referenced below, [FHWA's transportation conformity webpage](#) provides federal direction, interpretation, and resources.

Exempt Projects

Projects exempt from conformity are listed in federal and state regulations ([40 CFR 93.126](#) and [WAC 173-420-110](#), respectively). These are mostly projects that maintain existing transportation facilities, improve mass transit, or are considered to have a neutral impact on air quality.

Some projects, like park and ride lots, may reduce regional air emissions but can increase emissions locally, which is why they are exempt from regional but not project-level conformity analysis.

Both the federal and state exempt lists include the category "hazard elimination program" for projects that are normally air quality neutral, like removing fallen rock from the road or replacing guardrails. However, not all projects with hazard elimination program funds are automatically exempt from conformity analysis. For example, if installation of a new traffic signal or re-striping to add new lanes is funded by the program, then conformity analysis is required.

A metropolitan planning organization (MPO), in consultation with partner agencies, may also determine that a project on the exempt list has the potential for adverse emissions impacts and requires analysis.

425.04(4) Region-Level Analysis

Regional conformity analysis is conducted by an MPO for their four-year transportation improvement program (TIP) (see [Chapter 200](#)). An MPO must demonstrate through modeling that the emissions from the package of planned projects remain below the motor vehicle emissions budget for the region. WSDOT's Planning Office coordinates annual MPO TIP conformity review with the consultation partners and affected MPOs.

Projects requiring a region-level conformity determination must be included in a conforming plan. See [WAC 173-420-120](#) for projects exempt from regional analysis. If project design concept or scope changes in a way that could affect region-level emissions, the regional-level conformity determination must be updated.

A project conformity determination must identify that the following conditions apply:

- Project is in a conforming program
- The whole project is included in the regional analysis and conforming TIP
- Project design and scope is not significantly different from the conforming TIP

425.04(5) Project-Level Analysis

Transportation conformity regulations require project-level quantitative, or "hotspot," determinations for nonexempt projects within carbon monoxide (CO) or particulate matter (PM_{2.5} or PM₁₀) nonattainment and maintenance areas. Exempt projects are listed in [40 CFR 93.126](#) and [WAC 173-420-110](#). See pollutant specific requirements below.

All project alternatives must be analyzed for the existing year, estimated year of completion, and design year (end year of current transportation plan). [FHWA's Technical Advisory 6640.8A](#) describes the requirements for CO hot-spot analysis; it has not been updated to reflect PM analysis requirements. PM hotspot analysis is required only for five project types and requires additional consultation. See additional details in the PM section below.

Carbon Monoxide (CO)

Transportation conformity regulations require analysis of all intersections with at least a 10 percent increase in volume or a degradation to LOS D or worse with the project.

When the total predicted one-hour CO concentrations (standard is 35 ppm) are less than the eight-hour CO standard (9 ppm), no separate eight-hour analysis is necessary.

FHWA has released a [Carbon Monoxide Categorical Hotspot Finding](#) that satisfies project-level conformity requirements for eligible projects.

For projects outside the parameters of FHWA's finding, contact [WSDOT headquarters air quality staff](#) to determine next steps as the project will need to follow EPA's [Using MOVES3 in Project-Level Carbon Monoxide Analyses](#) (EPA-420-B-21-047, December 2021) guidance.

Washington State Intersection Screening Tool (WASIST) is no longer approved for hot-spot analysis since WASIST is based on MOVES 2014, whose grace period ended in January 2023. Because CO maintenance requirements are ending across the state, WSDOT does not plan to update WASIST with MOVES3 data.

Particulate Matter (PM)

A project-level particulate matter (PM_{2.5} or PM₁₀) conformity determination is required for all nonexempt projects located in particulate matter nonattainment or maintenance areas.

[40 CFR 93.123\(b\)\(1\)](#) requires that the following project types be evaluated through interagency consultation to determine if they are “projects of air quality concern” (POAQC); any project determined to be a POAQC requires a quantitative PM hotspot analysis. These project types include:

- New or expanded highway projects that have a significant number or significant increase in the number of diesel vehicles
- Projects affecting intersections that are at or will change to a Level of Service (LOS) D, E, or F with a significant number of diesel vehicles
- New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location
- Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location
- Projects in or affecting locations, areas, or categories of sites which are identified in the PM₁₀ or PM_{2.5} applicable implementation plan as sites of violation or possible violation

If a project is one of these types, contact the [WSDOT headquarters air quality staff](#), who will coordinate the POAQC interagency consultation process. If the interagency consultation partners concur that a project meeting one of these definitions is not a POAQC, a hot-spot analysis is not required. A project-level conformity determination is still required for projects determined to not be POAQC. Follow [WSDOT Air Quality, Greenhouse Gas, and Energy Discipline Report Template](#) for conformity determinations language.

For all other project types, a hot spot analysis is not required and the project documentation should clarify that EPA has determined that projects not listed in [40 CFR 93.123\(b\)\(1\)](#) meet the CCA’s requirements.

Motor Vehicle Emissions Simulator Model

EPA’s [Motor Vehicle Emissions Simulator Model](#) (MOVES) is the required model for conformity analysis. WSDOT also requires the use of MOVES for MSAT, GHG, and energy analysis. The two-year grace period for MOVES3 ends on September 12, 2025, making MOVES4 the required model for all applicable analyses.

Required Documentation

A project-level conformity determination must be documented in the NEPA/SEPA document.

Use the [WSDOT Air Quality, Greenhouse Gas, and Energy Discipline Report Template](#) to document the project technical analysis.

425.04(6) Multi-Modal and Non-Road Requirements

Rail, ferry, and aviation projects require a different type of conformity analysis (general conformity). Consult the [WSDOT headquarters air quality staff](#) for assistance on these.

425.05 External engagement

425.05(1) *Planning*

MPOs with air quality maintenance or nonattainment areas must show that their Transportation Improvement Plans (TIPs) meet regional transportation conformity requirements. Each year, the WSDOT Tribal and Regional Integrated Planning office coordinates review of the TIPs with affected MPOs and statewide consultation partners:

- Washington State Dept. of Ecology
- EPA Region 10
- FHWA WA Division Office
- FTA Region 10
- WSDOT Planning
- WSDOT Air Quality

Once partners agree that an MPO has adequately addressed conformity requirements, the FHWA WA Division Office issues letters to the MPO documenting the approval.

425.05(2) *Project-level consultation*

Projects in air quality nonattainment or maintenance areas must meet project level-air quality requirements (see analysis and documentation section). Some projects require consultation to determine if a hotspot analysis is required. For these projects, the partners listed above should be included, along with the local MPO and, if there is one, [local air quality agency](#). [WSDOT headquarters air quality staff](#) coordinates project-level consultation.

425.06 Internal roles and responsibilities

425.06(1) *Planning division*

Regarding conformity, the WSDOT Tribal and Regional Integrated Planning office coordinates the annual conformity consultation process to review and approve the conformity determination in MPO Transportation Improvement Plans (TIP). Consultation partners include WSDOT, FHWA, EPA, FTA, and Ecology.

At the corridor or region planning level, WSDOT may conduct preliminary GHG analyses.

425.06(2) *Project engineer*

For projects requiring a quantitative analysis of air quality, energy, or greenhouse gas emissions, the project office supplies traffic data to the air quality analyst. The type of traffic data required depends on the specific analysis required and should be discussed early with the air quality analyst.

425.06(3) Environmental coordinator

The environmental coordinator identifies the type of analysis required for individual projects. The analysis and documentation section of this chapter and the WSDOT [Air Quality, Greenhouse Gas, and Energy Guidance](#) and [decision tree](#) describe the triggers for different types of analyses.

The project team should reach out to the planning office to determine whether any relevant planning has been conducted that would inform the project-level analysis.

425.06(4) Environmental technical experts

Air quality analysts perform the technical analysis; WSDOT staff or consultants may fulfill this role. WSDOT air quality staff review consultant work to ensure requirements are met and the analysis is technically sound.

425.06(5) Environmental services office

The [WSDOT headquarters air quality staff](#) is part of the WSDOT Environmental Services Office (ESO) and is available to consult on projects requiring quantitative analysis. This specialist also leads all required project-level conformity consultations and participates in the conformity review of MPO TIPs.

425.07 Applicable permits and approval process

Regional clean air agencies may require air quality permits for the following activities:

- Land clearing burns
- Demolition of structures containing asbestos
- Asphalt batching, mixing concrete, crushing rock, or other temporary sources (new source construction)

425.08 Mitigation

Project documentation should describe any recommended mitigation measures and commitments to interested parties for the design, construction, and post-construction phases. The documentation should also describe whether additional mitigation measures were considered and why these were not included.

Fugitive Dust

For projects involving earthwork, construction plans and specifications should be evaluated to identify possible dust producing activities and appropriate best management practices (BMPs). In King, Kitsap, Pierce, and Snohomish counties, BMPs are required for all WSDOT projects per our [Memorandum of Agreement with the Puget Sound Clean Air Agency \(MOA\)](#).

It is WSDOT policy to minimize fugitive dust from project construction throughout the state. WSDOT will:

- Require the appropriate use of BMP on all WSDOT projects. The BMPs to be included are found in the Associated General Contractors of Washington (AGC) publication, [Guide to Handling Fugitive Dust from Construction Projects](#)
- Evaluate the construction plans and specifications for each WSDOT project to identify possible fugitive dust producing activities

- Ensure that the duties of WSDOT project engineers or other persons in charge of project sites include observing and reporting potential fugitive dust problems during the course of their work. They shall also ensure implementation of BMPs in accordance with the contract

BMPs prevent or reduce fugitive dust emissions. Common methods are outlined in the [Guide to Handling Fugitive Dust Guide to Handling Fugitive from Construction Projects](#) by the Associated General Contractors (AGC) of Washington and are not mutually exclusive. In summary, the BMPs

- Limit creation or presence of dust-sized particles. Cover exposed surfaces, use dust suppressants, install erosion control, minimize surface disruptions, pave dirt access roads, reschedule “dusty” work with consideration to wind and weather, reduce vehicle speeds, minimize spills.
- Reduce wind speed at ground level
- Bind dust particles together. Apply flocculating agents, spray water.
- Remove and capture fugitive dust from the source. Filter fabric around catch basin, street sweepers, wheel wash, vehicle scrape.

Although water can be one of the main control agents for dust, it is important to plan ahead for water shortages and consider the use of other measures.

Greenhouse Gas Emissions

Best practices used to reduce GHG emissions and energy use, in addition to air pollution, include:

- Educate vehicle operators to shut off equipment when not in active use to reduce idling
- Use cleaner fuels as appropriate
- Include detours and strategic construction timing (such as night work) to continue moving traffic through the area and reduce backups and delays to the traveling public to the extent possible
- Promote ridesharing and other commute trip reduction efforts for employees working on the project

425.09 Abbreviations and acronyms

AADT	Average Annual Daily Traffic
BMP	Best Management Practices
CAA	Clean Air Act (Federal)
CAAA	Clean Air Act Amendments
CEQ	Council on Environmental Quality
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CO	Carbon Monoxide
CO ₂	Carbon Dioxide
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GHG	Greenhouse Gas
LOS	Level of Service
MPO	Metropolitan Planning Organization

MSAT	Mobile Source Air Toxic
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NOX	Nitrogen Oxides
O3	Ozone
PM10	Course particulate matter, smaller than 10 micrometers in diameter
PM2.5	Fine particulate matter, smaller than 2.5 micrometers in diameter
POAQC	Project of air quality concern
SEPA	State Environmental Policy Act
SIP	State Implementation Plan
SO2	Sulfur Dioxide
TCM	Transportation Control Measure
TIP	Transportation Improvement Program
VMT	Vehicle Miles Traveled

425.10 Glossary

Air Quality Analysis – An evaluation of various air pollutants at the project level based on specific project location and type. This evaluation should include discussion of construction phase emissions such as fugitive dust, odors, and asbestos if applicable. This evaluation may include discussion of other air related concerns identified in project development.

Average Annual Daily Traffic (AADT) – The estimated average daily number of vehicles passing a point or on a road segment over the period of one year.

Carbon Monoxide (CO) – A by-product of the burning of fuels in motor vehicle engines. Though this gas has no color or odor, it can be dangerous to human health. Motor vehicles are the main source of carbon monoxide, which is generally a wintertime problem during still, cold conditions.

Conformity – Projects are in conformity when they do not (1) cause or contribute to any new violation of any standards in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Construction GHG Emissions – Primarily GHG emissions from the fuel used by the equipment that builds the project.

Criteria Pollutants – Carbon monoxide, sulfur dioxide, particulate matter, ground level ozone, lead, and nitrogen dioxide.

Embodied GHG Emissions – GHG emissions generated from the energy used to extract materials, fabricate them for construction, and transfer them to construction site. Embodied GHG emissions are also referred to as “cradle to site” GHG emissions.

Exempt Projects – Listed in federal and state regulations ([40 CFR 93.126](#) and [WAC 173-420-110](#)), these are mostly projects that maintain existing transportation facilities or are considered to have a neutral impact on air quality. See also [WAC 173-420-120](#) for projects exempt from regional analysis.

Fugitive Dust – Particulate matter that is suspended in the air by wind or human activities and does not come out of an exhaust stack.

Greenhouse Gases (GHG) – Greenhouse gases absorb and emit radiation within the thermal infrared range. Common GHGs in the Earth’s atmosphere include water vapor, carbon dioxide, methane, nitrous oxide, ozone, and chlorofluorocarbons.

Hot-Spot Analysis – Estimate of localized CO, PM_{2.5}, and PM₁₀ pollutant concentrations and a comparison of those concentrations to the National Ambient Air Quality Standards. Uses an air quality dispersion model to analyze the effects of emissions on air quality near the project. (See [40 CFR 93.101](#) and [40 CFR 93.116](#).)

Lifecycle GHG Emissions – Referred to as “cradle to grave emissions” that include embodied GHG emissions and GHG from energy used to demolish and/or dispose of materials after completion of usable life.

Maintenance Area – Area previously in nonattainment now in compliance with NAAQS and under a maintenance plan. Areas previously in nonattainment must be under a maintenance plan for 20 years after regaining compliance with the standard.

Metropolitan Transportation Improvement Program (MTIP) – A fiscally constrained prioritized listing or program of transportation projects covering a period of four years and formally adopted by an MPO in accordance with [23 CFR 450](#), as required for all regionally significant projects and projects requesting federal funding.

Mobile Source – Any nonstationary source of air pollution such as cars, trucks, motorcycles, buses, airplanes, and locomotives.

Mobile Source Air Toxic (MSAT) – A priority group of nine volatile gases or small particulate compounds coming from the tailpipe of a vehicle: 1,3-butadiene, acetaldehyde, acrolein, benzene, diesel particulate matter (diesel PM), ethylbenzene, formaldehyde, naphthalene, and polycyclic organic matter. EPA has determined that these compounds have significant contributions from mobile sources and contribute to cancer and non-cancer health problems.

Nonattainment Area – An area that does not meet one or more of the NAAQS for the criteria pollutants designated in the Clean Air Act.

Operational GHG Emissions – “Tailpipe” GHG emissions from vehicles using the project facility or nearby facilities affected by the project.

Ozone (O₃) – Ground level ozone forms in the atmosphere as a result of complex sunlight activated chemical transformations between nitrogen oxides (NO_x) and hydrocarbons (i.e., O₃ precursors).

Particulate Matter (PM₁₀ and PM_{2.5}) – Particles with a diameter of less than 10 microns or 2.5 microns, respectively. Sources of particulate matter include sea salt, pollen, smoke from wildfires and wood stoves, road dust, industrial emissions, and agricultural dust. These particles are small enough to be drawn deep into the lungs where they can contribute to a variety of respiratory and cardiovascular health problems.

Project of Air Quality Concern (POAQC) – POAQCs located in PM nonattainment and maintenance areas require a quantitative hot-spot analysis. EPA has identified the following categories of projects that maybe projects of air quality concern: New or expanded highway projects that have a significant number or significant increase in the number of diesel vehicles. Projects with intersections that are at Level-of-Service D, E, or F with a significant number of diesel vehicles. New or expanded bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location.

Regional Transportation Improvement Program (RTIP) – A fiscally constrained prioritized listing/program of transportation projects for a period of six years that is formally adopted by a Regional Transportation Planning Organization in accordance with [RCW 47.80](#), as required for all regionally significant projects and projects requesting federal funding.

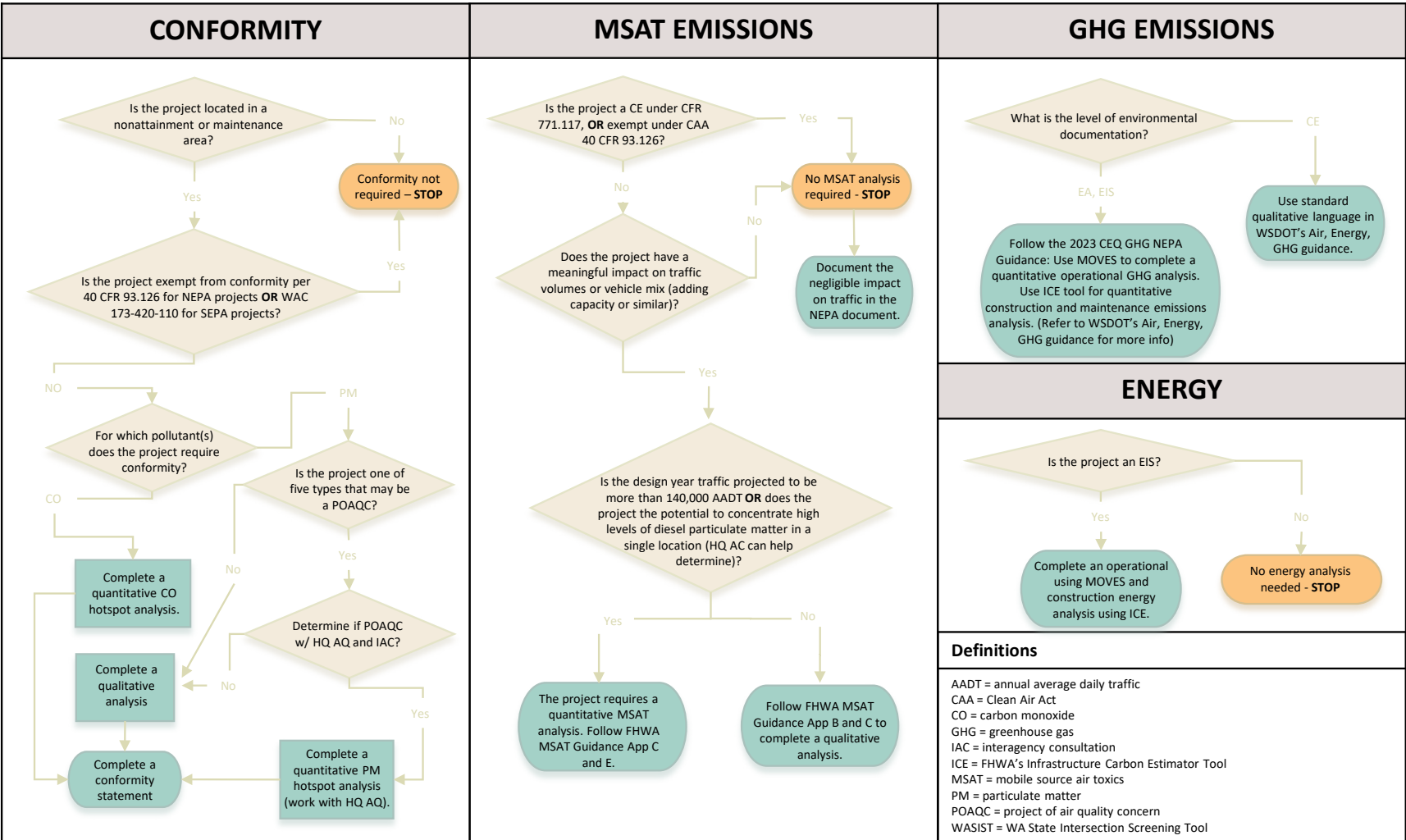
Regionally Significant Project – A nonexempt transportation project that serves regional transportation needs, major activity centers in the region, major planned developments, or transportation terminals, and most terminals. Such projects are normally included in the modeling of a metropolitan area’s transportation network, including, at a minimum, all principal arterial highways as well as all fixed guide way transit facilities that offer an alternative to regional highway travel ([40 CFR 93.101](#)).

State Implementation Plan (SIP) – Required by federal law ([40 CFR Part 51](#)), this state plan describes how the state will meet and maintain compliance with the National Ambient Air Quality Standards (NAAQS). Specific plans are developed when an area does not meet the NAAQS and include controls to quickly reduce air pollution in a nonattainment area and provide controls to keep the area in compliance. WSDOT projects must conform to the SIP before the FHWA and the EPA can approve construction.

Transportation Improvement Program (TIP) – A staged, multiyear program of multimodal transportation projects covering a metropolitan planning area consistent with the state and metropolitan transportation plan and developed pursuant to [23 CFR 450](#). The entire program must conform to the NAAQS before any federal funding can be used for nonexempt projects.

425.11 Exhibits

Exhibit 425-2 Air and Energy Analysis Triggers Flowchart



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Chapter 430 Stormwater and water quality

430.01	Introduction
430.02	Applicable statutes, regulations, executive orders, and agreements
430.03	Considerations during project development
430.04	Analysis and documentation requirements
430.05	External engagement
430.06	Internal roles and responsibilities
430.07	Applicable permits and approval process
430.08	Mitigation
430.09	Abbreviations and acronyms
430.10	Glossary

430.01 Introduction

WSDOT must evaluate potential stormwater, groundwater, and water quality impacts prior to submitting permit applications to resource agencies so project construction can proceed. These water quality obligations emerge through several laws and regulations including the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and Washington State's Water Pollution Control laws and regulations ([RCW 90.48](#) and [WAC 173-201A](#)).

[Chapter 600](#): Construction covers aspects of erosion and sediment control and includes a section on water quality during construction. For additional water-related considerations for other disciplines, see [Chapters 431: Wetlands](#), [432: Special flood hazard area](#), [420: Earth \(Geology and Soils\)](#), and [436: Fish, Wildlife and vegetation](#).

For incorporation of climate change in [Chapter 430](#) discipline reports, see the [Stormwater Discipline Report Checklist](#) and [Groundwater Discipline Report Checklist](#). Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

430.02 Applicable statutes, regulations, executive orders, and agreements

This section identifies the primary statutes and regulations applicable to water quality issues.

430.02(1) *Federal*

- **National Environmental Policy Act** – The National Environmental Policy Act (NEPA), [42 U.S.C. 4321](#), requires that all major actions sponsored, funded, permitted, or approved by federal agencies undergo environmental planning. This planning ensures that environmental values, such as impacts to water quality, receive appropriate consideration during decision making. [23 CFR 771](#) and [40 CFR 1500–1508](#) (CEQ) contain Federal implementing regulations. For details on NEPA procedures see [Chapter 400](#).
- **Clean Water Act** – The Water Pollution Control Act, better known as the Clean Water Act, [33 U.S.C. 1251](#) et seq., provides federal regulation of waters of the United States. In Washington State, the Environmental Protection Agency (EPA) has delegated administrative authority of the CWA to the Department of Ecology (Ecology) except on tribal and Federal lands (and discharges to tribal waters).

- **Safe Drinking Water Act** – The [Safe Drinking Water Act](#) sets national primary drinking water standards, regulates underground injection of fluids, and allows for designation of Sole Source Aquifers (SSA). Implementation of the SDWA is delegated to individual states.
- **Endangered Species Act** – Projects with a federal nexus (those with federal funding, permit, or approval) must go through consultations according to Section 7 of the Endangered Species Act (ESA). The process provides pertinent information about a project’s stormwater treatment facilities to biologists responsible for preparing biological assessments. For more details see the [Endangered Species Act & Essential Fish Habitat](#) webpage.

430.02(2) State

- **State Environmental Policy Act** – The State Environmental Policy Act (SEPA) requires that all major actions sponsored, funded, permitted, or approved by state and/or local agencies undergo planning to ensure environmental values receive consideration during decision making, including impacts to water quality. [WAC 197-11](#) and [WAC 468-12](#) describe state implementing regulations. For details on SEPA procedures see [Chapter 400](#).
- **State Water Quality Laws and Rules** – The Water Pollution Control Act ([RCW 90.48](#)) is the primary water pollution law for Washington State, which requires the use of all known, available, and reasonable methods of prevention, control, and treatment (AKART) to prevent and control the pollution of the waters of the state of Washington. State statute prohibits the discharge of pollutants into waters of the state unless authorized. [WAC 173-201A](#) identifies and mandates water quality standards pertaining to surface waters.
[RCW 90.48](#) also mandates that all underground water be protected. [WAC 173-200](#) identifies and mandates groundwater quality standards to maintain the highest quality of the state’s groundwater and to protect existing and future beneficial uses of the groundwater.
- **Accommodation of Stormwater Runoff Onto Right of Way Executive Order (E 1103)** – This Secretary’s Executive Order ([E 1103](#)) is a reference on accommodation of stormwater from adjacent properties onto WSDOT right of way. It cites multiple offices, manuals, procedures, and state and federal laws that provide requirements and policies on this subject.
- **Drinking Water – Source Water Protection** – Protection of drinking water sources (surface and groundwater) is mandated by the SDWA.
In Washington, [RCW 43.20.050](#) designates the State Department of Health (DOH) as lead agency for assuring safe and reliable public drinking water supplies, in cooperation with local health departments and water purveyors. State regulations ([WAC 246-290-135](#) for Group A systems; [WAC 246-291](#) for Group B systems) provide for two types of area based controls for source protection of wells and springs serving as sources of public water supplies:
- **Underground Injection Control** – The [Underground Injection Control \(UIC\) Program](#), authorized by the SDWA, is designed to prevent contamination of underground sources of drinking water from the use of injection wells.
The national UIC Program is administered by the EPA under [40 CFR 144](#). Ecology was delegated authority by the EPA to administer the program in Washington State, and operates under [RCW 43.21A.445](#) and [RCW 90.48](#) and [WAC 173-218](#). All new underground control activities must treat the “waste” fluid before injection.

- **Growth Management Act (GMA)** – This statute ([RCW 36.70A](#)), combined with Article 11 of the Washington State Constitution, mandates development and adoption by local jurisdictions of ordinances that classify, designate, and regulate land use in order to protect critical areas defined in [RCW 36.70A.030\(5\)](#). Aquifer recharge areas are one type of critical area and are regulated through local critical area ordinances. Under the GMA, state agencies must comply with local comprehensive plans and development regulations; likewise, local agencies should coordinate with WSDOT. See the section of Local Critical areas Ordinances below for more information and links.
- **Local Critical Area Ordinances** – One purpose of critical area ordinances is to provide cities and counties with a mechanism to classify, designate, and regulate areas deemed necessary to provide adequate recharge and protection to aquifers used as sources of potable (drinking) water. [WAC 365-190-100](#) identifies requirements for local jurisdictions to determine classification and designation of Critical Aquifer Recharge Areas (CARAs). Unless the local laws conflict with state law, WSDOT must meet the requirements of local regulations. Local planning departments should be contacted to determine the location or descriptive criteria of geologically hazardous areas that may impact the project. For review of other critical areas, see Chapters [431](#): Wetlands, [432](#): Special flood hazard area, [420](#): Earth (Geology and Soils), [455](#): Land use and transportation, and [436](#): Fish, Wildlife and vegetation. Refer to [WAC 365-190-100](#) and [ECY Publication 05-10-028; Critical Aquifer Recharge Areas Guidance](#).

Additional information on local implementation of CARAs may be available at websites for the appropriate local jurisdictions.

430.02(3) Local

- N/A

430.02(4) Tribal

- Several federal environmental laws authorize EPA to [treat eligible federally recognized Indian tribes as a state \(TAS\)](#) for the purpose of implementing and managing certain environmental programs and functions, and for grant funding. Tribes must apply for and receive EPA approval for each specific program or function, with the exception of some portions of the Puyallup Reservation, where the Construction Stormwater General Permit (CSWGP) does not apply for discharges to surface water on land held in trust by the federal government.

Some tribes have applied for and received EPA approval to adopt specific water quality standards that may be stricter than those required by Ecology. For projects where stormwater is discharging within tribal lands or waters, coordinate with your region's environmental staff to determine what standards apply. Information about Section 401 Water Quality Certification is available in [Section 430.03](#) and [Chapter 530](#):

Tribal Approvals.

430.02(5) **Interagency Agreements**

[Appendix B](#) contains the following interagency agreements pertaining to stormwater and water quality:

- **Implementing Agreement Regarding Application of the *Highway Runoff Manual (HRM)*** – In February 2009, WSDOT and Ecology signed an [implementing agreement](#) committing WSDOT to apply the [HRM](#) statewide to direct the planning, design, construction, and maintenance of stormwater facilities. The implementing agreement was most recently revised in March 2024 and granted an extension through the duration of WSDOT’s 2019 NPDES municipal stormwater permit.
- **Sole Source Aquifers (SSA)** – This [2014 Memorandum of Understanding between the Federal Highway Administration \(FHWA\) Washington Division, EPA Region 10, and WSDOT](#) assures that each highway project that is to receive FHWA financial assistance is designed and constructed in a manner that will prevent the introduction of contaminants into a SSA in quantities that may create a significant hazard to public health.
- **Highways and Drinking Water Well Sanitary Control Areas “Screening Criteria”** – This [2006 agreement](#) between WSDOT and the DOH clarifies expectations, establishes project screening criteria, and facilitates communication among WSDOT, DOH, and water purveyors when a proposed highway project intersects with the sanitary control area of a public water supply.

430.03 **Considerations during project development**

430.03(1) **Planning**

See the [Stormwater & water quality](#) webpage for guidance and resources on the following requirements:

- Identify receiving waters such as lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.
- Determine whether a project has the potential to discharge to Category 5 impaired waters on the 303(d) list or covered by a Category 4a Total Maximum Daily Load (TMDL) and identify the pollutants of concern.
- Determine if project will go through the ESA programmatic consultation process.
- Identify existing Best Management Practices (BMPs) using as-builts, WSDOT’s GIS Workbench, hydraulics reports, the Stormwater BMP Specifications (SWABS) database, field verification, and guidance in the [HRM](#).
- Identify stormwater retrofit needs using web guidance.

430.03(2) Scoping

See the [Stormwater & water quality](#) webpage for guidance and resources on the following requirements:

- Department of Ecology [2024 Stormwater Management Manuals](#).
- Identify contaminant loading potential pursuant to [WAC 365-190-100](#) Critical aquifer recharge area (CARA).
- Identify areas with a critical recharging effect on aquifers used for potable water.
- Confirm whether a project has the potential to discharge to Category 5 impaired waters on the 303(d) list or covered by a Category 4a TMDL and identify the pollutants of concern.
- Document stormwater features and discharge points when preparing hydraulics reports.
- Determine Corps jurisdiction and the certifying agencies (Ecology, EPA and/or Tribes) and permit needs regarding section 401 Water Quality Certifications.

See the [Hydraulics & hydrology](#) and [Highway Runoff Manual](#) webpages for guidance and resources on the following requirements:

- Confirm impacts to existing BMPs and address mitigation for those impacts. See the [HRM](#) for more information about assessing impacts on existing BMPs.
- If a project needs runoff treatment and/or stormwater BMPs, recommend consulting HQ Geotech Office or Region Materials Office and Region Hydraulics to discuss installing piezometers at potential BMP locations. This will aid in determining Low Impact Development (LID) BMP feasibility and site suitability for infiltration. Establishing the seasonal high groundwater table may take up to a year's worth of monitoring piezometer data.
- Read the Stormwater Retrofit Guidance section on the [Hydraulics & hydrology](#) webpage which includes considerations for scoping stand-alone stormwater retrofits, a site visit checklist, and instructions for determining cost-effectiveness and feasibility of stormwater retrofits. The scoping engineer must include seed money for the Puget Sound Basin retrofit requirement (if applicable) following the guidelines in the (RCEF) document.
 - Complete a [stormwater retrofit assessment](#) for all fish passage projects prior to Project Summary submittal for Headquarters (HQ) review. A separate assessment is required for each fish passage site in a project.
 - Determine if the project will add enough new impervious surface to trigger [HRM](#) requirements for stormwater treatment and/or flow control. If so, preliminarily select BMPs that could be used from Chapter 5 of the [HRM](#) to meet these requirements and the potential locations where they would be cited.
 - Determine if the project will add enough impervious surface to trigger ESA programmatic consultation requirements for stormwater treatment. If so, preliminarily select BMPs that could be used from Chapter 5 of the [HRM](#) to meet these requirements and the potential locations where they would be cited.
 - If this is a stand-alone retrofit project, retrofits must have an emphasis on LID BMPs (also known as green infrastructure) as defined in the [HRM](#).

430.03(3) Design

- Document stormwater treatment and flow control BMP information in SWABS.
- Review *Geotechnical Design Manual Chapter 3* for well decommissioning and piezometer removal requirements.
- Identify any connections to WSDOT's stormwater drainage system and follow the Accommodation of Stormwater Runoff Onto Right of Way Executive Order ([E 1103](#)) to permit each accordingly.
- Apply for a water rights permit for project work that uses surface water or groundwater. Temporary water rights can be granted for dust control during construction. Contact Ecology's regional Water Resources Program for information about water rights permits.
- If a project impacts a wetland, (e.g., draining a wetland, altering natural drainage patterns, increasing or decreasing water levels), see [Chapter 431: Wetlands](#) or the [Wetlands & other waters](#) webpage and the [HRM](#) for guidance.
- Many WSDOT projects are covered under ESA programmatic consultations. These programmatic consultations have lower thresholds for stormwater treatment than the [HRM](#) that must be considered early in design. The benefit of programmatic coverage is a significant reduction in the duration of ESA consultation for the project. For additional details, see [Chapter 436](#).
- If a project turns groundwater into surface water, the project must follow the design requirements in the [Hydraulics Manual](#) and [HRM](#).
- The design team shall consider the effects of climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

See the [Stormwater & water quality](#) webpage for guidance and resources on the following requirements:

- Projects that require a US Army Corps of Engineers CWA Section 404/Rivers and Harbors Act (RHA) Section 10 authorization or US Coast Guard RHA Section 9 permit and discharge or have the potential to discharge pollutants into water of the United States must receive a Water Quality Certification (WQC) from the appropriate Section 401 certifying agency or tribe.
- **Individual 401 certifications** require a pre-filing meeting request form to be submitted 30 days prior to submitting section 401 request. The pre-filing meeting request form is a mandatory precursor that starts the application process. Complete most recent WQC request form (ECY 070-640). The Draft Water Quality Monitoring and Protection Plan (WQMP) needs to be prepared to ensure water quality standards ([WAC 173-201A](#)) will be met during in-water work.
- Prior to beginning in-water work, review environmental permits and approvals to determine project-specific requirements for in-water work and sampling.
- Whether or not a sampling report is prepared for a project, WSDOT must comply with the state surface water quality standards ([WAC 173-201A](#)).
- Complete the [Surface Water Technical Guidance](#) to calculate annual pollutant loads and assess potential impacts to receiving waters. The results help identify differences in impacts between project alternatives and can be included in discipline reports and other NEPA/SEPA documentation.

- Complete the ESA Stormwater Design Checklist to provide pre- and post-project runoff treatment and flow control quantities that are typically required during ESA consultation.
- Determine if a stormwater discipline report is necessary. Use the [Stormwater Discipline Report Checklist](#) to make sure all project-related stormwater impacts are considered in the discipline report.
- Determine if a groundwater discipline report is necessary. Use the [Groundwater Discipline Report Checklist](#) to make sure all project-related groundwater impacts are considered in the discipline report.
- Consider connections to special flood hazard areas. Refer to [Chapter 432: Special Flood Hazard Area](#) for more information on special flood hazard areas.

See the [Temporary Erosion and Sediment Control \(TESC\) Manual](#) and [Stormwater & Water Quality](#) webpages for guidance and resources on construction stormwater planning, including TESC plan development, plan reviews, and project completion requirements:

- Construction projects must apply for coverage under the CSWGP if the project has the potential to discharge stormwater to surface waters and will either disturb one or more acres of soil or is part of a larger common plan that will disturb one or more acres of soil. Ecology may require CSWGP coverage for smaller projects that have the potential to cause a violation in water quality standards and/or be a significant contributor of pollutants to waters of the State. CSWGP coverage will also be required for projects with known contamination.
- Ecology requires that projects apply for permit coverage by submitting a Notice of Intent (NOI) at least 60 days prior to beginning earth disturbing work. To prevent permitting delays, WSDOT advises projects apply for coverage at least 90 days prior to work. Refer to the [Complete NOI Guidance](#) document for more information on applying for National Pollutant Discharge Elimination System (NPDES) 402 coverage and specific scenarios that could extend the permitting timeline.
- WSDOT transfers CSWGP coverage to the contractor, except for special cases which must be approved by the Assistant State Construction Engineer (ASCE). Transfer of coverage is not common for design-build (DB) projects since the standard practice is for the Design-Builder to obtain CSWGP coverage. However, should it be determined that WSDOT will get the NPDES permit for a DB project, the ASCE may approve transfer of coverage for that DB project. When a contractor or Design-Builder is the permit holder, they are responsible for implementing all permit requirements, while WSDOT's role centers around contract enforcement. WSDOT's contract enforcement role is critical to demonstrate due diligence and reduce liability.
- Prepare a Stormwater Pollution Prevention Plan (SWPPP) for all work, even when not applying for coverage under the CSWGP. The SWPPP is made up of two plans, the Spill Control and Countermeasure (SPCC) plan and TESC plan (TESC narrative and Plan drawings). More information about SPCC plans is available in [Chapter 447 Hazardous Materials and Solid Waste](#). The SPCC plan guidance and the SPCC template are located on the Stormwater and Water Quality webpage under the tools tab. The TESC plan must identify site-specific erosion risks during construction and document plans for minimizing those risks with emphasis on source control, erosion control, and supporting project Planting Plans and successful Roadside Restoration goals. There are two types of TESC plans: comprehensive TESC plan and the abbreviated TESC plan for smaller earth-disturbing work. Complete guidance for TESC plan development can be found within the WSDOT [TESC Manual](#) and TESC plan templates, which are available on the WSDOT

Stormwater and water quality webpage and should be used by projects to ensure all necessary information is included. Develop a preliminary TESC plan to be included in the project contract as an appendix. If the project is design-build, the contractor must develop a TESC plan for WSDOT review and comment. The contractor may adopt and modify the preliminary TESC Plan or develop a new plan, must submit their TESC Plans as a Type 2 Working drawing for WSDOT review and comment prior to active construction to ensure the proposed work meets WSDOT's requirements and expectations.

- Review the SWPPP prior to construction to ensure all requirements are included. WSDOT reviews the contractor's TESC plan to ensure any modifications make sense and sufficiently account for the site-specific risks and long-term asset management.
- Submit monthly discharge monitoring reports (DMRs) to Ecology's [WQWebPortal](#) once CSWGP coverage is granted, even if construction has not started or there have been no discharges. For transfer of coverage projects, WSDOT is responsible for submitting DMRs until the specific date of CSWGP transfer identified by the Headquarters CAPS Office. DMRs must be submitted monthly until the CSWGP coverage terminates or permit coverage is transferred to the contractor; failure to do so is considered a violation of the CSWGP.

See the [Highway Runoff Manual](#) and [Hydraulics & hydrology](#) webpages for guidance and resources on the following requirements:

- If the project will add enough new impervious surface to trigger [HRM](#) requirements for stormwater treatment and/or flow control, use the [HRM](#) to select appropriate BMPs for a project. Use the TMDL considerations in Chapter 5 of the [HRM](#) to choose appropriate BMPs if discharging to impaired waters on the 303(d) list or covered by a TMDL based on the pollutant(s) of concern.
- Develop a Hydraulics Report and BMP Maintenance Manual for all BMPs.

430.03(4) Construction

See the [Stormwater & water quality](#) webpage for guidance and resources on the following requirements:

- All contractor and Design-Build staff performing CSWGP site inspections must be current Certified Erosion and Sediment Control Leads (CESCL). WSDOT staff involved in TESC plan design and/or field implementation must successfully complete the WSDOT Construction Site Erosion and Sediment Control training in accordance with Chapter 1 of the WSDOT [TESC Manual](#). See the [Environmental training](#) webpage for more information about course offerings.
- Report, spills, and illicit discharges that might impact the stormwater drainage system. If a spill or illicit discharge occurs, immediately follow the reporting procedures on WSDOT's [Report a spill](#) webpage.
- Ensure that all in-water work meets applicable water quality standards and follow reporting protocols. For Individual 401 Certifications, the contractor must prepare a Final WQMP/WQMPP for Ecology approval prior to in-water work if designs change after coverage is issued.
- For both Design Build and Design Bid Build projects, ensure that required TESC-related site inspections, documentation and reporting protocols are being followed, and that physical BMPs meet WSDOT material, installation, maintenance, replacement and removal requirements. Refer to the WSDOT [TESC Manual](#), Division 8-01 and 9-14 of

the WSDOT [Standard Specifications](#), and WSDOT [Standard Plans, Section I](#) for more information.

- The Environmental Compliance Assurance Policy (ECAP) must be initiated in the event of known or suspected non-compliance. See SS 1-07.5 of the WSDOT [Construction Manual](#), Chapter 4 of the WSDOT [TESC Manual](#), and [RCW 47.85.030](#) for more information.

For more information on environmental commitments during construction, see [Section 600.03](#).

430.03(5) Maintenance and operations

Perform inspection and maintenance activities and enter records into the Highway Activity Tracking System (HATS) database and conduct quarterly QA/QC.

430.03(6) Stormwater and water quality resources

Refer to the following resources for additional guidance and tools:

1. **GIS Workbench** – The WSDOT GIS Environmental Workbench provides a GIS interface for internal WSDOT users. It has numerous environmental and natural resource management data layers from federal, state, and local agencies that provide useful information for water quality analyses. Available databases include water resource inventory areas (WRIAs) and sub-basins, major shorelines, 303(d)s and TMDLs, and NPDES municipal stormwater permit areas. The status of Category 5 303(d) listed waters and Category 4a TMDLs change biennially and there is lag time updating the GIS Workbench, therefore it is good practice to verify status prior to permitting using Ecology's Water Quality Atlas.
2. **FHWA Guidance Documents and Resources**
 - **FHWA Technical Advisory** – FHWA [Technical Advisory T 6640.8A](#) (October 30, 1987) provides guidelines for preparing environmental documents.
 - **FHWA Environmental Review Toolkit and Guidebook** – This online resource contains several guidance documents and federal MOAs on topics related to stormwater and water quality, the CWA, and coastal zone management.
3. **Programmatic Monitoring Approach for Highway Stormwater Runoff in Support of Endangered Species Act (ESA) Section 7 Consultation** – Describes the programmatic monitoring approach for assessing the potential water quality effects of highway stormwater runoff on ESA-listed aquatic species.
4. **Department of Ecology Resources**
 - **Watershed Basin Reports and Action Plans (Local or State Plans)** – Many watershed and basin plans include specific recommended action items on priority environmental issues. The stormwater analysis should address the guidance outlined in watershed/basin action plans related to water quality.
 - **Water Quality Atlas** – The [Water Quality Atlas](#) is a web-based map application to obtain information about water quality in Washington State. Available datasets include 303(d)s and TMDLs, and NPDES municipal stormwater permit areas, among others.
 - **Ecology's Construction Stormwater General Permit** – Ecology's [CSWGP](#) webpage includes site inspection form templates, SWPPP templates, requests for chemical treatment forms, stormwater sampling guidance and videos, regional contacts, and other permit implementation resources.

430.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

430.04(1) Analysis and documentation for NEPA

WSDOT estimates potential water quality impacts during scoping and through the NEPA and SEPA environmental documentation process. If the project may result in adverse impacts to water quality, NEPA and SEPA require impact analyses to be completed and recorded in the environmental document (see [Chapter 400](#)).

1. Determining the Necessary Level of Effort

Stormwater – A proposed project generally needs to analyze stormwater impacts when the project could affect receiving waters by:

- Increasing the amount of pollutants discharged to receiving waters.
- Presenting a risk of eroded sediments or spilled pollutants entering receiving waters.
- Involving construction or other work in or over surface water bodies, their buffers, or floodplains.
- Using, diverting, obstructing, or changing the natural flow or bed of receiving waters.

Groundwater – A proposed project generally needs to analyze groundwater impacts when:

- Introducing enough stormwater or wastewater into an aquifer or its recharge zone to create a significant adverse environmental impact.
- Stormwater or wastewater discharges produced by any project alternatives are likely to enter SSAs, CARAs, or WPAs in quantities sufficient to produce a potential adverse environmental impact.
- Other potential impacts (active and retired wells, septic systems, etc) to groundwater are identified.

Situations where build options reduce the amount of pollutants to receiving waters may also require impact analyses if significant differences exist in the water quality benefits provided by each of the alternatives. Document the analysis of stormwater and groundwater impacts as part of the environmental document for the project (i.e., ECS, EA, or EIS). In rare cases, when warranted by the nature of the project, the analysis can be documented in a separate discipline report which supplements the environmental document. In these situations, use the [Stormwater Discipline Report Checklist](#) or the [Groundwater Discipline Report Checklist](#) to help ensure adequate consideration of all project-related impacts in the report.

If uncertainty exists as to whether impacts may occur, perform a preliminary investigation of the impacts from each of the alternatives. Project managers can also contact the regional water quality lead for assistance. End the investigation if it becomes apparent no significant impacts or differences exist among the alternatives. In the project file, explain why the project did not need a stormwater or groundwater impact analysis.

2. **Methodology for Analyzing Surface Water Impacts** – Calculate annual pollutant loads to assess potential impacts of a project. The [Surface Water Technical Guidance](#) describes the two appropriate methods to use in the scoping stage of a project. Do not use other pollutant loading methodologies when analyzing impacts from stormwater.

3. **Highway Runoff Manual** – The [Highway Runoff Manual M 31-16](#) summarizes stormwater management requirements and describes approved methods of managing stormwater runoff known as Best Management Practices. Used together, [HRM](#) and [Hydraulics Manual M 23-03](#), provide tools for designing effective stormwater collection, conveyance, and treatment systems for highways, ferry terminals, park and ride lots, and other transportation-related facilities.

The project stormwater designer must first follow [HRM](#) Chapter 2 guidelines for integrating the planning and design of stormwater-related project elements into the context of WSDOT's project development process. Then the designer must use

Chapter 3 to determine the applicable minimum requirements for a specific project. In most cases, this process will spur the need to design construction and post construction BMPs according to the criteria in Chapters 4, 5, and 6. Chapter 6 describes and links to WSDOT's [Temporary Erosion and Sediment Control Manual \(TESCM\)](#).

The [TESCM](#) describes how to meet the requirements of the NPDES CSWGP.

It covers SWPPPs, BMP selection, discharge sampling and reporting, and other compliance-related issues, as well as potential effects to receiving water during construction.

Ecology approved the [TESCM](#) and [HRM](#), in combination, as equivalent to the Ecology *Stormwater Management Manuals for Western and Eastern Washington* for compliance with Ecology-issued stormwater permits.

Standard BMP options from the [HRM](#) fit most projects. See [HRM](#) Section 1-4 on who to contact when a site presents a challenge and does not lend itself easily to the approaches prescribed in the manual.

4. 303(d) and TMDL Impaired Water Bodies

Ecology may assign WSDOT waste load allocations (WLAs) along with specific action items or compliance timelines when a TMDL identifies WSDOT discharges as a source or conveyer of the pollutant of concern. Ecology includes EPA-approved TMDLs that contain WLAs and/ or actions for WSDOT in Appendix 3 of WSDOT's NPDES Municipal Stormwater Permit.

Category 5 303(d) listed waters and Category 4a TMDLs approved by EPA that do not assign WSDOT a WLA can also trigger requirements depending on the pollutant of concern. For example, pollution impairments for turbidity, pH, fine sediment, and/or phosphorus can trigger numerous additional requirements during construction. WSDOT policy and procedures for complying with these requirements is built into several WSDOT manuals, the [Standards Specifications](#), and guidance documents.

If a proposed project, or construction activity, occurs in a 303(d) listed segment of a waterbody, or upstream of a listed segment, and may result in further exceedances of the specific listed parameter, then Ecology WQC review will be required to determine if the project meets the programmatic WQC or will require an individual WQC.

Follow the guidance on WSDOT's webpage to determine if stormwater from a project will discharge to an impaired water body. For more information on TMDLs or 303(d) listings, contact the Stormwater Branch in the Environmental Services Office, or visit Ecology's website, [Water Quality Atlas](#).

5. ESA Programmatic Consultation Stormwater Requirements

Many WSDOT projects are covered under ESA programmatic consultations. These programmatic consultations have lower thresholds for stormwater treatment than the HRM that must be considered early in design. The benefit of programmatic coverage is a significant reduction in the duration of ESA consultation for the project. For additional details, see [Chapter 436](#).

6. Climate Change

For information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and [WSDOT's Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#).

430.04(2) Analysis and documentation for SEPA only (No federal nexus)

SEPA requirements are the same as federal requirements.

430.05 External engagement

WSDOT documents project level environmental analysis required by NEPA and SEPA to describe impacts to human health and the environment, project benefits, and mitigation measures. WSDOT participates in appropriate external engagement during the project development process. [Chapter 400](#) describes the community engagement process followed for compliance with NEPA and SEPA in greater detail. Public notice is also required as part of the CSWGP NOI process, and early coordination with regulators is recommended for TESC, especially on higher-risk projects, such as those with existing contamination.

430.06 Internal roles and responsibilities

430.06(1) Region/Modal Environmental Manager

- Signs water quality permit applications.
- Oversees the development of stormwater and groundwater discipline reports.
- Supports and decides on conflicting environmental issues.
- Evaluates stormwater and water quality non-compliance.
- Determines if the Environmental Compliance Assurance Policy (ECAP) is applicable and if an event should be handled at the region/project level or escalated.
- Supports stormwater compliance during design and construction phases of projects.

430.06(2) Project Engineer- Design

- Prepares design plans in compliance with water quality requirements.
- Develops and completes stormwater hydraulic reports.
- Identifies stormwater BMPs that are necessary and included in a project.
- Prepares a Water Quality Management Plan (WQMP), if required.
- Ensures mitigation requirements are incorporated into the design and contract.
- Ensures stormwater and other water quality permit commitments are included in the project contract.

- Develops and gets approval on any stormwater deviation from the [HRM](#).
- Works with the Region/Modal Environmental Manager to identify non-compliance and determine if ECAP is applicable and if an event should be handled at the region/project level or escalated.
- Orders Suspension of Work when an environmental permit violation is known or likely to occur without mitigative action, to ensure compliance with [RCW 47.85.030](#).

430.06(3) Project Engineer- Design and Construction

- Ensure construction compliance with stormwater and water quality permit conditions and mitigation requirements.
- Determines need for contract enforcement actions.
- Develops stormwater BMP Maintenance Plans for stormwater features.
- Works with the Region/Modal Environmental Manager to identify non-compliance and determine if ECAP is applicable and if an event should be handled at the region/project level or escalated.
- Orders Suspension of Work when an environmental permit violation is known or likely to occur without mitigative action, to ensure compliance with [RCW 47.85.030](#).
- Provides adequate resources for inspectors to perform daily site inspections for environmental/TESC compliance.
- Consults with region SMEs on key hold points and decision-making that may affect their respective programs (e.g., roadside/Las, RMECs, etc.).

430.06(4) Region Environmental Coordinator/Permit Specialist/Biologist/ Stormwater Hydraulic Engineer

- Identifies in the ERS stormwater treatment needs and water quality discharges to Category 4a TMDL waters, and Category 5 303(d) waters.
- Identifies the need for stormwater and groundwater discipline reports.
- Identifies in the ECS stormwater treatment needs and water quality discharges to Category 4a TMDL waters, and Category 5 303(d) waters.
- Coordinates the internal review of stormwater and groundwater discipline reports.
- Submits for water quality permits and approvals.
- Identifies stormwater and water quality mitigation and permit commitments through CTS to the Design Project Engineer (PE).
- Identifies stormwater and water quality non-compliance and processes with Construction ECAP documentation.
- Identifies and coordinates mitigation for listed endangered species.
- Performs site walk-throughs with appropriate subject matter experts.

430.06(5) HQ Environmental Services Office

- Supports regions, headquarters and mega programs on the development and completion of impact analysis documents.
- Provides technical assistance on impact analysis documents.
- Coordinates with regulatory community to establish agreements and understandings on matters impacting statewide policy and practices.
- Provides policy and guidance on stormwater and water quality reports.
- Provides guidance on CSWGP-related topics prior to escalating issues to certifying agencies.
- ESO's Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

430.06(6) Area Maintenance

- Responsible for inspecting and maintaining stormwater treatment facilities.

430.06(7) Region Maintenance Environmental Coordinator

- Coordinates with services and local agencies.
- Supports area maintenance and ensures correct permits are in place.
- Reviews In-water work windows, interference in streams, critical areas, stormwater runoff, and 303d/TMDL.
- Attends site visits for preliminary TESC plan development and prior to permit close-out.

430.06(8) Region Hydraulic Engineer

- Responsible for reviewing and accepting the Stormwater Hydraulic Report.
- Ensures designs comply with long term permanent stormwater requirements.
- Evaluates and coordinates deviations from the [HRM](#) for approval with Ecology.
- Supports stormwater compliance for local programs and developer services clients.
- Liaison for local jurisdictions.
- Supports stormwater construction and TESC plan development.

430.06(9) Region Materials Engineer/State Geotechnical Engineer

- Responsible for completing the groundwater discipline report.
- Responsible for completing the geotechnical investigations along the project, if requested by the project engineer office (PEO).

430.06(10) HQ Hydraulics Office

- Works with regions on [HRM](#) deviations and Ecology approval.
- Supports regions, headquarters, and mega programs on HRM and HM compliance for stormwater design.
- Provides final hydraulic report concurrence.
- Maintains and updates the HRM and HM.

430.07 Applicable permits and approval process

WSDOT must comply with all applicable federal, state, and local laws, regulations, policies, and plans. Consider obligations for each water quality permit or approval listed in this section during design and environmental review.

Stormwater and water quality requirements and BMPs get developed and implemented through Section 401 Water Quality Certifications, NPDES permits, WSDOT's [HRM](#), and project-specific BMPs. See the additional information for [Stormwater & water quality](#) related permits and approvals.

430.07(1) **Federal**

- **US Army Corps of Engineers** – A jurisdictional determination may be required to determine what activities will be covered under the federal permit. If no federal action is required, then the project may require an AO for non-federally regulated waters.
- **EPA – CWA Section 401** – Water quality certifications that are issued on federal and tribal land without WQC authority.

430.07(2) **Tribal**

Tribes with treatment as a state (TAS) may be WQC certifying authorities. The Confederated Tribes of the Chehalis Reservation, Confederated Tribes of the Colville Reservation, Jamestown S'Klallam Tribe, Kalispel Indian Community,, Lummi Tribe, Makah Indian Nation, Port Gamble S'Klallam Tribe, Puyallup Tribe of Indians, Quinault Indian Nation, Spokane Tribe of Indians, Swinomish Indian Tribal Community, and Tulalip Tribe have authority to approve Section 401 Water Quality Certifications. See [Section 401 Water Quality Certification](#) ORIA page for the current list.

430.07(3) **State**

- Ecology - CWA Section 401 – Water quality certifications for activities on all other federal, public, and private lands in Washington State.
- CWA NPDES 402 Construction Stormwater General Permit
- CWA NPDES Industrial Stormwater General Permit
- CWA NPDES WSDOT Municipal Stormwater General Permit
- CWA NPDES Bridge and Ferry Terminal Washing General Permit

430.07(4) **Local**

For more information on the permitting process, see [Chapter 500](#) Environmental permitting, WSDOT's [Environmental Services](#) webpage, or [contact the local government](#).

430.08 Mitigation

Guidance and resources for mitigation options can be found on the [Stormwater & water quality](#) webpage. Mitigation options include:

- Stormwater retrofit
- Special or newly researched BMPs
- Assistance with watershed priorities set through watershed planning

430.09 Abbreviations and acronyms

AKART	All Known, Available, and Reasonable Methods of Prevention, Control, and Treatment
BA	Biological Assessment
BMP	Best Management Practice
CAO	Critical Area Ordinance
CAPS	Contract Administration and Payment System
CARA	Critical Aquifer Recharge Area
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CSWGP	Construction Stormwater General Permit
CTS	Commitment Tracking System
CWA	Clean Water Act
DB	Design-Build
DOH	Washington State Department of Health
DMR	Discharge Monitoring Report
EA	Environmental Assessment
ECAP	Environmental Compliance Assurance Policy
Ecology	Washington State Department of Ecology
ECS	Environmental Classification Summary
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ERS	Environmental Review Summary
ESA	Endangered Species Act
FHWA	Federal Highway Administration
GIS	Geographic Information System
GMA	Growth Management Act
HIRUN	Highway Runoff Dilution and Loading Stormwater Model
HPA	Hydraulic Project Approval
HRM	Highway Runoff Manual M 31-16
LID	<i>Low Impact Development</i>
MHHW	Mean Higher High Water
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
OHWM	Ordinary High Water Mark
PE	Project Engineer
PEO	Project Engineer Office

RCEF	Retrofit Cost-Effectiveness and Feasibility
RCW	Revised Code of Washington State
SCA	Sanitary Control Area
SDWA	Safe Drinking Water Act
SEPA	State Environmental Policy Act
SPCC	Spill Prevention, Control, and Countermeasures Plan
SSA	Sole Source Aquifer
SWABS	Stormwater BMP Specifications database
SWPPP	Stormwater Pollution Prevention Plan
TAS	Tribes as a State
TESCM	<i>Temporary Erosion and Sediment Control Manual</i>
TMDL	Total Maximum Daily Load
UIC	Underground Injection Control
U.S.C.	United States Code
USFWS	U.S. Fish and Wildlife Service
WAC	Washington Administrative Code
WLA	Waste Load Allocation
WPA	Wellhead Protection Area
WRIA	Water Resource Inventory Area
WSDOT	Washington State Department of Transportation
WSF	Washington State Ferries
WQC	Water Quality Certificate
WQMPP	Water Quality Monitoring and Protection Plan

430.10 Glossary

These definitions provided context for the Stormwater process. Some terms may have other meanings in a different context.

Council on Environmental Quality (CEQ) – Coordinates Federal environmental efforts and works closely with agencies and other White House offices on the development of environmental policies and initiatives.

Critical Aquifer Recharge Area (CARA) – An area designated by a city or county for protection under the Growth Management Act that has a critical recharging effect on aquifers used for potable water.

Groundwater – Water that occurs below the surface of the earth, contained in pore spaces. It is either passing through or standing in the soil and underlying strata and is free to move under the influence of gravity.

Group A water systems regularly serve 15 or more residential connections or 25 or more people/day for 60 or more days per year. All remaining systems are designated Group B.

Group B wells serve a single residential connection and are not considered public water supplies but are generally regulated by local ordinances.

Highway Runoff Manual (HRM) – WSDOTs [Highway Runoff Manual](#) M 31-16 directs the planning and design of stormwater management facilities that meet state and Federal regulations for new and redeveloped Washington state highways, rest areas, park-and-ride lots, ferry terminals, and highway maintenance facilities throughout the state.

Injection Well – Any disposal system designed to place fluids, including highway runoff and treated wastewater from on-site sewage disposal systems, into the subsurface. Such systems include bored, drilled, or dug holes; for example, dry wells, French drains, and drain fields.

National Pollution Discharge Elimination System (NPDES) – Pollution control permits that require point source dischargers to obtain permits. These are issued to WSDOT and other entities, by Ecology, for construction stormwater, municipal separate storm sewer systems, industrial, and sand and gravel operations.

Sanitary Control Area (SCA) – An area (minimum radius 100 ft) maintained around a public water source (surface or well) for the purpose of protecting that source from existing and potential sources of contamination. No sources of contamination may be constructed within the sanitary control area without the permission of the DOH and the water purveyor. DOH guidance identifies stormwater runoff and spills resulting from vehicular accidents on roadways as potential sources of contamination.

Sole Source Aquifer (SSA) – An aquifer designated by EPA that (1) supplies 50 percent or more of the drinking water to the population living over the aquifer, (2) has distinct hydrogeological boundaries, and (3) for which there is no economically feasible alternative source of drinking water if it should become contaminated.

Source Water Protection Area – Area protected for drinking water supplies; these include Wellhead Protection Areas and Sanitary Control Areas.

Stormwater – That portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body or a constructed infiltration facility.

Surface Water – All water naturally open to the atmosphere, such as rivers, lakes, reservoirs, ponds, streams, wetlands, seas, and estuaries.

Total Maximum Daily Load (TMDL) – A requirement of the Clean Water Act, TMDLs consist of a watershed-based pollution control plan developed by Ecology or the EPA to address water quality impairment.

Watershed – The land area that drains into a surface waterbody; the watershed for a major river may encompass several smaller watersheds that ultimately combine at a common point.

Waters of the State or State Waters – Lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses located within the jurisdiction of the state of Washington. ([RCW 90.48.020](#))

Wellhead Protection Area – Area managed by a community to protect groundwater drinking water supplies.

Wellhead Protection Areas (WPA) – A portion of the zone of contribution for a Group A well or spring, as determined by delineation criteria based on the estimated time of travel for a particle of water from the zone boundary to its eventual arrival at the well. Water purveyors are required to inventory all known and potential groundwater contamination sources within the WPA and complete a susceptibility assessment every five years. Additional information is available in DOH's *Wellhead Protection Guidance Document*.

431.01	Introduction
431.02	Applicable statutes, regulations, executive orders, and agreements
431.03	Considerations during project development
431.04	Analysis and documentation requirements
431.05	External engagement
431.06	Internal roles and responsibilities
431.07	Applicable permits and approval process
431.08	Mitigation
431.09	Abbreviations and acronyms
431.10	Glossary
431.11	Exhibits

431.01 Introduction

This chapter presents policies to be followed when planning work in or near wetlands, waters of the state, or waters of the United States such as streams and tidal waters. It includes information on determining and delineating wetlands and other waters, determining impacts (adverse effects), compensating for unavoidable impacts, and links to related information.

Project teams should follow the guidance in this chapter and the step-by-step procedures on our [Wetlands and other waters](#) webpage.

WSDOT Secretary's Executive Order (EO) E 1102 *Wetlands Protection and Preservation* directs employees to protect and preserve Washington's wetlands, ensure no net loss of wetland acreage and function is caused by department actions, and to increase the quantity and quality of wetlands in the long term. These activities must be implemented in planning, designing, constructing, and maintaining the state's transportation system. WSDOT employees, contractors, and consultants must avoid impacts to wetlands and other waters where practicable; minimize wetland impacts when they are unavoidable; provide compensatory mitigation for unavoidable impacts; and protect, preserve, and maintain wetlands under department stewardship.

WSDOT's environmental policies direct employees to protect and preserve state natural resources while providing for cost-effective delivery and operation of transportation systems. Our [Strategic Plan](#) webpage details WSDOT's values, including integrity and sustainability, that reinforce protection and preservation of wetlands and other waters.

Common transportation project activities that may impact wetlands or other waters include:

- Filling wetlands
- Draining wetlands
- Altering natural drainage patterns
- Increasing or decreasing water levels
- Discharging sediment or toxicants in runoff
- Mechanically removing wetland vegetation
- Compacting wetland soils
- Using wetland and buffers as staging areas
- Altering wetland or stream buffer areas
- Shading impacts to wetlands
- Converting aquatic resource
- Excavating wetlands or streams
- Realigning stream channels

See [Exhibit 431-1](#) for a flow chart of work to be performed throughout the project phases, from Planning to Maintenance and Operations.

In 2024, CEQ revised its NEPA implementing regulations ([40 CFR 1500-1508](#)). Prior to this update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses and mitigation strategies sections of the documentation.

For incorporation of climate change in Wetland discipline reports, see the Wetland Discipline Report Checklist. Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

431.02 Applicable statutes, regulations, executive orders, and agreements

431.02(1) **Federal**

- 42 United States Code 4321 National Environmental Policy Act (NEPA) of 1969
- Clean Water Act of 1977 (Section 404 and 401) – Found on the US Army Corps of Engineers (Corps) [Regulations and Guidance](#) webpage and on the Washington State Department of Ecology (Ecology) [401 Water quality certification](#) webpage
- 2008 Final Rule on [Compensatory Mitigation for Losses of Aquatic Resources](#) (Federal Register webpage)
- Rivers and Harbors Act of 1899 (Section 10 and Section 408) – Found on the Corps [Regulations and Guidance](#) and [Section 408](#) webpages
- Title 23: Highways [Part 771 – Environmental Impact Related Procedures](#) (Code of Federal Regulations webpage) ([23 CFR 771](#))
- Title 33 Navigation and Navigable Waters, [Part 332 Compensatory Mitigation for Losses of Aquatic Resources](#) (Code of Federal Regulations webpage) ([33 CFR § 332.2](#))
- Title 40: Protection of Environment ([40 CFR § 1500 – Purpose and Policy, Part 1508 - Definitions](#))

431.02(2) **State**

- Environmental mitigation in highway construction projects – Public lands first or other sites that avoid loss of long-term, commercially significant agricultural lands ([RCW 47.01.305](#)) (on the Washington State Legislature webpage)
- Environmental mitigation – Exchange agreements ([RCW 47.12.370](#)) (on the Washington State Legislature webpage)
- Governor's [EO 89-10 Protection of Wetlands](#)
- Procurement of Goods and Services ([RCW 39.26](#)) (on the Washington State Legislature webpage)
- State Environmental Policy Act (SEPA)

- WSDOT Secretary's EO 1102 *Wetlands Protection and Preservation*
- WSDOT [Strategic Plan](#)
- Shoreline Management Act [RCW 90.58](#) and [WAC Title 173](#) (on the Washington State Legislature webpage)
- Optional Shoreline process [RCW 90.58.355](#) and [RCW 90.58.356](#) (on the Washington State Legislature webpage)
- Water Rights [RCW 90.03](#) and [WAC 173-152](#) (on the Washington State Legislature webpage)
- Water Pollution Control Act [RCW 90.48](#) and [WAC Title 173](#)

431.02(3) Local

- Growth Management Act [RCW 36.70A](#) directs counties and cities to designate critical areas that are then enforced through Shoreline ordinances, Critical Area ordinances, and Shoreline Master Programs (see local agency webpages).

431.02(4) Agreements

- [Interagency wetland mitigation guidance](#) (on Washington State Department of Ecology webpage): Wetland Mitigation in Washington State Part 1 – Agency Policies and Guidance and Part 2 – Developing Mitigation Plans
- [Joint Memorandum to the Field Between the U.S. Department of the Army, Corps of Engineers and the U.S Environmental Protection Agency Concerning Exempt Construction or Maintenance of Irrigation Ditches and Exempt Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act \(PDF 141KB\)](#) – provides information including terms and definitions as well as guidance for how both agencies will work together to apply these exemptions. This memorandum refers to citations 404(f)(1)(C) and 404(f)(2) of the Clean Water Act (CWA) as well as [33 CFR 323.4\(c\)](#).

431.03 Considerations during project development

431.03(1) Planning

If it is possible that there are wetlands or other waters, as defined in [RCW 90.48.020](#) and [WAC 173-226-030\(27\)](#), within the planning study area, then planners will notify the region environmental coordinator. The region environmental coordinator will initiate the environmental screening process for scoping as project-level information develops.

Planners engage in early coordination with the region environmental coordinator so they can avoid and minimize impacts during planning, perform corridor studies, and identify compensatory mitigation needs and opportunities during scoping. Early coordination aids in planning sustainable and effective watershed-based solutions and may expand the range of mitigation options for project impacts.

See the [Environmental guidance for planning studies](#) webpage for information on how to conduct environmental screening to identify existing WSDOT compensatory mitigation sites in a study area that will need to be avoided.

431.03(2) Scoping

A biologist should conduct a wetland and stream reconnaissance field survey to confirm the presence or absence of wetlands and other waters within the study area. If present, reconnaissance may include estimation of wetland category, stream water type, and buffers depending on the necessary level of information to address project needs. WSDOT staff can use reconnaissance to inform the preliminary design and identify avoidance and minimization opportunities, as well as evaluate potential mitigation needs and opportunities. Find information on how to conduct a reconnaissance survey during Scoping on the [Wetlands and other waters](#) webpage.

If the wetland and stream reconnaissance memo concludes no wetlands or other waters are present in the project area, no further wetland work needs to be done unless the project area changes. The Region/Modal Environmental Manager documents this in the Environmental Review Summary and Environmental Classification Summary (ERS-ECS) database.

If wetlands or other waters are present, the permit/environmental coordinators must identify permit needs and enter preliminary information into ERS. They continue the mitigation sequence (see [Section 431.08 Mitigation](#)) started during Planning and strategize to avoid and minimize impacts to wetlands and other waters.

The environmental coordinators may coordinate early with the Multi-Agency Permit Program (MAPP) team and regulatory liaisons to identify permit needs. Find information on how to determine who has jurisdiction and your permitting needs for the waters in your project area during Scoping on the [Wetlands and other waters](#) webpage.

Environmental coordinators should begin researching compensatory mitigation options as soon as they think unavoidable impacts to wetlands and other waters in the project area may occur. We follow the 2008 Final Rule on [Compensatory Mitigation for Losses of Aquatic Resources](#) (Federal Register webpage). The rule expresses a preference for using credit from mitigation banks as a first choice, credit from in-lieu fee programs as a second choice, and permittee-responsible mitigation as least desirable. Project specifics provide additional context for determining which mitigation option is the most suitable choice. Find information on how to research compensatory mitigation options during Scoping on the [Wetlands and other waters](#) webpage.

431.03(3) Design

If wetlands or other aquatic resources will be impacted by a transportation project, the permit application submittal will require a Wetland and Stream Assessment Report to be completed by a qualified wetland biologist. A Wetland and Stream Assessment is a detailed field study of wetlands and other aquatic resources within the project area. Find information on how to complete a wetland and stream assessment during Preliminary design on the [Wetlands and other waters](#) webpage.

The Corps and Ecology consider wetland delineations valid for five years from the date of the field work. If the project is delayed beyond the five-year time frame, the field work will need to be re-verified and the report updated before submitting the permit application.

Biologists and environmental/permit coordinators identify impacts to wetlands and other waters by comparing the surveyed wetland boundaries to the project footprint during environmental review. If an EA or EIS is being conducted, environmental coordinators are required to prepare a separate Wetland Discipline Report. A short description of wetland impacts would be included in the Wetland Discipline Report. If direct and indirect impacts to

waters of the state will be completely avoided, a wetland and stream reconnaissance memo is all that is required.

See [Interagency wetland mitigation guidance](#) (on Washington State Department of Ecology webpage): Wetland Mitigation in Washington State Part 1 – Agency Policies and Guidance for detailed definitions of the different types of impacts and when regulators may require compensatory mitigation.

Regulators may not require compensatory mitigation for unavoidable impacts for projects designed for aquatic habitat restoration or enhancement, such as projects specifically built for fish barrier correction, if they result in net increases in aquatic resource functions and values. These projects and compensatory mitigation requirements are assessed on a case-by-case basis.

Find information on how to:

- Document impacts and find the Wetland Discipline Report Checklist during Preliminary design on the [Wetlands and other waters](#) webpage.
- Write appropriately sized discipline reports during preliminary design on the [NEPA and SEPA](#) webpage.
- Prepare a Water Quality Monitoring and Protection Plan (WQMPP) on the [Stormwater and water quality](#) webpage.

See [Section 431.08](#) Mitigation for information on developing Mitigation Plans. Environmental Coordinators will submit a complete permit application to applicable agencies.

The design team shall consider the effects climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

Environmental coordinators will submit a complete permit application to applicable agencies.

431.03(4) Construction

See [Chapter 600](#): Construction for considerations of wetlands and other waters during and at the end of construction including:

- Implement the WQMPP and spill prevention control and counter measures plan
- Environmental Coordinators will conduct compliance site visits in coordination with construction inspection staff to ensure consistency with permit conditions
- Submit a right-of-way plan
- Submit an as-built or as-constructed plan
- Initiate compensation site monitoring

Find information on how to initiate compensatory mitigation site monitoring or apply for a permit modification on the Final design tab on the [Wetlands and other waters](#) webpage.

431.03(5) Maintenance and Operations

The region or mode compensatory mitigation site manager coordinates with the wetland monitoring group throughout the monitoring period by:

- Reviewing the monitoring manager's proposed fieldwork schedule to coordinate management and monitoring activities (e.g. to make sure weed spraying isn't conducted just before or during the monitoring visit.)

- Sending documentation of management activities to the wetland monitoring group for inclusion in the wetland monitoring report.
- Responding to feedback from the wetland monitoring group regarding emerging problems at the site. For example, if the wetland monitoring group sees invasive weed species, they will notify the site manager so that weed control can take place.
- Reviewing draft monitoring reports before they are submitted to the permitting agencies.

The Environmental Services Office (ESO) wetland monitoring group:

- Coordinates compliance site visits and conducts monitoring activities for compliance with permits.
- Provides management recommendations based on site observations and monitoring data to inform the adaptive management cycle.
- Facilitates annual meetings with the regions/modes to review site development.
- Provides wetland monitoring reports for permit compliance.

At the end of the monitoring period, the wetland monitoring group documents that WSDOT has replaced the acreage and functions of the impacted wetlands and other waters. They request concurrence from regulators that permit obligations have been met.

The wetland monitoring group continues to monitor compensatory mitigation sites while waiting for either a release from further monitoring from the regulators or concurrence that permit conditions have been met.

WSDOT maintains permanent protection of most compensatory mitigation sites in perpetuity. Long-term site management needs will be outlined in an approved Long-term Management (LTM) Plan for the site. See [Section 431.08](#) Mitigation for WSDOT's long-term responsibilities for compensatory mitigation sites.

431.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

431.04(1) Analysis and documentation for NEPA

A Wetland and Stream Assessment Report is required to be submitted with all applicable aquatic permit applications. If impacts to wetlands or other waters will be unavoidable, then WSDOT will prepare a Wetland Discipline Report for NEPA documentation.

Further guidance on how to prepare a Wetland Discipline Report and the Wetlands Discipline Report Checklist can be found on the [Wetlands and other waters](#) webpage for Preliminary design.

WSDOT performs Section 404(b)(1) analysis as part of the NEPA document for Corps individual permits to submit with the Section 404 permit application.

For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and [WSDOT's Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#).

431.04(2) Analysis and documentation for SEPA only (No federal nexus)

Analysis and documentation for SEPA-only projects are the same as for NEPA.

431.05 External engagement

For Nationwide Permits (NWP), the Corps will send the project description, impact numbers, and drawings out for a 10-day agency and 30-day tribal review. All tribal and agency comments must be addressed before the Corps can verify the work under a NWP.

For Individual Permits, the Corps will typically issue a joint public notice (15-30 days depending on the activity) with the Section 401 certifying agency or tribe once they have a complete application. Sometimes the public notice will only be issued from the Corps.

431.06 Internal roles and responsibilities

431.06(1) *Planner*

- Conducts environmental screening for potential wetlands and other waters.
- Notifies the region environmental coordinator if obvious wetlands or other waters are in the study area.

431.06(2) *Project Engineer*

- Works with environmental managers and permit coordinators to request a reconnaissance from a WSDOT regional or headquarters environmental office or consultant.
- Works with environmental managers and permit coordinators to request a wetland and stream assessment from a WSDOT regional or headquarters environmental office or consultant.
- Provides the biologist the project description, purpose, and location, project plan sheets including the study area or area of potential effect, written right of entry for access to non-DOT property, and survey crew.

431.06(3) *Region/Modal Biologists and Consultant Biologists*

- Performs wetland and stream reconnaissance and prepares the Wetland and Stream Reconnaissance Memo to provide to the project engineer, environmental coordinator, and permit coordinator.
- Performs wetland, stream, and other waters assessment, evaluates ditches, evaluates wetland and stream buffers, and prepares the Wetland and Stream Assessment Report.
- Writes the Conceptual Mitigation Plan.
- Writes the Draft and Final Mitigation Plan.
- WSDOT biology staff review and comment on consultant prepared reports/plans.

431.06(4) *Region Environmental Coordinator*

- Fills out the ERS/ECS
- Determines potential unavoidable impacts with Region Permit Coordinator and Biologist.
- Documents impacts in the environmental review document or a wetland discipline report.
- Plans for and documents avoidance and minimization of impacts.

431.06(5) Region Permit Coordinator

- Fills out the ERS/ECS.
- Determines potential unavoidable impacts with Region Environmental Coordinator and Biologist.
- Plans for and documents avoidance and minimization of impacts.
- Coordinates with regulatory agencies and applies for permits.

431.06(6) Region/Modal Environmental Manager

- Reviews and approves documentation that goes into ECS/ERS.

431.06(7) Environmental Services Office Wetland Monitoring Group

- Monitors WSDOT owned mitigation banks and compensatory mitigation sites.
- Communicates with site managers in the region/mode and restoration crews and provide site observations and data to inform adaptive management of compensatory mitigation sites to achieve permit requirements.
- Writes compensation site monitoring reports.
- Writes and submits emails to regulatory agencies to request closeout of permit monitoring requirements for WSDOT mitigation banks and compensatory mitigation sites.
- Performs long-term management inspections and coordinates with the maintenance division and environmental restoration crews on site management needs.
- ESO's Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

431.07 Applicable permits and approval process

Apply for one or more of the following permits when work is in or over a wetland or stream:

- Navigable waters permit under Section 10 of the Rivers and Harbors Act
- Discharge of dredge or fill material permit under Section 404 of the CWA
- Administrative Order for impacts to non-federally regulated wetlands, including any alteration of the physical, chemical, or biological properties, of any waters of the state
- See [Chapter 436](#) for information about Hydraulic Project Approvals from the Washington State Department of Fish and Wildlife

See the graphic depiction of the [Limits of Corps Regulatory Jurisdiction](#) on the Corps webpage.

Permits under Section 10 of the Rivers and Harbors Act and Section 404 of the CWA require a Water Quality Certification per Section 401 of the CWA. See [Chapter 430](#) Surface Water for information about Water Quality Certifications and compliance with Section 401 of the CWA.

431.07(1) Section 10 of the Rivers and Harbors Act

The purpose of the Rivers and Harbors Act is to ensure the free flow of interstate commerce on our aquatic “highways”, or navigable waters. Navigable waters are tidally influenced or fresh waters currently or historically used to transport commerce, such as Puget Sound, Lake Washington, the Columbia River, and the lower sections of many rivers in the state. You will need a Section 10 permit from the Corps when you work on a structure in or over a navigable water of the US.

Check the lists of Navigable Waters in Washington State on the [Streams, Rivers, and Tidal Waters](#) page of the Corps Permit Guidebook to see if the Corps has Section 10 jurisdiction of the waterbody.

There are no maintenance exemptions under Section 10 of the Rivers and Harbors Act.

431.07(2) Section 408 of the Rivers and Harbors Act

Projects that make alterations to or use property federally authorized by the Corps must get permission from the Corps. Examples would be work that affects levees or navigation channels. Application information can be found on the Corps [Section 408](#) webpage.

431.07(3) Section 404 of the Clean Water Act

The purpose of the CWA is to regulate the discharge of pollutants into the waters of the U.S. and to regulate quality standards for surface waters. The object of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. Under Section 404, the Corps regulates the discharge of dredged or fill materials into waters of the U.S. See the [Seattle District Corps](#) webpage for more information.

431.07(4) Nationwide Permits

The Corps issues Nationwide Permits (NWP) which are programmatic permits covering activities that have minimal individual and cumulative adverse environmental effects every five years. The Corps will verify that projects fit under one or more of the NWPs. Permit coordinators can use Section 5 of the [Corps’ User Guide for 2021 Nationwide Permits in Washington State \(PDF 1.63MB\)](#) and the [Corps’ 2021 NWP Summary Chart \(PDF 110KB\)](#) to find out if an activity is covered by an NWP.

To be covered under an NWP, the work must also follow the:

- **National General Conditions** – broad conditions that apply to all NWPs nation-wide. See Section 4 of the User Guide.
- **Regional General Conditions** – Corps Seattle District conditions that apply to all NWPs for work in Washington. See Section 3 of the User Guide.
- **NWP-specific Regional Conditions** – Corps Seattle District conditions that apply only when work will be verified under that NWP. See Section 5 of the User Guide.

431.07(5) Individual Permits

Permit coordinators need to apply for an Individual Permit for work that cannot be verified under the NWP.

431.07(6) Regional General Permits

Section 404 of the CWA also allows the Corps and Ecology to issue 5-year Regional General Permits (RGPs) for certain types of activities, similar to the NWP. There are currently no RGPs that WSDOT can use at this time.

431.07(7) Maintenance Exemptions from Section 404 Permits

The maintenance or repair of transportation structures that was previously authorized may be exempt from getting a new permit under Section 404 of the CWA ([33 CFR 323.4](#)). This can include bank stabilization, culvert repairs, culvert maintenance, bridge footing scour repairs, and other types of projects.

To be exempt, work must be consistent with the previously authorized work in the following ways:

- **Scope** – The purpose of the work must be the same as the purpose of the previous work.
- **Character** – The material must be of the same type and size (or one size larger) as was previously placed.
- **Size** – The footprint of the work must be the same as the previous footprint.

If you are not sure if the work is exempt, contact the MAPP team for help. If you are certain the work is exempt, it is not necessary to submit a permit application or request approval from the Corps. It is recommended to document the extent of the work in an internal memo to record the activities as exempt. The maintenance exemption does not apply to Section 10 waters.

431.07(8) Water Quality Certification

Under Section 401 of the CWA, an activity involving a discharge into waters of the U.S. authorized by a federal permit must receive a Section 401 Water Quality Certification. Certifying agencies (Ecology, EPA, Tribes with WQC authority) have issued WQC decisions for each NWP program to grant, grant with conditions, or deny. The certifying authority determines if a project meets the conditions and general conditions required to issue a programmatic Water Quality Certification. If a project does not meet the programmatic conditions, does not meet the state general conditions, or if a NWP was denied a programmatic water quality certification, then an Individual Water Quality Certification will be required. Permit coordinators can use Section 5 and 7 of the [Corps' User Guide for 2021 Nationwide Permits in Washington State \(PDF 1.63MB\)](#).

To be covered under a programmatic WQC, the certifying agency will determine if the project meets:

- **Ecology Section 401 WQC General Conditions** – broad conditions that apply to all NWP state-wide. See Section 7 of the User Guide.
- **NWP-specific Programmatic Conditions** – Corps Seattle District conditions that apply only when work will be verified under that NWP. See Section 5 of the Corps NWP User Guide.

431.07(9) Individual Water Quality Certification

Permit coordinators need to apply for an Individual Water Quality Certification for projects that do not meet the programmatic NWP or general conditions for each certifying authority, or if a programmatic NWP Water Quality Certification was denied, or if the project has the potential for discharge under Section 10. See Section 7 of the Corps NWP User Guide.

431.07(10) Coastal Zone Management Act (CZMA)

The Coastal Zone Management (CZM) program applies to all areas of 15 coastal counties and extends three nautical miles into the Pacific Ocean and excludes federal and tribal lands such as all lands within national parks, national forest lands, and military and defense reservations. Ecology evaluates federal activities and permit applicants ([15 CFR 930.39](#)) to ensure consistency with the state's Coastal Zone Management Program. Ecology is the authority to review federal actions for consistency with the enforceable policies of Washington's CZM Program. For each NWP, Ecology issued a decision to concur, concur with conditions, or object. For NWPs where the decision is to concur, the project or activity does not require an individual decision. If a project or activity has a decision of concur with conditions or object, project proponent will need to coordinate with the Corps and Ecology. See Section 1 and 5 of the Corps NWP User Guide.

431.07(11) Non-federally regulated wetlands

For waters of the state under Ecology's jurisdiction, and where there is no Corps jurisdiction, Ecology will issue an Administrative Order (AO) that the work is consistent with the State Water Pollution Control Policy [RCW 90.48](#) and other state laws ([Chapter 430](#)). There are procedures on the [Wetlands and other waters](#) webpage to use during scoping to apply for an Administrative Order from Ecology, however early coordination with the MAPP Manager is recommended. Coordinate with Ecology, tribes, and EPA early in the design process for work in waters of the state on tribal lands to determine timeline and information regarding application requirements. Refer to the [Interagency Wetland Mitigation Guidance Parts 1 and 2](#).

431.07(12) Shoreline permits and approvals

Shoreline permits and approvals may be required for work within 200 feet of a shoreline of statewide significance. Shorelines include floodways, wetlands, and all marine waters along the Puget Sound and Pacific Ocean.

Ecology is responsible for implementing the Shoreline Management Act, which directs local governments to develop Shoreline Master Programs (SMP). Local governments issue Shoreline permits and approvals, following their SMP. Types of Shoreline Permits and approvals:

- Substantial Development Permits
- Conditional Use Permits
- Variance
- Exemption Issued by Local Government
- Exemption (optional shoreline process for WSDOT only [RCW 90.58.355](#) and [RCW 90.58.356](#))

Many WSDOT projects within 200 ft. of shoreline jurisdiction qualify for the optional shoreline process under [RCW 90.58.355](#). The optional shoreline process allows WSDOT to perform certain maintenance, repair, safety, and replacement work without applying for a shoreline permit or approval. Check [RCW 90.58.355](#) to determine if your project meets the criteria for this process.

If the project does not require a permit and will cost more than \$1 million to plan and design, send written notification of the project prior to construction to all:

- Agencies, federal and state, with jurisdiction in the area, including the Ecology Regional Planner.
- Agencies with facilities or services that may be impacted by the project, including utility companies, transit systems, and schools.
- Adjacent property owners within 300 feet of the shoreline jurisdiction area.

If there are dozens to hundreds of property owners that require notification under the optional shoreline process or if the local agency's permit process is simple, consider applying for a shoreline permit or approval instead.

If your project doesn't meet the criteria for an optional shoreline process, apply for a shoreline permit or approval during final design. See the local SMP and coordinate with local government staff to determine which permit you need. Sometimes local governments have different criteria for different types of shoreline permits and approvals.

431.07(13) Water Rights

Ecology issues water right permits to applicants that need to withdraw any amount of surface water or groundwater ([RCW 90.03](#) and [WAC 173-152](#)).

WSDOT or the contractor may need to acquire a temporary water right permit for dust control or watering a mitigation site if potable water is not available near a site.

431.08 Mitigation

WSDOT Secretary's EO 1102 *Wetland Protection and Preservation* directs employees to mitigate for all adverse effects to wetlands in accordance with Governor's [EO 89-10](#) and [WAC 197-11-768](#).

WSDOT uses the mitigation sequence outlined in state and federal EOs and regulations. Mitigation sequencing requires the applicant to:

1. **Avoid** impacts to wetlands and other aquatic resources.
2. **Minimize** unavoidable impacts to the greatest extent feasible.
3. **Rectify** impacts by repairing, rehabilitating, or restoring the environment.
4. **Reduce** or eliminate impact over time.
5. **Compensate** for unavoidable impacts through required compensatory mitigation.
6. **Monitor** the impact and take corrective measures.

Avoidance is the preference because it has the greatest reliability and is the simplest, most effective way to preserve and protect wetlands and other aquatic resources.

The Federal Highway Administration Mitigation of Environmental Impacts section of the [Environmental Review Toolkit](#) webpage summarizes parts of [40 CFR § 1500](#), [1508](#), and [23 CFR 771](#) that pertain to mitigation.

431.08(1) Selecting a compensatory mitigation option

We follow guidance in the [Final Rule on Compensatory Mitigation for Losses of Aquatic Resources \(2008\)](#). We use mitigation credits established prior to project impacts first when possible. See the [Wetlands and other waters](#) webpage during Scoping for how to research compensatory mitigation options and during Final Design for how to purchase third-party mitigation credits. Regulatory agencies must approve mitigation bank and in-lieu fee program instruments, including identification of initial sites, before any credits are released for use.

If the impacts are not in the service area of an approved third-party mitigation bank or in-lieu fee program, permittee-responsible mitigation may be the only option. We use excess credit from previously implemented WSDOT compensatory mitigation before considering construction of a new compensatory mitigation site when possible.

Compensatory mitigation should make ecological sense in the landscape context in which it occurs. Find information about evaluating landscape and site scale environmental processes on Ecology's [Watershed Characterization](#) webpage and use the guidance on selecting wetland mitigation sites using a watershed approach on Ecology's [Wetland mitigation resources](#) webpage.

We can only use agricultural lands of long-term commercial significance for compensatory mitigation when there are no other options ([RCW 47.01.305](#)). Washington law directs WSDOT to consider public and private lands before using agricultural lands. We must make every effort to avoid net loss of commercial agricultural lands.

Existing wetlands and other waters must be documented prior to construction of permittee-responsible compensatory mitigation sites in a Wetland and Stream Assessment Report. The mitigation design team uses the baseline resource conditions to determine the area available for different types of compensatory mitigation (e.g. establishment, re-establishment, rehabilitation, enhancement, and preservation). The wetland monitoring group uses digital files (MicroStation design or Geographic Information System shapefiles) of the delineations of pre-existing wetlands or other waters to evaluate how many acres of each type of compensatory mitigation has been provided after the site has been constructed.

431.08(2) Developing Conceptual and Draft Mitigation Plans

Toward the end of the environmental review portion of the Design phase, biologists document the full mitigation sequence using Ecology's [avoidance and minimization checklist](#), including avoidance and minimization measures, unavoidable impacts and compensatory mitigation proposals in Conceptual, Draft, and Final Wetland and Stream Mitigation Plans.

A Conceptual Mitigation Plan contains general information to allow for discussion of the design alternatives and proposed mitigation. WSDOT staff can bring the Conceptual Mitigation Plan to the MAPP team meetings for early agency input, and append it to the environmental review document. See Ecology's [Interagency wetland mitigation guidance](#) webpage for information on what biologists include in a Conceptual Mitigation Plan.

State and federal regulatory agencies evaluate the mitigation concept to determine if it would adequately compensate for the expected project impacts. A commitment to the mitigation option must be made during the NEPA process, leaving sufficient time to develop an appropriate detailed Wetland and Stream Mitigation Plan and design for the application.

Biologists document how the project avoids and minimizes impact to wetlands or other waters in a Draft Wetland and Stream Mitigation Plan. They describe the project, the remaining unavoidable impacts, and the approach for providing compensatory mitigation. See the [Wetlands and other waters](#) webpage Preliminary design tab for WSDOT-specific guidance on writing Mitigation Plans, including a template mitigation plan that is consistent with the requirements outlined in Chapter 3.6 of Ecology's [Wetland Mitigation in Washington State: Part 1 - Agency Policies and Guidance \(Version 2\)](#).

Regulatory agencies will determine the adequacy of the proposed compensatory mitigation after they review the complete project proposal and Wetland and Stream Mitigation Plan.

Complete Wetland and Stream Mitigation Plans include:

- Details of impact avoidance
- Details of minimization
- Proposed compensatory mitigation for unavoidable direct and indirect impacts
- A plan for establishing a legal mechanism to protect the compensatory mitigation property in perpetuity
- A Long-term Management Plan to implement after the compensatory mitigation site permit obligations are met

In accordance with [40 CFR 230.94\(C\)](#) of the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (2008), the Corps requires Wetland and Stream Mitigation Plans to contain a commitment to develop a Long-term Management Plan. This requirement does not affect the ongoing requirement for perpetual stewardship of compensatory mitigation sites.

Additional work necessary to develop the Wetland and Stream Mitigation Plan for submittal with the application varies depending on the compensatory mitigation option(s) chosen.

Mitigation Bank and In-Lieu Fee Programs – A Mitigation Bank Credit Use Plan or an In-Lieu Fee Program Use plan must be submitted.

Advance Mitigation – Advance Mitigation Plans are approved at the time the site is authorized. It includes details of how the advance mitigation credit will be developed and used, briefly explains how the available credit compensates for project impacts and provides a ledger showing the debits and remaining credit value.

Permittee-responsible Mitigation – The Draft Mitigation Plan includes all the information needed for WSDOT to plan appropriate mitigation. It includes the rationale for selecting the site, data describing baseline (pre-construction) conditions, a detailed mitigation plan (including a grading plan and planting plan), and goals, objectives, and performance standards.

If WSDOT plans to develop more wetland area than needed for compensation of the project impacts, WSDOT can propose that the excess be available for use by other projects; see the [Wetland Mitigation in Washington State–Part 1 \(Version 2\)](#) Section 4.2 Permittee-responsible mitigation.

The permitting agencies won't approve the value for later use unless it is documented in the Wetland and Stream Mitigation Plan and the Corps permit verification that excess credit generated can be used for future projects.

See Ecology's [Interagency wetland mitigation guidance](#) webpage for information on how to write Conceptual, Draft and Final Mitigation Plans.

See the [Wetlands and other waters](#) webpage during Preliminary Design for information on how to:

- Use available WSDOT mitigation credits.
- Write Credit Use and Mitigation Plans
- Develop a Long-term Management Plan.

431.08(3) *Establishing the mechanism for compensatory mitigation site protection*

The 2008 [Final Rule on Compensatory Mitigation for Losses of Aquatic Resources](#) requires long-term compensatory mitigation site protection. Long-term site protection must be maintained in perpetuity. Another natural resource management entity may provide the long-term management with or without direct property transfer to their ownership.

We consider opportunities to develop partnerships in mitigation development with other natural resource management entities or local jurisdictions. If possible, we establish willing partners to transfer compensatory mitigation sites to manage long-term. Qualified natural resource entities must agree to restrict the use of the property to preserve the natural and beneficial values of the wetland ([RCW 47.12.370](#)).

We most often use recordings on the right-of-way plan or a sundry site plan that identify the property as a compensatory mitigation site with the Corps permit number as the long-term site protection mechanism. If the site won't be maintained for the long term in WSDOT ownership, another legal mechanism for long-term protection must be developed.

Environmental staff and project managers coordinate with the region real estate services office to develop the long-term protective mechanisms for land transferred to other ownership. Conservation easements, restrictive covenants, or other mechanisms may be suitable for long-term protection.

Project managers and environmental staff also coordinate with the region real estate services office and legal counsel as needed to develop any compensatory mitigation site transfer mechanism. See [RCW 47.12.370](#) on the Washington State Legislature webpage for the requirements for environmental mitigation exchange agreements. Regulatory agencies only allow transfer of compensatory mitigation site ownership to other parties for long-term management after the regulatory agencies concur that permit obligations have been met. There must be an agreement that the new entity will protect the on-site environmental resources in perpetuity.

431.08(4) *Final Wetland and Stream Mitigation Plan development*

Permit coordinators submit the permit application when further design refinements are not likely to change the wetland and other waters impacts. Reports supporting the application may include one or more Wetland and Stream Assessment Reports and a Draft Wetland and Stream Mitigation Plan. See the "Apply for Section 404/Section 10 permits and Administrative Orders" section on the Final design tab on the [Wetlands and other waters](#) webpage for MicroStation and AutoCAD application drawing pattern templates.

After the permit application has been submitted, WSDOT finalizes the Draft Wetland and Stream Mitigation Plan in coordination with the permitting agencies. The Final Wetland and Stream Mitigation Plan is completed after the appropriate agencies have provided authorization with or without conditions. WSDOT prepares the final mitigation design, approved by the permitting agencies, for contract during the design phase with development of the final Plans, Specifications and Estimates.

431.08(5) Monitoring

The ESO wetland monitoring group evaluates each compensatory mitigation site annually. They compare the site's performance to criteria established in the Wetland and Stream Mitigation Plan and environmental permits.

The wetland monitoring group collects quantitative and qualitative data to evaluate mitigation sites.

Find the Wetland Monitoring Reports on the [Wetlands and other waters](#) webpage under Tools, templates and resources.

431.08(6) WSDOT's long-term responsibilities for compensatory mitigation sites

WSDOT owns most of its compensatory mitigation sites. After monitoring is complete and all permit conditions have been met, the region or project office will follow the LTM Plan that was included in the approved Mitigation Plan. The LTM plan will include elements outlined in [33 CFR 332.7\(d\)](#). If a LTM plan was not included in the Mitigation Plan, then the site will be managed using the *Programmatic Long-term Management Plan* found on the [Wetlands and other waters](#) webpage under Final design. The Programmatic LTM Plan also includes the criteria for site LTM eligibility. Sites that do not meet those criteria do not require a LTM plan.

ESO Wetlands Program will coordinate LTM responsibilities and required actions with either the maintenance division or environmental restoration crews, as needed, after the regulatory agencies concur that permit obligations have been met.

We may transfer department-owned compensation sites to qualified entities that agree to restrict the use of the property consistent with the preservation of wetlands and other aquatic resources ([RCW 47.12.370](#)). Any such transfer must include an approved legal mechanism for long-term protection. WSDOT regions evaluate this option to reduce agency risk.

431.09 Abbreviations and acronyms

AO	Administrative Orders
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers
CZM	Coastal Zone Management
Ecology	Washington State Department of Ecology
ECS	Environmental Classification Summary
EO	Executive Order
ERS	Environmental Review Summary
HPA	Hydraulic Permit Approval
LTM	Long-term Management
NEPA	National Environmental Policy Act
NWP	Nationwide Permit
RCW	Revised Code of Washington
RGP	Region General Permit
SEPA	State Environmental Policy Act
SMP	Shoreline Master Program
WAC	Washington Administrative Code
WDFW	Washington State Department of Fish and Wildlife
WSDOT	Washington State Department of Transportation
WQC	Water Quality Certification
WQMPP	Water Quality Monitoring and Protection Plan

431.10 Glossary

This glossary provides reader friendly context for terms in this chapter. The associated links provide technical definitions. These terms may have other meanings in other chapters. Many of the terms below are included in the definitions in Title 33 Navigation and Navigable Waters, Part 332 Compensatory Mitigation for Losses of Aquatic Resources: [33 CFR § 332.2](#).

Advance Mitigation – Compensatory mitigation that is accepted by regulatory authorities as being established before an impact occurs. This is a form of permittee -responsible mitigation.

Buffer – An upland, wetland, or riparian area that protects or enhances wetlands or aquatic resource functions from disturbances associated with adjacent land uses.

Compensatory Mitigation – The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of wetlands or other aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Enhancement – Changing a wetland to improve specific aquatic resource functions. Enhancement results in a gain in aquatic function but does not result in a gain in wetland area.

Establishment – Converting an upland area to a wetland or other aquatic resource. Establishment results in a gain in wetland area and functions. (Equivalent to the term ‘creation’ used previously.)

Impact – Adverse effect, whether direct, indirect, temporary, or cumulative. Typical adverse effects to wetlands or other waters include filling, draining, altering natural drainage patterns, increasing or decreasing water levels, discharging sediment or toxicants from runoff, mechanically removing wetland vegetation, altering wetland or stream buffers, or compacting wetland soils.

In-Lieu Fee Program – A program administered by a governmental or nonprofit natural resources management entity that provides compensatory mitigation and sells mitigation credits. With regulatory approval, the obligation to provide compensatory mitigation is transferred from the permittee to the in-lieu fee entity when the credit purchase is complete.

Mitigation – Avoiding adverse impacts to wetlands, streams and other aquatic resources, where practical; minimizing unavoidable impacts; and compensating for all remaining unavoidable impacts.

Mitigation Bank – A property developed for the purpose of providing compensatory mitigation in advance of authorized impacts to aquatic resources where wetlands are established, restored, enhanced, or preserved. A mitigation bank may sell credits to and assume the mitigation obligations of third parties. With regulatory approval, the mitigation obligation is transferred when the credit purchase is finalized.

Mitigation Sequencing – An ordered approach to mitigation, pursuant to [WAC 197-11-768](#), that involves analyzing the affected environment and determining the effects of projects. Mitigation sequences as follows:

- Avoiding and minimizing adverse impacts,
- Rectifying the impact by repairing, rehabilitating, or restoring the affected areas,
- Reducing or eliminating the impact over time through preservation and maintenance over the life of the impact,
- Compensatory mitigation may be used to compensate for unavoidable adverse impacts.

An avoidance and minimization checklist is available at: <https://ecology.wa.gov/water-shorelines/wetlands/mitigation/avoidance-and-minimization>

Permittee-Responsible Mitigation – Compensatory mitigation for which the permittee retains full responsibility.

Preservation – Removing a threat to or preventing a decline of aquatic resources by implementing legal or physical mechanisms to provide permanent protection. Preservation does not result in a gain of wetland area or functions.

Restoration – Changing a site so natural or historic functions are returned to a former or degraded wetland. For tracking net gains in wetland area, restoration is divided into Re-establishment and Rehabilitation. Re-establishment results in a gain in wetland area; rehabilitation results in a gain in aquatic resource function, but not in area.

Waters of the state – Lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington ([RCW 90.48.020](#)).

Waters of the United States – see current EPA [Waters of the United States](#) webpage

Wetland – In general, wetlands are areas that are normally wet enough to support plants typically adapted for life in saturated soil conditions. Washington State ([WAC 173-22- 030](#)) and federal ([Corps Regulatory Program](#)) jurisdictional definitions of wetlands are slightly different.

Wetland and Stream Assessment Report – Describes the location, classification, ratings and functional assessment for each wetland based on field work by a qualified wetland biologist and a land survey. The project area for this report should include all potential work areas so the report does not have to be updated unless the project area changes.

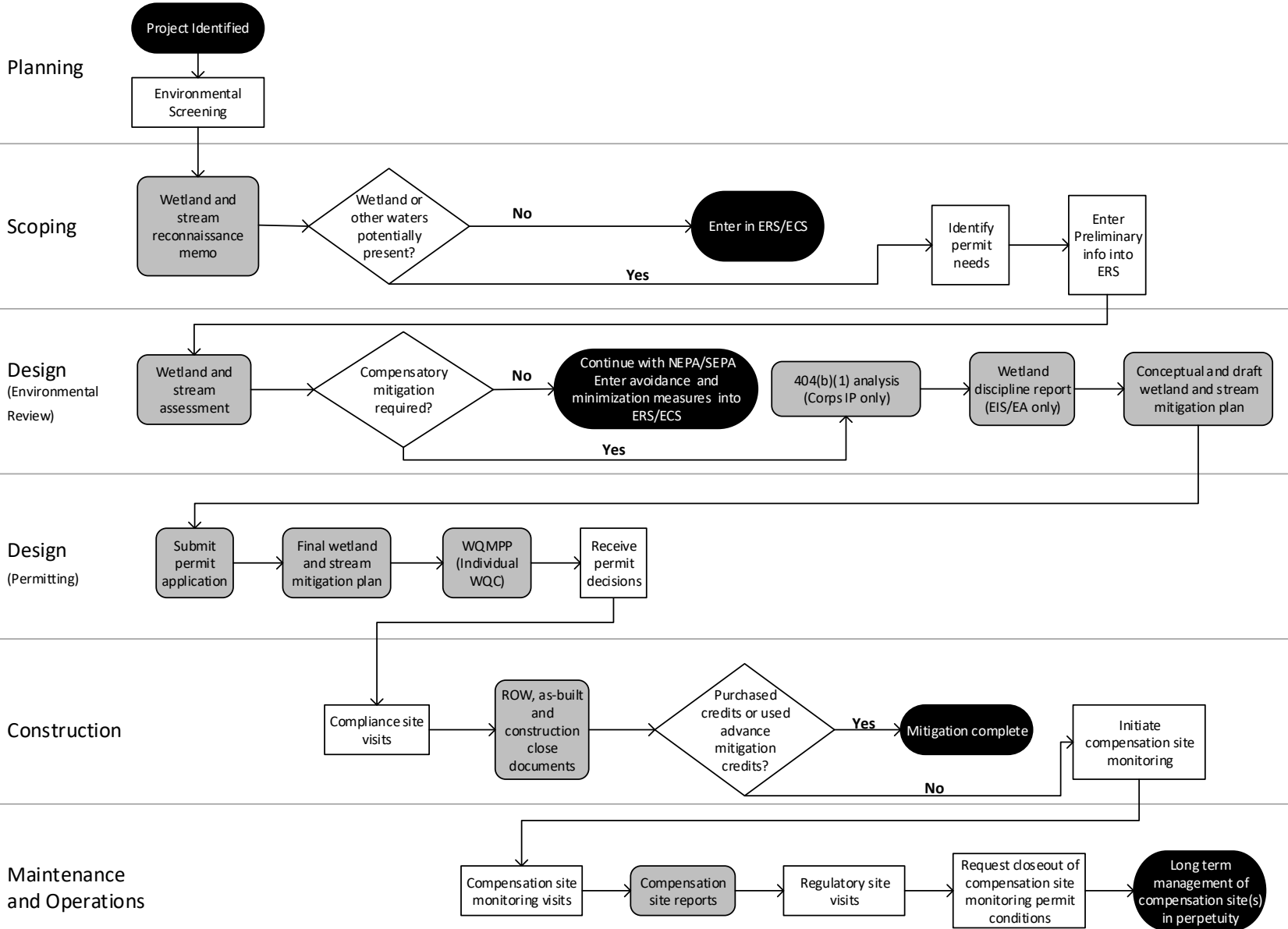
Wetland and Stream Mitigation Plan – Describes measures taken to avoid and minimize wetland impacts and the way compensatory mitigation will be accomplished. This plan may have several iterations and levels of detail depending on the stage of design and discussions with regulatory agencies. It is finalized as permits are issued, and often is incorporated into the permit conditions.

Wetland Discipline Report – Uses the wetland boundaries and categories in the Wetland and Stream Assessment Report and the project footprint for each alternative to estimate impacts to wetlands and other waters. It may be updated as design modifications change the adverse impacts.

Wetland Reconnaissance Memo – Describes the presence or absence of wetlands based on a brief field visit. The project area for this report should include the potential work areas for all alternatives.

Water Quality Monitoring and Protection Plan – A plan that is provided and used by the department of Ecology, or certifying agency, to track the progress in achieving compliance with the state water quality standards.

Wetlands and Other Waters Flowchart



432.01	Introduction
432.02	Applicable statutes, regulations, executive orders, and agreements
432.03	Considerations during project development
432.04	Analysis and documentation requirements
432.05	External engagement
432.06	Internal roles and responsibilities
432.07	Applicable permits and approval process
432.08	Mitigation
432.09	Abbreviations and acronyms
432.10	Glossary
432.11	Exhibits

432.01 Introduction

This chapter addresses the potential impact of WSDOT projects on special flood hazard areas. The National Environmental Policy Act (NEPA), requires that all actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations are given due weight in project decision making. For work in special flood hazard areas that requires permit approval, environmental documentation must explain the impacts the project will have on these areas, and on the resources within those areas. The State Environmental Policy Act (SEPA), mandates a similar procedure for state and local actions.

The primary concern with projects located in floodplains is increasing the frequency or severity of flooding caused by obstructing flood flows or filling floodplain storage. Flood flows are obstructed by under sizing hydraulic structures or blocking natural flow paths causing flood water to back up behind the highway. Filling floodplain storage can also increase off-site flooding by reducing the ability to store water, potentially sending more flow downstream.

Consequently, all WSDOT projects that encroach upon a regulatory special flood hazard area must have a floodplain discipline report. All stream projects, regardless whether they are in a FEMA SFHA, shall complete a [Flood Risk Assessment](#). The Flood Risk Assessment is a communication tool used to identify if there are potential risks of meeting FEMA, local jurisdiction, and public health and safety requirements in the preliminary stages of design. In addition, during the design process, the Project Engineer must contact the HQ Hydraulics Section, to determine the appropriate analysis to evaluate the project's potential effects on the floodplain and floodway.

The WSDOT [Floodplain Discipline Report Checklist](#) includes floodplain issues to be addressed in project development, and sources of information. Other references, documents, MOUs, Interagency Agreements, and permits are included in this chapter.

The [Hydraulics Manual](#) M 23-03 provides details and requirements for preparing various floodplain analyses and reports.

A process guidance document "Outreach to Local Governments on Flood Risk Assessment for WSDOT Fish Passage Projects ([Exhibit 432-2](#))" has been prepared and is discussed further in Sections [432.04](#) and [432.05](#), respectively. The current version of this document has been attached as an exhibit in [Section 432.11](#).

In 2024, CEQ revised its NEPA implementing regulations. Prior to this update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses, and mitigation strategies sections of the documentation.

For incorporation of climate change in special flood hazard area discipline reports, see the Floodplain Discipline Report Checklist. Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

432.02 Applicable statutes, regulations, executive orders, and agreements

432.02(1) **Federal**

- [42 United States Code \(U.S.C\) Chapter 55](#). National Environmental Policy Act of 1969 (NEPA)
- [16 U.S.C Chapter 35](#). Endangered Species Act of 1973 (ESA)
- [42 U.S.C Chapter 50](#). National Flood Insurance
- [23 CFR 771](#) Environmental Impact and Related Procedures
- [23 CFR 650 Subpart A](#); Location and Hydraulic Design of Encroachments on Flood Plains
- [40 CFR 1500-1508](#) National Environmental Policy Act Implementing regulations
- [44 CFR 60.3](#) Flood plain management criteria for flood-prone areas
- Public Law 92 234, 87 Stat. 975. [Flood Disaster Protection Act](#) (1973)
- [Presidential Executive Order \(E.O.\) 11988](#) Floodplain Management (May 24, 1977)
- FHWA Technical Advisory [T 6640.8A](#) (October 1987)
- [USDOT Policy statement on climate change adaption](#) (2021)
- [USDOT 2024-2027 Climate Adaptation Plan \(2024\)](#)
- [FHWA Order 5520](#). Transportation System Preparedness and Resilience to Climate Change and Extreme Weather Events (2014)

432.02(2) **State**

- [RCW 47.01.260](#) Authority of WSDOT on state highway system design
- [RCW 77.55](#) Construction Projects in State Waters
- [RCW 77.57](#) Fishways, Flow, and Screening
- [RCW 86.16](#) The Flood Control Management Act of 1935
- [RCW 86.26](#) State Participation in Flood control Maintenance
- [WAC 173-145](#) Administration of the flood control assistance account program
- [WAC 173-158](#) Flood Plain Management
- [WAC 197-11](#) SEPA Rules
- [WAC 220-660](#) Hydraulic Code Rules
- [WAC 468-12](#) Transportation Commission and Transportation Department State Environmental Policy Rules
- [WDFW Memorandum of Agreement \(MOA\) for Transportation Activities](#)

432.02(3) Local

- **Floodplain Development Permit** – Specifics vary for each jurisdiction (Contact HQ Hydraulics Section for assistance).

432.03 Considerations during project development

The level of analysis for special flood hazard areas changes with the stage of project development. Analysis maybe very generalized and qualitative during planning and become very detailed and quantitative during design. The [Hydraulics Manual M 23-03](#) provides details and requirements for preparing various floodplain analyses and reports through project development.

432.03(1) Planning

During the planning phase of a project, it is expected that the project planners identify special flood hazard areas. [EO 11988](#) requires that floodplains be avoided when practicable, consequently documentation is required to demonstrate that alternatives have been considered to minimize floodplain impacts. Local floodplain development permit requirements should also be identified.

432.03(2) Scoping

During the scoping process it is expected that Project Engineers are considering project designs that accommodate floodplain issues that were identified in the planning stage. These considerations include sizing hydraulics structures to minimize flood flow obstruction and identifying locations that may need to be acquired for compensatory storage. It is also expected that project engineers will consult with the Environmental Services Office (ESO) Stream Restoration Program to determine if hydraulic structures are located on fish bearing water courses that will require specialized design to ensure fish passage.

432.03(3) Design

During the design process it is expected that Project Engineers and HQ Hydraulics Section will be working together, to provide a quantitative analysis of the project impacts on floodplains including changes in flood flows, sizing of hydraulics structures and provisions for compensatory storage if needed. In addition, the design team shall consider the effects of scour and climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#). The design team is also responsible for preparation of the technical engineering materials to support the Federal, State and local permits from the Federal Emergency Management Agency, the US Army Corps of Engineers, the US Coast Guard, Washington Department of Fish and Wildlife, as well as the local jurisdiction.

432.03(4) Construction

There are no construction requirements for floodplains. However, if a project requires a Letter of Map Revision (LOMR) as-built survey data is required to comply with the local permits.

432.03(5) Maintenance and Operations

There are no maintenance and operations requirements for floodplains.

432.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

432.04(1) ***Analysis and documentation for NEPA***

A [Floodplain Discipline Report](#) must be completed whenever a proposed project intersects with, or is located in, a special flood hazard area, particularly when the placement of new fill, structures, in-water structures (such as wood, barbs or weirs), bridges, channel modifications or re-locations are involved within a floodway.

The WSDOT Floodplain Discipline Report Checklist ensures that floodplain issues are considered in the design of projects. The discipline report should provide the information required for an EIS, EA, or CE, and for floodplain development permits. The extent of analysis should be proportionate to the level of impact without over analyzing or providing unnecessary information.

The checklist includes these sections:

1. Introduction and preliminary drainage survey.
2. Affected environment, shown mainly by mapping regulatory floodplains.
3. Studies and coordination including flood history, climate impacts vulnerability assessment and identification of permits required.
4. Summary should include enough detail so it can be included in an EIS with only minor modifications.

The 1998 FHWA Environmental Flowchart on Floodplains ([Exhibit 432-1](#)) provides an overview of floodplain issues. For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and WSDOT's Guidance for NEPA and SEPA Project-Level Climate Change Evaluations.

432.04(2) ***Analysis and documentation for SEPA only (No federal nexus)***

The requirements are the same as federal.

432.04(3) ***Analysis and documentation for local floodplain development permits***

As described further in [Section 432.07](#), local floodplain development ordinances are the key regulatory instrument governing floodplain management. Local ordinances must comply with minimum federal standards set by FEMA in the NFIP; however, local jurisdictions may adopt more stringent regulations.

This process is described in [Sections 432.05](#), [432.07](#) and the current guidance document is attached as [Exhibit 432-2](#). However, ESO Multi-Agency Permit Program and the HQ Hydraulics Section should be contacted to obtain the most up to date guidance.

432.05 External engagement

Floodplain impacts follow the standard NEPA/SEPA scoping, public noticing, accepting agency and public comments, and responding to comments appropriate to the level of the environmental review process. However, all floodplain development requires to follow the local jurisdiction code. In addition, external engagement may, however, inform the development of the projects as other resources such as cultural, wetland, and farmland are commonly found in floodplains. Altering the floodplain may also trigger Environmental Justice concerns.

It is necessary, however, to engage with the local floodplain management agency early in the development process to determine what is necessary to obtain a floodplain development permit in the affected community ([Exhibit 432-2](#)). This guidance lays out a process for the Regions to reach out to local governments about fish passage projects that have been identified within their jurisdiction. The Regions should share the fish passage delivery plan with the local government representatives and discuss the FEMA effective FIRMs for each crossing in their jurisdiction, WSDOT's flood risk assessment process, and WSDOT's hydraulic modeling approach. As fish passage projects are developed, the Regions should meet with the local jurisdictions, as needed, throughout the design process to share modeling results; zero rise analyses; CLOMR and LOMR processes, if needed and the overall floodplain development permitting approach. Generally, the special flood hazard area that the project encroaches upon determines the levels of analysis required to obtain a floodplain development permit.

432.06 Internal roles and responsibilities

432.06(1) *Region/Modal Environmental Manager*

The Region/Modal environmental manager's role is to oversee the general preparation of environmental review documents, providing expert guidance to region staff as to the type of analysis needed and identifying need for specialized analysis. The manager provides quality assurance and quality control. The manager is responsible for disseminating new or updated guidance and verifying that the guidance is being followed. The manager is also responsible for reporting to ESO when guidance is not adequate, confusing, or in need of revision.

432.06(2) *Project Engineer*

It is the Project Engineer's role and responsibility to oversee that all engineering studies and technical reports are prepared consistent with the [Design Manual M 22-01](#) and provide appropriate levels of analysis to support the environmental review process and permitting activities to the environmental staff.

It is also the Project Engineers responsibility to reach out to local floodplain development managers to secure floodplain development permits.

432.06(3) *Region Environmental Coordinator*

The region environmental coordinator role is to oversee the development of the environmental review documents. The coordinator is responsible for exchange of information between the project engineer and the environmental review specialists on the team and to ensure that any environmental requirements are incorporated into the project design as well as engineering information needed for permits and other agency approvals is provided.

432.06(4) ESO

ESO role is primarily to keep the guidance current with evolving and changing rules and regulations. ESO staff also provide expert assistance for developing scopes of work for consultants and internal WSDOT staff as well as reviewing floodplain discipline reports and environmental review documents. ESO's Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

432.06(5) Headquarters Hydraulics Section

HQ Hydraulics role is to provide guidance to Project Engineers, other WSDOT engineering staff, and consultants in the preparation of hydrologic and hydraulic analyses as described in [Chapter 1](#) of the [Hydraulics Manual](#). The HQ Hydraulics Section also prepares specialized hydraulic studies and reviews consultant work products for concurrence by the State Hydraulic Engineer.

The HQ Hydraulics Section oversees the preparation of Preliminary and Final Hydraulic Design (PHD and FHD) for all hydraulic projects. The PHD or flood risk assessment memorandum is used to coordinate with local agency floodplain managers to facilitate the floodplain development permit process. Floodplain mitigation measures (compensatory storage or larger structures), if needed, would be included in the FHD.

432.07 Applicable permits and approval process

Local floodplain development ordinances are the key regulatory instrument governing floodplain management. Local ordinances must comply with minimum federal standards set by FEMA in the NFIP; however, local jurisdictions may adopt more stringent regulations. The specifics of each permit are unique to each community.

For more information on the permitting process, see [Chapter 500](#).

432.08 Mitigation

NFIP prohibits encroachments within the regulatory floodway unless it can be demonstrated that the proposed encroachments would not increase the 100-year flood levels. Hydrologic and hydraulic analyses are required to document a No-Rise Certification.

Some local jurisdictions are also adding "compensatory storage" requirements to their floodplain ordinances. These statutes require the excavation of floodplain storage areas to compensate for fill placed in floodplains. They may also stipulate elevation requirements for the location of the compensatory storage area.

432.09 Abbreviations and acronyms

BFE	Base Flood Elevation
CEQ	Council on Environmental Quality
CLOMR	Conditional Letter of Map Revision
CMZ	Channel Migration Zone
FAPG	Federal Aid Policy Guide
FCAAP	Flood Control Assistance Account Program
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
LOMC	Letter of Map Change
LOMR	Letter of Map Revision
NFIP	National Flood Insurance Program
SFHA	Special Flood Hazard Area

432.10 Glossary

Avulsion – A sudden, dramatic shift of the river into a new course or channel.

Base Flood Elevation (BFE) – The elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the Flood Insurance Rate Map (FIRM) for zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, AR/AO, V1–V30 and VE.

Compensatory Storage – The NFIP floodway standard in [44 CFR 60.3\(d\)](#) restricts new development from obstructing the flow of water and increasing flood heights. However, this provision does not address the need to maintain flood storage. Especially in flat areas, the floodplain provides a valuable function by storing floodwaters. When fill or buildings are placed in the flood fringe, the flood storage areas are lost, and flood heights will go up because there is less room for the floodwaters. This is particularly important in smaller watersheds which respond sooner to changes in the topography.

Community –

1. A group of people living in the same locality and under the same government, or a political subdivision of a state or other authority that has zoning and building code jurisdiction over a particular area.
2. A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.
3. A network of individuals and families, businesses, governmental and nongovernmental organizations and other civic organizations that reside or operate within a shared geographical boundary and may be represented by a common political leadership.

Flood – A general and temporary condition of partial or complete inundation of 2 or more acres of normally dry land area or of 2 or more properties (at least 1 of which is the policyholder's property) from:

1. Overflow of inland or tidal waters; or
2. Unusual and rapid accumulation or runoff of surface waters from any source; or
3. Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.; or
4. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

A flood inundates a floodplain. Most floods fall into three major categories: riverine flooding, coastal flooding, and shallow flooding. Alluvial fan flooding is another type of flooding more common in the mountainous western states.

Floodplain – Any land area susceptible to being inundated by flood waters from any source; usually the flat or nearly flat land on the bottom of a stream valley or tidal area that is covered by water during floods.

Floodplain Boundaries – Lines on flood hazard maps that show the limits of the 100- and 500-year floodplains.

Floodway – A “Regulatory Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Communities must regulate development in these floodways to ensure that there are no increases in upstream flood elevations.

Regulatory Floodplain – The currently effective floodplain that has been mapped under the NFIP.

Special Flood Hazard Area – An area having special flood, mudflow or flood-related erosion hazards and shown on a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM) Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE or V. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. For the purpose of determining Community Rating System (CRS) premium discounts, all AR and A99 zones are treated as non-SFHAs.

Zone A – Areas subject to inundation by the 1-percent-annual-chance flood event generally determined using approximate methodologies. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Zones AE and A1- A30 – Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. Base Flood Elevations (BFEs) are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Zone AH - Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Zone AO - Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Some Zone AO have been designated in areas with high flood velocities such as alluvial fans and washes. Communities are encouraged to adopt more restrictive requirements for these areas.

Zone AR - Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Zone A99 - Areas subject to inundation by the 1-percent-annual-chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No Base Flood Elevations (BFEs) or depths are shown.

Zone V - Areas along coasts subject to inundation by the 1-percent-annual-chance flood event with additional hazards associated with storm-induced waves. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Zone VE and V1-30 - Areas subject to inundation by the 1-percent-annual-chance flood event with additional hazards due to storm-induced velocity wave action. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply. indicates additional coastal flooding hazards such as storm waves. Study is detailed and BFEs are shown.

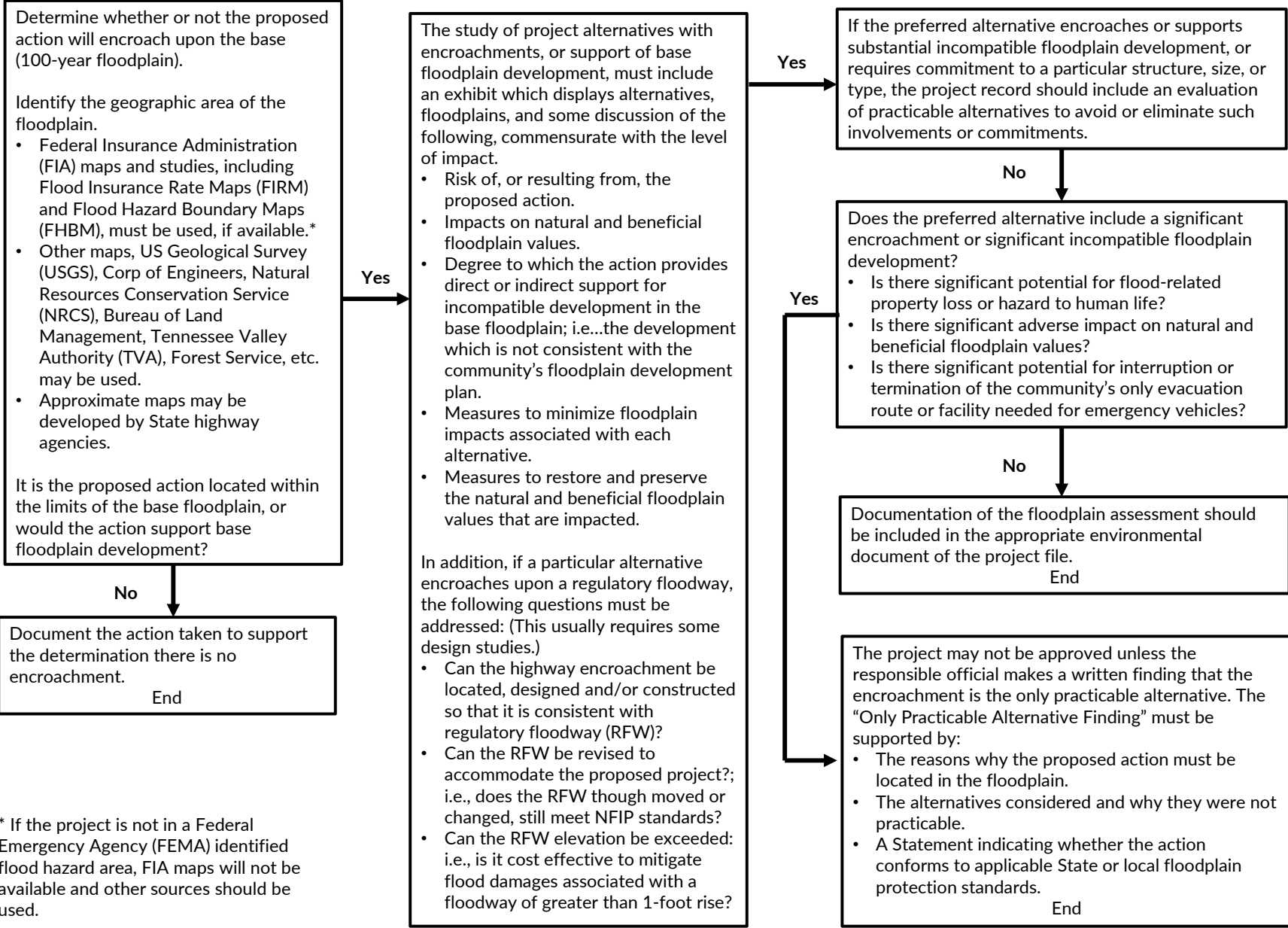
Zone X, B (moderate-rise zones) - An area of moderate flood hazard that is determined to be outside the Special Flood Hazard Area between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood.

Zone X, C (low-rise zones) - An area of minimal flood hazard that is determined to be outside the Special Flood Hazard Area and higher than the elevation of the 0.2-percent-annual-chance (or 500-year) flood.

432.11 Exhibits

- [Exhibit 432-1](#) The 1998 FHWA Environmental Flowchart on Floodplains
- [Exhibit 432-2](#) Outreach to Local Governments on Flood Risk Assessment for WSDOT Fish Passage Projects

Exhibit 432-1 The 1998 FHWA Environmental Flowchart on Floodplains



* If the project is not in a Federal Emergency Agency (FEMA) identified flood hazard area, FIA maps will not be available and other sources should be used.

Exhibit 432-2 Outreach to Local Governments on Flood Risk Assessment for WSDOT Fish Passage Projects

WSDOT's flood risk assessment includes coordinating with local governments early in project development. Note: pursuing a floodplain development permit does not preclude a project from qualifying for a Fish Habitat Enhancement Project (FHEP) hydraulic project approval (HPA). The following are suggested talking points and considerations for coordination with local governments:

- Prepare for outreach with the local government (local):
 - Region reviews FEMA's effective flood maps at each barrier site to determine if it's within a FEMA regulatory floodway or special flood hazard area (SFHA) zone.
 - Region reviews the local code. It is important to note whether the local's floodplain development regulations fall under their Critical Areas Ordinance (CAO). If the flood regulations are included within the CAO and the project ultimately qualifies for FHEP, the project will apply for a floodplain development permit but should not be subject to any other local permits.
 - Prior to meeting with the local, it is recommended to have a prep meeting that includes the PEO, HQ Hydraulics, and Region Environmental to discuss the agenda for meeting with the local. Suggested topics include:
 - Project overview
 - WSDOT's Flood Risk Assessment Process and modeling approach with SRH2D
 - Permitting approach
 - The sooner the Region engages with the local, the better, to keep the hydraulic work progressing.
- When reaching out to the local, request that the local's floodplain manager attend the meetings.
- Initially provide the local with a list of upcoming projects within their jurisdiction. Update the list as needed and refer to the list as the projects develop. Contact the ESO Fish Passage Delivery Team for any questions on the delivery plan.
- For projects within a FEMA regulatory floodway or SFHA, coordinate with the local throughout the no-rise analysis and CLOMR or LOMR (if needed) processes, as well as the floodplain development permitting process.

For reference:

- [44 CFR 60.3](#) Flood plain management criteria for flood-prone areas
- [RCW 47.01.260](#) Authority of WSDOT on state highway system design
- [ORIA's Floodplain Development Permit](#) webpage, which has links to WAC, RCW and CFR
- [RCW 77.55.181](#) Fish habitat enhancement project (WDFW code)

436.01	Introduction
436.02	Applicable statutes, regulations, executive orders, and agreements
436.03	Considerations during project development
436.04	Analysis and documentation requirements
436.05	External engagement
436.06	Internal Roles and responsibilities
436.07	Applicable permits and approval process
436.08	Abbreviations and acronyms
436.09	Glossary

436.01 Introduction

Sensitive wildlife, fish, plants, and their habitat require special consideration during project planning and development. Many federal, state, and local regulations apply to projects that may affect natural resources. The Washington State Department of Transportation's (WSDOT) policy is to follow and comply with all federal and state mandated regulations ([RCW 47.04.280](#)). Therefore, WSDOT biologists are involved in all stages of project development, evaluating potential adverse effects and recommending impact avoidance or minimization measures.

Projects with a federal nexus, meaning they have federal funding, requires a federal permit, or takes place on federal lands, must follow the most prominent laws; the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). All projects, regardless of funding source, must comply with Section 9 of the ESA, the State Environmental Policy Act (SEPA) ([RCW 43.21C](#)), Migratory Bird Treaty Act (MBTA), Marine Mammal Protection Act (MMPA), Bald and Golden Eagle Protection Act (BGEPA), and local ordinances.

Ferry, rail, airport, or non-motorized transport systems are subject to the same policies, procedures, and permits that apply to road systems, but are generally funded under different authorities such as Federal Transit Administration (FTA), Federal Railway Administration (FRA), or Federal Aviation Administration (FAA). Each of these federal agencies may have slightly different approaches for document preparation, review, and submittal procedures or overall process goals and directives regarding fish, wildlife, and habitat resources.

Washington State Ferries (WSF) must follow strict guidelines to work in nearshore environments (see [Section 436.06](#)). These guidelines include avoidance of eelgrass and forage fish spawning habitat, restrictions on construction materials, and specific Best Management Practices (BMPs) for removal of creosote treated wood associated with docks, pilings, and piers. In addition, some regulations may be more applicable to non-road projects. For example, ferry projects occur within marine waters and require consideration of regulations under the MMPA and the Shoreline Protection Act.

Public use airports must address specific wildlife hazards on or near airports. These issues are addressed in the Federal Aviation Administration (FAA) Publication, *Hazardous Wildlife Attractants on or Near Airports*, (No. 150/5200-33C, February 21, 2020).

The main focus of this chapter is to summarize regulations associated with fish, wildlife, and habitat resources.

436.02 Applicable statutes, regulations, executive orders, and agreements

436.02(1) *Federal*

- 42 United States Code (U.S.C) 4321 National Environmental Policy Act of 1969 (NEPA)
- Endangered Species Act (ESA)
- Fishery Conservation and Management Act (Magnuson-Stevens Act)
- Migratory Bird Treaty Act (MBTA)
- Bald and Golden Eagle Protection Act (BGEPA)
- Marine Mammal Protection Act (MMPA)
- National Forest Management Act
- Northwest Forest Plan

436.02(2) *State*

- WDFW [RCW 77.12.240](#)
- [WSDOT State Habitat Connectivity Policy](#). Executive Order: “Protections and Connections for High Quality Natural Habitats.”
- [RCW 47.85.020](#) – A streamlining process that requires WSDOT to maintain programmatic agreements and permits, including the Programmatic Biological Assessment and General Hydraulic Project Approvals (GHPA). Also implements a multiagency effort with Washington Department of Fish and Wildlife (WDFW) to streamline the HPA permit process for fish passage barrier correction projects.
- WSDOT and WDFW have agreed on HPA application and review procedures through a Memorandum of Agreement (MOA) Concerning Implementation of the Fish and Wildlife Hydraulic Code for Transportation Activities (henceforth referred to as the WDFW-WSDOT Hydraulic Code MOA). This WDFW-WSDOT Hydraulic Code MOA includes information on the Fish Passage Retrofit Program, the Chronic Environmental Deficiency (CED) Program, and deferred mitigation for maintenance and emergency activities.
- [RCW 77.55](#) Construction Projects in State Waters – WDFW laws for fish screens, fishways, and fish passage.
- [RCW 77.57](#) Fishways, Flow, and Screening – WDFW’s laws for HPA permitting.
- [WAC 220-660](#) – WDFW’s Hydraulic Code rules for HPA permits.

436.02(3) *Local*

- Local Comprehensive Plans and Critical Area Ordinances (CAO) – For additional details see [Chapter 455](#).

436.03 Considerations during project development

436.03(1) *Planning*

Sensitive wildlife, fish, plants, and their habitat require special consideration during project planning. Many federal, state, and local regulations apply to projects that may affect natural resources. Some considerations include timing restrictions to avoid or minimize project effects to species, and anticipated time to complete ESA consultation. Based on the location and preliminary nature of the project, many environmental issues can be anticipated. During scoping, the Environmental Coordinator and Project Biologist may be able to determine whether the project will be covered by a USFWS/NMFS programmatic consultation or will require an individual consultation. Depending on the project, the Fish and Wildlife Program may prepare a Habitat Connectivity memorandum for the region.

436.03(2) *Scoping*

During the Scoping phase, the Project Biologist will determine those state and federal regulations that will likely apply to the project. Bridge projects often require a bird management plan to comply with the MBTA. Projects with in-water pile driving may require a monitoring plan to determine if predicted noise levels are accurate. In marine waters, projects that generate underwater noise will likely require an MMPA Incidental Harassment Authorization (IHA) for marine mammals. If your project requires a HPA permit, see if your project qualifies for any existing GHPAs.

436.03(3) *Design*

The Project Biologist works closely with the Project Engineer to obtain details regarding stormwater design, new pollution generating impervious surface, pile driving and other project elements that may affect species and habitats. It is during the Design phase that the Project Biologist conducts early coordination with USFWS/NMFS liaisons. These initial pre-BA meetings are coordinated and facilitated by the Fish and Wildlife Program. The programmatic form or an individual BA are prepared by the biologist during this phase and submitted by the region. The programmatic consistency finding, letter of concurrence, or biological opinion must be received prior to construction.

Many I-4 fish passage and chronic environmental deficiency projects qualify for WDFW's Fish Habitat Enhancement Process (FHEP). FHEP is a streamlined process that does not require SEPA or local permits, except for Floodplain Development permits. WDFW requires applicants to submit a FHEP sponsorship letter and a form for most FHEP projects. However, WDFW does not require FHEP sponsorship letters and FHEP cover sheet for WSDOT-sponsored fish passage barrier removal FHEP projects that are on the WDFW fish passage list

If applicable, the biologist must also prepare an MMPA application and receive the IHA prior to construction. Similarly, coordination with the USFWS regarding the MBTA and BGEPA must be completed prior to construction.

436.03(4) Construction

Projects that require in-water work nearly always include work site isolation and moving fish out of the work area. In marine waters, MMPA compliance usually includes marine mammal monitoring. For Design Bid-Build projects, the Project Biologist is responsible for coordinating these efforts. For a Design-Build Project, a WSDOT manager may assign a Design-Build Directing Biologist responsibility for coordinating these efforts and a WSDOT Project Biologist or other qualified staff will verify the work is being done according to WSDOT protocols. Other requirements may include implementation of bird protection plans and monitoring specific habitat enhancement measures such as large wood placement in a stream. The Project Biologist is responsible for reinitiating ESA consultation if, among other things, the project changes significantly, allocated take limits are exceeded, or when a new species is proposed for listing.

WSDOT activities must comply with the Hydraulic Code in [RCW 77.55](#) and HPA permit provisions. Details of the Hydraulic Code WAC only apply when the habitat biologist (HB) includes them within the HPA provisions. If compliance issues arise, WDFW first seeks voluntary compliance by offering technical assistance and providing a reasonable timeline to achieve compliance; which could include site visits. The level of WDFW technical assistance will vary based on project complexity, site conditions, and potential impacts. WDFW can perform compliance inspections without notification (WDFW-WSDOT Hydraulic Code MOA).

When voluntary compliance does not occur, WDFW may use a range of increasingly strict enforcement rules which ranges from issuing notices of correction and stop work orders to penalties. Additional details about these tools are available in [WAC 220-660-480](#).

WDFW's HPA Compliance Program complements WSDOT's existing Environmental Compliance Assurance Policy (ECAP) process. Our agencies have a long history of working well together when non-compliance issues arise during construction and maintenance activities. We anticipate this will continue as WSDOT staff continue to follow ECAP and closely collaborate with WDFW when potential HPA non-compliance issues arise.

436.03(5) Maintenance and Operations

In some situations, a Maintenance activity may require a separate ESA consultation and other environmental permitting. Maintenance activities that may affect freshwater habitats are usually covered under the 4(d) rule. In terrestrial areas where potential disturbance to listed species may occur, the Fish and Wildlife Program has prepared species specific BMPs that avoid or minimize impacts to sensitive wildlife and habitat. There are no Operations phase requirements for Fish, Wildlife, and Vegetation.

436.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

436.04(1) Analysis and documentation for NEPA

NEPA, [42 U.S.C 4321](#), requires that all major actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations such as impacts related to fish and wildlife are given due weight in decision making. Federal implementing regulations are at [23 CFR 771](#) (FHWA) and [40 CFR 1500-1508](#) (NEPA). WSDOT's policy is to follow all guidance and direction provided by the federal lead agency on NEPA related documents. The analysis of impacts to fish, wildlife and habitat can be recorded directly in the project's environmental document. In rare cases when warranted by the nature of the project, the analysis can be documented in separate [Fish, Wildlife, and Vegetation](#) discipline reports. For additional details on NEPA procedures see Chapters [400](#) and [412](#).

436.04(2) Analysis and documentation for SEPA only (No federal nexus)

WSDOT typically documents SEPA as part of the NEPA documentation when both NEPA and SEPA are required. Find step-by-step guidance for compliance with SEPA rules in the Washington State Department of Ecology's (Ecology) [SEPA Handbook](#). For additional details [Chapter 400](#).

436.04(3) Analysis and documentation for ESA

Both the state and federal agencies regulate threatened and endangered species in Washington. WSDOT complies with the ESA, which is administered by the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). The USFWS is primarily responsible for terrestrial and freshwater species, while NMFS responsibilities lie mainly with marine wildlife and anadromous fish. Significant sections of the Act include:

- **Section 4** of the ESA allows for the listing of species as threatened or endangered based on habitat loss or degradation, over utilization, disease or predation, inadequacy of existing regulation mechanisms, or other human caused factors. Section 4(d) allows for the promulgation of regulations to provide for the protection and conservation of listed species. It may allow for "take" of threatened species.

In July 2000, NMFS adopted a rule under Section 4(d) of the ESA (65 FR 42422), which allows take of threatened fish species. Under this rule, the take prohibition is not applied to threatened species when the take is associated with one of NMFS's 13 approved programs or limits. The 13 limits can be considered exceptions to the 4(d) take prohibition. NMFS has determined that these programs, activities, and criteria contribute to species conservation and therefore it is not necessary to impose take prohibitions. NMFS updates the rule to include new species listed as threatened. The rule applies to any agency, authority, or private individual subject to U.S. jurisdiction that applies for coverage under the rule. In 2003, WSDOT applied for and received approval as part of the [Regional Road Maintenance Program \(RRMP\)](#) for take exception under the 4(d) rule.

WSDOT's routine, unscheduled, and emergency/disaster maintenance activities are covered under the Routine Road Maintenance limit along with 29 other cooperating agencies. The program defines general practices (such as adaptive management, monitoring, and training) and specific Best Management Practices that WSDOT uses to avoid adverse effects to aquatic environments.

- **Section 7** of the ESA requires each federal agency to ensure actions it carries out, authorizes, permits, or funds do not jeopardize the continued existence of any threatened or endangered species. It describes consultation procedures and conservation obligations.

All projects with a federal nexus are subject to Section 7 of the ESA and an analysis is required to ensure compliance with the ESA. The project biologist – either a WSDOT biologist or a consulting biologist – conducts a preliminary evaluation to determine the level of project effects on listed species or designated critical habitat. Depending on the level of effect, preparation of a “no effect” letter or a biological assessment (BA) will be required. Templates are required for projects with FHWA as the lead action agency. WSDOT has developed extensive guidance and protocols for [ESA Section 7 Compliance](#). There are three primary types of documentation that can be completed: No Effect Letter or Assessment, Programmatic Biological Assessment, or Individual Biological Assessment. For each listed species evaluated, a BA must arrive at one of three conclusions:

- The action will have “no effect” on the species.
- The action “may affect, not likely to adversely affect” the species.
- The action “may affect, likely to adversely affect” the species.

BAs prepared for WSDOT must follow [specific guidance](#) developed through cooperative agreements and in collaboration with FHWA, NMFS, and USFWS. The guidance standardizes analyses, improves consistency and facilitates quality control reviews. The guidance is updated regularly and the website should be checked often for current guidance. Guidance includes:

- [BA Preparation Seminars](#) taught regularly by WSDOT.
- Consulting biologists on contract with WSDOT must be [qualified to write BAs](#) for WSDOT.
- Required methods for [analyzing the effects of stormwater](#) on ESA listed fish species.
- Identifying the extent of [aquatic and terrestrial noise effects](#).
- Required method for analyzing [delayed consequences](#) of a project.

BAs are submitted to the appropriate Service (USFWS or NMFS) depending on the species addressed. A non-federal agency (such as WSDOT) designated by a federal action agency may submit a BA for informal consultation. During informal consultation, the Service reviews the BA and ascertains if they concur with the effect determination conclusions. If the agency concurs in writing, then no further consultation is needed. The agency may request additional information before giving concurrence and the project biologist should respond to such requests within two weeks. However, if the Service does not concur with the effect determinations, the consultation enters formal consultation at the request of the federal action agency.

Formal consultation involves a “may affect, likely to adversely affect” determination for one or more listed species or designated critical habitats. Formal consultation packages are submitted to the Service(s) by the federal action agency (i.e., FHWA, FTA, U.S. Army Corps of Engineers). During formal consultation, NMFS/USFWS may recommend modifications to eliminate or reduce adverse effects. If effects can be reduced to an insignificant or discountable level, then consultation proceeds informally. Formal consultation ends when NMFS/USFWS issues a biological opinion (BO). The ESA mandates that BOs be completed within 135 days, although extensions are possible at the request of the consulting Service. However, formal consultations typically take much longer (averaging 300 days or more) and this timeline should be factored into project schedules. Questions on current consultation timelines can be directed to the Environmental Services Office [Fish and Wildlife Program](#).

- **Section 9** of the ESA prohibits a “take” of listed species. “Take” is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect or attempt to engage in such conduct” (1532(18)). Through regulations, the term “harm” is defined as “an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” Section 4(d) of the ESA allows for each service (USFWS and NMFS) to develop special rules (4(d) rules) to conserve species listed as threatened. These protections allow some take of threatened species that does not interfere with survival and recovery.

Section 4(d) protective rules for threatened species may apply Section 9 take prohibitions to threatened species. There may be an “exception” from the prohibitions if a program adequately protects listed species. In other words, the 4(d) rule can “limit” the situations to which the take prohibitions apply. Many of WSDOT maintenance activities are covered under existing Section 4(d) rules. All projects are required to conduct an ESA review. If during the review it appears that incidental take cannot be avoided, the project will be modified or a federal nexus identified for Section 7 consultation.

- **Section 10** of the ESA lays out guidance on permits that may be issued to authorize “take” as defined in Section 9.
 - Section 10(a)1(A) allows permits for take of listed threatened or endangered species for scientific research or purposes of propagation or survival.
 - Section 10(a)1(B) allows permits for incidental take of threatened or endangered species through the development and approval of Habitat Conservation Plan (HCP).

WSDOT has made ESA compliance an agency wide priority. Therefore, all WSDOT projects are required to comply with Section 9 of the ESA (prohibited acts). If the project has a federal nexus, such as federal funding, permitting, or is on federal lands, it is also subject to Section 7 of the ESA. Projects located on lands covered by an HCP must comply with rules defined in the plan. Standard maintenance operations are covered under Section 4(d) Rules for fish species under NMFS jurisdiction.

WSDOT identifies potential effects to listed or proposed species and critical habitats associated with a proposed action and then attempts to avoid, minimize, or eliminate these effects. For some actions, WSDOT conducts preliminary environmental reviews to identify likely effects early in the project design. This approach allows for design adjustments if effects to listed or proposed species or critical habitats are identified.

Analysis and documentation for MMPA

The [Marine Mammal Protection Act](#) establishes responsibilities for conservation and management to protect marine mammals. It establishes a moratorium on the taking and importation of marine mammals and marine mammal products. The MMPA defines “take” as “to hunt, harass, capture, or kill” any marine mammal or attempt to do so. WSDOT projects that involve marine waters, as well as the Columbia River up to Bonneville Dam, must consider potential effects of project activities and operation on marine mammals. If a project will impact marine mammals, a permit request for incidental harassment may be required from NOAA. Contact the Environmental Services Office [Fish and Wildlife Program](#) for additional information and guidance.

Analysis and documentation for MBTA and BGEPA

Two federal regulations administered by the USFWS mandate WSDOT's responsibilities to minimize impacts to protected bird species.

The [Migratory Bird Treaty Act \(MBTA\)](#) makes it unlawful to take, import, export, possess, sell, purchase, or barter any migratory bird, with the exception of the taking of game birds during established hunting seasons. The law also applies to feathers, eggs, nests, and products made from migratory birds. This law is of particular concern when birds nest on bridges, buildings, signs, illumination, and ferry dock structures. WSDOT has developed guidance on avoiding active nests during highway construction, bridge maintenance, bridge inspection, and other relevant activities to ensure compliance with the MBTA. See Regional or Headquarters biology staff on how to proceed if guidance is necessary.

The [Bald and Golden Eagle Protection Act \(BGEPA\)](#), similar to the MBTA, makes it unlawful to take, import, export, sell, purchase, or barter any bald or golden eagle, their parts, products, nests, or eggs. "Take" includes pursuing, shooting, poisoning, wounding, killing, capturing, trapping, collecting, molesting, or disturbing eagles. All WSDOT projects must comply with the BGEPA. To avoid potential disturbance to bald eagles, the National Bald Eagle Management Guidelines (guidelines) provide recommendations that will likely avoid take for a list of activities. WSDOT biologists and consultants address compliance with the BGEPA through a Bald Eagle database that documents compliance with the National Bald Eagle Management Guidelines. Contact the Environmental Services Office [Fish and Wildlife Program](#) to access the database. If take is unavoidable, contact regional or headquarters biologists on how to proceed.

State law also requires authorization to handle, kill, or collect wildlife of the state. The Washington State Department of Fish and Wildlife (WDFW) administers this law under [RCW 77.12.240](#) and applies to all wildlife. If you believe your project may require take of state wildlife, including birds, amphibians, reptiles, invertebrates, and mammals, contact the Environmental Services Office [Fish and Wildlife Program](#).

Analysis and documentation for Fishery Conservation and Management Act (Magnuson-Stevens Act)

Under the Fishery Conservation and Management Act of 1976, NMFS was given legislative authority to regulate the fisheries of the United States. In 1996, this Act was amended to emphasize the sustainability of the nation's fisheries and create a new habitat conservation approach called [Essential Fish Habitat \(EFH\)](#). In 1999 and 2000, the Pacific Fishery Management Council (PFMC) added provisions for the protection of EFH to three Fishery Management Plans (Coastal Pelagics, Groundfish, and Pacific Coast Salmon) in the Pacific Northwest. Federal agencies, and agencies working on their behalf, must consult with the NMFS on all activities, or proposed activities, authorized, funded, or undertaken by the agency that have or may have an adverse effect to EFH. The WSDOT [Biological Assessment Preparation Manual](#) contains a chapter detailing WSDOT procedures for completing EFH consultations with NMFS.

Construction in State Waters

A Memorandum of Agreement (MOA) between WSDOT and WDFW addresses transportation construction work in state waters. The purpose of the MOA is to establish and promote mutual agreement of the needs and mandates of the respective agencies, to facilitate the consistent and efficient administration of Hydraulic Project Approvals (HPAs) for transportation projects under [RCW 77.55](#) (Construction Projects in State Waters), and [WAC 220-660](#) (Hydraulic Code Rules); to ensure that fish passage at transportation projects is facilitated through [RCW 77.57](#) (Fishways, Flow, and Screening); and facilitate the implementation of the WSDOT Chronic Environmental Deficiency Program.

436.05 External engagement

436.05(1) Working on Public Lands

Specific regulations apply to projects located on public lands. These projects may include a federal nexus as described previously, or not. In either case, public land managers (US Forest Service (USFS), Bureau of Land Management (BLM), Washington State Department of Natural Resources (DNR), National Park Service (NPS), and others) may require additional review to meet their regulatory obligations and mission goals. WSDOT policy encourages coordination and cooperation with public land agencies and adherence to their regulations.

[National Forest Management Act](#) (NFMA, 16 U.S.C 1604 (g)(3)(B)) requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System. The [NFMA](#) applies directly to lands administered by the USFS, but also provides direction for BLM plans. The BLM and USFS have integrated NEPA requirements with their land management regulations. In 2008, the USFS implemented new planning rules that offer a more strategic approach to land management plan development, amendment, and revision, as well as expanded public involvement.

The USFS has developed forest specific “forest plans” which identify “species of concern” found within each forest. Species lists are comprised of several categories of species such as federally listed species, USFS sensitive species, survey and manage species, and state listed species. Forest plans can cover a wide range of species (mollusks, lichens, mammals, and others). Individual forest staff or regional foresters decide which designated species to include on its species of concern list. Project requirements are associated with species ranking. However, actions on federal land must always comply with the ESA (see [Section 436.03](#)).

[Northwest Forest Plan \(NWFP\)](#) is a management plan affecting federal forest lands within the range of the northern spotted owl in western Washington, Oregon, and northern California. The standards and guidelines set forth in this plan supersede any existing forest plans within the range of the spotted owl. All WSDOT projects occurring on federal forest lands within the range of the northern spotted owl must follow the standards and guidelines within the [NWFP](#).

WSDOT projects that involve federal forest lands must comply with regulations under the NFMA and the NWFP. The USFS policy (FSM 2670.32) states that all programs and activities will be reviewed in a Biological Evaluation (BE) to determine the potential effect of such proposed activities on sensitive species. In most cases, WSDOT BA formats and Programmatic documents can meet USFS and BLM requirements by adding in information on sensitive species. Further, the policy states that impacts of such activities must be avoided or minimized and any permitted activities must not result in a loss of viability or

create significant trends towards Federal listing. Similar to the USFS policy, the BLM Manual 6840 describes policy regarding special status species on BLM lands. Lists of special status and sensitive species for USFS and BLM as well as recent policy can be obtained from the [Interagency Special Status/Sensitive Species Program](#).

The regional or state office of the federal agency responsible for the affected federal lands should be contacted to obtain a species of concern (special status or sensitive) list, information on necessary surveys and other guidance on needed documentation. Depending on the federal land ownership, this could include, but is not limited to, coordination with BLM, USFS, or NPS. Before any ground disturbing activity can occur, surveys may be required for each managed species that may be present in the project area.

436.05(2) Working on Tribal Lands

Projects on tribal lands may be subject to tribal laws that regulate fish, wildlife, and habitat. Projects not on tribal land could affect treaty reserved resources or species of tribal significance. The appropriate tribal biologist should be contacted to discuss any regulations that may apply to the project. Contact the [WSDOT Tribal Liaison](#) for more information or guidance.

436.06 Internal Roles and responsibilities

436.06(1) Project Engineer

The Project Engineer provides a detailed project description to the Project Biologist.

436.06(2) Project Environmental Office

The Project Environmental Office is responsible for preparing HPA permit applications, HPA commitments and resolving HPA issues.

436.06(3) Project Biologist

The project biologist can be either a WSDOT biologist or consultant. The project biologist conducts early coordination with state and federal agencies, works with the Project Engineer in addressing and minimizing environmental issues associated with the project, and prepares and submits environmental documents. This role requires a thorough understanding of ESA, MMPA, MBTA, and other federal and state regulations, and detailed knowledge of species biology.

436.06(4) Directing Biologist

A Directing Biologist can be Contractor-direct staff or a consultant. The Directing Biologist is responsible for construction field duties such as fish moving, marine mammal monitoring, MBTA monitoring, or other project specific activities. A Directing Biologist is responsible for submitting Fish Exclusion Plans, Marine Mammal Monitoring Plans, Bird Protection Plans or other required plans, and following required protocols and plans required for work during construction activities. A WSDOT Project Biologist, Lead Biologist, or other qualified staff may supervise a Directing Biologist's work to verify the DB is meeting all protocol/permit requirements.

436.06(5) Region/Mode Lead Biologist

The Lead Biologist provides technical assistance to project biologists and conducts quality assurance and quality control for all environmental documents.

436.06(6) ESO Multi-Agency Permit Program

The Multi-Agency Permit Program manages the HPA program including GHPAs.

436.06(7) ESO Fish and Wildlife Program

The Fish and Wildlife Program facilitates early coordination meetings between the Project Biologist, Project Engineer and USFWS/NMFS liaisons. The Program provides technical assistance throughout the process and conducts additional quality assurance and quality control services.

436.06(8) ESO Liaison Program

The Liaison Program provides technical assistance early in the ESA consultation process, ensuring that the Project Biologist has addressed all ESA concerns prior to document submittal.

436.07 Applicable permits and approval process**436.07(1) Federal**

Endangered Species Act (ESA) – If a project may affect a proposed or listed species, or proposed or designated critical habitat, WSDOT must obtain a Letter of Concurrence, Biological Opinion, or Programmatic Consistency Finding from the USFWS or NMFS.

The Fish and Wildlife Program also maintains ESA Section 10(a)1(A) permits that cover handling of some listed species.

Fishery Conservation and Management Act (Magnuson-Stevens Act) – If a project may affect essential fish habitat, WSDOT must prepare and submit an Essential Fish Habitat Assessment to NMFS. This assessment is included in an individual biological assessment or programmatic form. When ESA species are not present, a stand-alone EFH assessment may be required.

Migratory Bird Treaty Act (MBTA) – The Fish and Wildlife Program applies for an annual MBTA permit from the USFWS that covers most compliance issues. The project biologist will determine if a project requires the preparation of a Bird Protection Plan. This document includes measures to avoid or minimize impacts to nesting birds.

Bald and Golden Eagle Protection Act (BGEPA) – If a project may affect an active or inactive eagle nest, the project biologist will prepare a Bird Protection Plan, and coordinate with the Fish and Wildlife Program to obtain authorization from the USFWS.

Marine Mammal Protection Act (MMPA) – Projects that may disturb marine mammals must apply for an Incidental Harassment Authorization from NMFS.

436.07(2) State

- WDFW [RCW 77.12.240](#) authorizes take of species under the jurisdiction of WDFW. The Fish and Wildlife Program applies for an annual permit from the WDFW that covers most compliance issues
- The Washington Department of Fish and Wildlife (WDFW) requires HPA permits for hydraulic projects in, over, or near state waters [RCW 77.55](#). WDFW defines a hydraulic project as “construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state.” [RCW 77.55.011](#) HPA permit provisions include measures that avoid and minimize impacts to fish life and fish habitat as WSDOT performs authorized activities. Provisions also cover requirements for notification, reporting, and compliance. Additional information about project activities that trigger HPAs and the permitting process is available on the [WDFW Fish](#) webpage.
- The Washington Deparns includng, and compliance. Additional information about project activities that trigger HPAs and the permitting process is available on the WDFW website and the WSDOT [Fish](#) webpage.
- Shoreline Management Acts (SMA). For more details see [Chapter 431](#).

436.07(3) Local

- Local Comprehensive Plans and Critical Area Ordinances (CAO) – For more details see [Chapter 455](#).

For more information on the permitting process, see [Chapter 500](#).

436.08 Abbreviations and acronyms

BA	Biological Assessment
BE	Biological Evaluation
BGEPA	Bald and Golden Eagle Protection Act
BLM	Bureau of Land Management
BMP	Best Management Practice
BO	Biological Opinion
CAO	Critical Area Ordinance
EFH	Essential Fish Habitat
ESA	Endangered Species Act
GHPA	General Hydraulic Project Approval
HPA	Hydraulic Project Approval
MBTA	Migratory Bird Treaty Act
MMPA	Marine Mammal Protection Act
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NWFP	Northwest Forest Plan

PFMC	Pacific Fishery Management Council
RRMP	Regional Road Maintenance Program
Service(s)	United States Fish and Wildlife Service and National Marine Fisheries Service
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
WDFW	Washington State Department of Fish and Wildlife

436.09 Glossary

Candidate Species – Any species of fish, wildlife, or plant considered for possible addition to the list of endangered and threatened species. These are taxa for which NMFS or USFWS has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions.

Critical Habitat – Under the Endangered Species Act, (1) the specific areas within the geographic area occupied by a federally listed species on which are found physical or biological features essential to conserving the species, and that may require special protection or management considerations; and (2) specific areas outside the geographic area occupied by a federally listed species when it is determined that such areas are essential for the conservation of the species.

Effects of the Action (ESA) – Effects that are caused by the proposed action and are later in time but are still reasonably certain to occur. ([50 CFR 402.02](#))

Endangered Species – Any species which is in danger of extinction throughout all or a significant portion of its range.

Federal Nexus – A project with a federal nexus either has federal funding, requires federal permits, or takes place on federal lands.

Habitat – The physical or natural environment where a species or population may live.

Incidental Take (ESA) – Take of listed species that results from, but is not the intention of, carrying out an otherwise lawful activity.

Jurisdiction – Governing authority which interprets and applies laws and regulations.

Listed Species – Any species of fish, wildlife, or plant which has been determined to be endangered or threatened under Section 4 of the ESA.

Programmatic Biological Assessment – A biological assessment that establishes conditions allowing multiple actions on a program, regional or other basis to proceed through streamlined consultation processes with the Services.

Proposed Species – Any species of fish, wildlife, or plant that is proposed by NMFS or USFWS for federal listing under Section 4 of the ESA.

Take – Defined under the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct,” including modification to a species’ habitat.

Threatened Species – Any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Viability – Ability of a population to maintain sufficient size so it persists over time despite normal fluctuations in numbers; usually expressed as a probability of maintaining a specific population for a defined period.

Watershed – Basin including all water and land areas that drain to a common body of water.

Chapter 446 Noise

446.01	Introduction
446.02	Applicable statutes, regulations, executive orders, and agreements
446.03	Noise considerations during project development
446.04	Analysis and documentation requirements
446.05	External engagement
446.06	Internal roles and responsibilities
446.07	Applicable permits and approval process
446.08	Mitigation
446.09	Abbreviations and acronyms
446.10	Glossary
446.11	Exhibit

446.01 Introduction

Noise is defined as unwanted sound. The Federal Highway Administration (FHWA) developed noise regulations to investigate traffic noise impacts in areas where humans exist adjacent to highways and effective control of the undesirable effects of traffic noise. The regulation requires investigation of actions that have the potential to alter the existing traffic noise environment such as the proposed construction of a new highway, significantly changing the horizontal or vertical alignment of an existing highway, increasing the number of through-traffic lanes.

Noise levels near roadways depend on six variables:

1. Traffic volume
2. Traffic speed
3. Percent of heavy trucks
4. Distance from the roadway
5. Intervening topography
6. Atmospheric conditions

Generally, traffic noise increases with heavier traffic volumes, higher speeds, and more heavy trucks.

WSDOT uses several strategies to control traffic noise at nearby noise sensitive receivers:

- Construct noise barriers (walls or earthen berms)
- Reduce traffic speeds
- Coordinate with local agencies to prevent “noise sensitive” development near highways
- Preserve existing buffer zones and beneficial topographic features
- Support local jurisdictions to establish principal routes for buses and trucks

See the noise study process flow chart in Exhibit 446-1 below and for detailed information see WSDOT’s [Noise](#) webpage.

446.02 Applicable statutes, regulations, executive orders, and agreements

446.02(1) *Federal*

- 42 United States Code (U.S.C.) 4321 National Environmental Policy Act of 1969 (NEPA)
- Federal Noise Control Act ([42 U.S.C. 4901](#)) and companion legislation ([23 U.S.C. 109\(i\)](#))
- FHWA [Procedures for Abatement of Highway Traffic Noise And Construction Noise \(23 CFR 772\)](#)

446.02(2) *State*

- State Noise Legislation ([Chapter 70A.20 RCW](#)) and implementing regulations

The Washington State Department of Ecology (Ecology) is responsible for implementation under the following regulations:

- [Chapter 173-58 WAC](#) – Establishes standard procedures for measuring sound levels of sources regulated by Ecology, including, but not limited to, environmental noise, motor racing vehicles, construction, float planes, and railroads.
- [Chapter 173-60 WAC](#) – Establishes the maximum noise levels allowed in different environments and Environmental Designations for Noise Abatement (EDNA) standards as measured at the property line. Highway traffic is exempt from this regulation, but it does apply to highway construction noise at night from 10 p.m. to 7 a.m.
- [Chapter 173-62 WAC](#) – Sets noise emission standards for new motor vehicles operating on public highways and provides methods for evaluating motor vehicle noise levels.

446.02(3) *Local*

Local Noise Ordinances – Noise from construction or maintenance on transportation facilities during nighttime hours (typically, 10 p.m. to 7 a.m.) are subject to local ordinances and may require a noise variance or exemption.

446.03 Noise considerations during project development

446.03(1) *Highway Projects*

Planning

The federal lead agency may adopt and use planning products in the environmental review process of a project, even where planning begins at the local level. This can provide an opportunity for [noise-compatible land use](#) planning or reconsideration of project alternatives.

Scoping

Determine if the project is a Type 1, Type 2, or Type 3 project according to the definitions in [23 CFR 772.5](#) and [WSDOT Traffic Noise Policy and Procedures \(2020\)](#) or identify what information is needed to make this determination during design phase. Refer to the current retrofit barrier priority list and determine whether there are any retrofit (Type 2) noise barriers within the project corridor.

If the project is Type 1 and there is high density housing within the project corridor that do not already have a noise wall, conduct a noise screening analysis following [WSDOT Traffic Noise Policy and Procedures \(2020\)](#) to determine potential need for noise barriers. This information can help to provide more accurate project cost estimates prior to design phase.

Recommend including replacement of access doors on existing noise walls within projects as necessary.

Design

The intent of the [WSDOT Traffic Noise Policy and Procedures \(2020\)](#) is to minimize and avoid noise impacts from transportation systems and facilities. Many of the Technical Guidance documents in [Section 446.02](#), above, also function as Policy Guidance.

Related guidance is available in the following documents.

1. **FHWA Highway Traffic Noise Analysis and Abatement, Policy and Guidance** – The basis for all state noise policies and the accompanying guidance used to support state DOT policy development.
 - Federal Rule [23 CFR 772](#), July 2010
 - [Highway Traffic Noise: Analysis and Abatement Guidance](#) FHWA-HEP-10-025, December 2011
 - [FHWA Noise Measurement Handbook](#) – Final Report 2018.
 - [FHWA Consideration of Existing Noise Barrier in a Type 1 Noise Analysis](#) – FHWA-HEP-12-051
2. **FHWA Guidance on Construction Noise** – FHWA guidance on highway construction noise from the [FHWA Special Report Highway Construction Noise: Measurement, Prediction, and Mitigation](#) (May 2, 1977). Additional information can be found in the [FHWA Construction Noise Handbook](#) (August 2006).
3. **FHWA Guidance on Pavement as a Noise Abatement Measure** – Outlines when states can consider the use of quieter pavements for noise abatement (2016).
4. **FHWA Environmental Review Toolkit** – Contains links to numerous references on highway construction and traffic noise analysis and abatement.
5. **FHWA Recommended Best Practices for the Use of TNM** – Provides TNM users with the best sources for information and input data that are critical to the development of an accurate model of highway traffic noise (2015).
6. **NCHRP Supplemental Guidance on the Application of FHWA's TNM** – Provides State Department of Transportation staff and other transportation professionals with technical guidance on using TNM (2014).

WSDOT guidance

1. [WSDOT Traffic Noise Policy and Procedures \(2020\)](#) – Both technical procedures and policy guidance for addressing roadway traffic and construction noise is included in the document.
2. [Guidance for Noise Modeling \(2020\)](#) – Technical procedures and guidance for traffic noise modeling using FHWA's Traffic Noise Model (TNM).
3. [Biological Assessment Manual](#) – Evaluation of noise impacts for fish and wildlife is located in the *Biological Assessment Manual*, Part 2: Guidance on Specific Biological Assessment Topics, under Chapter 7: Noise Impact Assessment.
4. [Roadside Manual](#) – Provides additional information on safety, visual quality, and maintenance that may be useful for designers of noise barriers.

5. **Design Manual Chapter 1130** – Gives general guidelines that local jurisdictions and private developers should follow when considering development and noise impacts on state highways.
6. **Design Manual Chapter 1600** – Provides information on design choices for designers to use to minimize potential noise impacts from rumble strips and quieter options where needed.

446.03(2) Other Transportation Projects

FTA lead/co-lead projects

For many projects involving passenger rail, transit, and/or park and ride facilities, FTA criteria applies as outlined in *FTA Transit Noise and Vibration Impact Assessment Manual*, September 2018 (Report No. 0123). Noise studies are also required for these facilities.

An [Interagency Agreement](#) for coordinated noise analysis and abatement policy and procedures has been developed by FTA, FHWA, WSDOT, and Sound Transit. The current agreement (as of February 2001) documents an agreed upon noise methodology and criteria for integrated highway and transit projects. A copy of the agreement is included in [Appendix B](#) of this manual.

FTA technical guidance for mass transportation noise analysis is available in the *FTA Transit Noise and Vibration Impact Assessment Manual*. The [FTA General Noise Assessment Spreadsheet](#) is designed as an aid in using the FTA General Noise Assessment Procedures.

FRA lead/Co-lead projects

Evaluation of railroad sound levels is regulated under [42 U.S.C. 4916](#) and [Chapter 173-58 WAC](#). Rail projects may require a vibration analysis. Rail projects may also require a horn noise analysis if a new rail crossing is created, or an existing crossing is modified to introduce new horn warning signals. A process to address train horn noise and establish community quiet zones is now available through the Federal Rail Administration (FRA) [Train Horn Rule and Quiet Zones](#) webpage.

WSF projects

Ferry projects are considered multimodal facilities and are typically addressed under FTA criteria and policy for noise and vibration. Noise studies following FHWA criteria may also be required for these facilities. Ferry projects that generate underwater noise (e.g., pile driving in water) may require an Incidental Harassment Authorization for marine mammals. Biological Assessments (BA) should address noise impacts to species listed under the Endangered Species Act.

Ferry vessels are regulated for noise under [Chapter 79A.60 RCW](#).

For more information on potential impacts to fish and wildlife, see [Chapter 436](#).

WSDOT airports

WSDOT [airports](#) have [noise compatible land use guidelines](#).

446.03(3) Construction, Maintenance, and Operations

Construction

WSDOT shall ensure Contractor complies with noise variance conditions set by local jurisdictions for night work. Respond to community complaints in a timely manner. Provide Design Builder with timely comments on potential design changes and/or updated noise study to ensure that they achieve the same results as in the original environmental documentation.

For more information on environmental commitments during construction see [Chapter 600](#).

Maintenance and Operations

Repair noise wall panels damaged by errant vehicles, paint over graffiti.

446.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

446.04(1) Analysis and documentation for NEPA

When noise impacts are found or anticipated on highway projects a full noise analysis and report must be completed following [WSDOT Traffic Noise Policy and Procedures \(2020\)](#). Noise analysis, where there are federal funds or a federal nexus associated with the project, must include the entire project corridor and both sides of the highway regardless of whether there are Type 1 activities along the entire project corridor or not.

If no noise impacts are anticipated on a highway project a noise screening analysis can be conducted using a 'straight-line' model or under specific conditions the [FHWA Traffic Noise Screening Tool \(TNST\)](#) can be used following [WSDOT Traffic Noise Policy and Procedures \(2020\)](#). A simple memorandum report format is acceptable.

446.04(2) Analysis and documentation for SEPA only (No federal nexus)

If there are no federal funds or no federal nexus associated with the project, the same applies as it does for NEPA above, however, in [Appendix 1 of WSDOT Traffic Noise Policy and Procedures \(2020\)](#) there is an option to analyze only those areas and only the side of the roadway where Type 1 activities are occurring on the project. For projects with no federal funds or federal nexus, areas where no Type 1 activities are occurring may be eliminated from the analysis and reporting.

446.04(3) Analysis and documentation for projects under FTA/FRA under NEPA/SEPA

For projects involving passenger rail, transit, and/or park and ride facilities, FTA criteria applies as outlined in FTA [Transit Noise and Vibration Impact Assessment Manual](#) for both NEPA and SEPA documentation. Reporting under NEPA would include a full noise and vibration report and a simpler memorandum format could be used under SEPA reporting.

446.05 External engagement

446.05(1) *Methods of public outreach for noise abatement*

The WSDOT [Air Quality, Noise and Energy Program manager](#), with the project engineering office, will decide on the appropriate method and level of initial public involvement.

Depending on the size, controversy, and impact of the project, public outreach may include:

- Open houses
- Community group briefings
- Environmental document hearings
- Mailers
- Workshops
- Community polling
- Joint WSDOT/Citizen committees

For communities where noise levels are above the impact criteria and abatement is not proposed for construction and there is significant community concern about noise, the project design team may augment its community involvement activities to conduct specific outreach. This is intended to determine if there are other possible low-cost solutions to address the community concerns within the existing project budget ([WSDOT Traffic Noise Policy and Procedures \(2020\), Appendix 2](#)). These would not be eligible for federal-aid highway funds.

It is generally assumed that noise abatement is desired by a community, however, if there is opposition to the proposed abatement by the community the project engineering office will be responsible for:

- Ensuring that the department is aware of these concerns
- Documenting the concerns
- Considering changes to the design if possible
- Responding to those who expressed concerns
- Working with the WSDOT [Air Quality, Noise and Energy Program manager](#), conduct a poll of eligible property owners and residents

446.06 Internal roles and responsibilities

446.06(1) *Region/modal environmental manager*

Final review of noise discipline report and NEPA/SEPA documentation.

446.06(2) *Project engineer office*

The Project Office provides traffic data, MicroStation design files including alignments, cross sections, contours, and structures out to 500 feet from the edge of pavement to the noise analyst. The Project Office reviews the draft and final noise discipline report to ensure that it aligns with the project description, and they incorporate any noise walls recommended for construction into the final design.

For some larger projects (e.g., Megaprograms) the staff editor performs a final editorial review. If there are any conflicts with construction of the proposed noise wall (e.g., buried utilities or overhead powerlines), the Project Office communicates these to the noise analyst. If the noise wall requires changes in the alignment due to these conflicts the noise analyst must update the noise study.

446.06(3) Region environmental coordinator

The environmental coordinator reviews the draft and final noise discipline report to ensure that it aligns with the project description, ensures the format is consistent with the other discipline reports, and checks for grammatical errors.

446.06(4) Environmental services office

The [Air Quality, Noise and Energy Program manager](#) reviews the draft and final noise discipline report to ensure that it is consistent with the FHWA regulations and [WSDOT Traffic Noise Policy and Procedures \(2020\)](#), that the methodology is technically correct, and checks for grammatical errors. During the final design stage, the Air Quality, Noise and Energy Program manager ensures that the designed top of wall elevation is consistent with what was proposed in the noise discipline report. The Program manager also leads all consultations with FHWA if needed to clarify any policy or regulatory questions or changes.

The Air Quality, Noise and Energy specialists conduct air quality and noise and energy studies, provide technical assistance and advice pertaining to air quality and noise and vibration issues on projects, work with the environmental coordinator and the Project Office to obtain nighttime noise variances or exemptions for night work in various jurisdictions, and work with Local Programs provide technical reviews of air quality and noise reports.

446.07 Applicable permits and approval process

The only permits required for noise are variances or exemptions from state and local noise regulations for construction and maintenance activities during nighttime hours ([Chapter 173-60 WAC](#)). Nighttime noise limits are typically in effect between 10 pm and 7 am but vary by jurisdiction or type of land use adjacent to the construction noise source. The application process will vary by jurisdiction and tribe. Contact the [Air Quality, Noise and Energy Program manager](#) for information or assistance.

For more information on the permitting process, see [Chapter 500](#).

446.08 Mitigation

Avoiding or minimizing noise impacts through the design process is always the first choice, but it is not viable in all locations. Where noise impacts are present, a noise barrier or berm near the source or the receiver provides the most efficient form of noise mitigation (abatement). Regardless of the type of noise abatement proposed, it must meet both feasibility and reasonableness criteria to be considered noise abatement and be eligible for federal funds. Any noise abatement constructed is required to be maintained in-perpetuity.

For projects where noise impacts occur and noise abatement does not meet the feasibility and reasonableness criteria and there are substantial concerns from the community regarding noise, other options can be considered that will not provide noise reduction but can either give the perception of noise reduction or address other community issues using a 'green to gray' approach ([WSDOT Traffic Noise Policy and Procedures \(2020\)](#), [Appendix 2](#)). These community-scale options are intended to enhance community participation. They are not eligible for federal funds and must be within available project scopes and budgets.

WSDOT cannot use quieter pavement or insulation of non-institutional and non-public use facilities.

446.09 Abbreviations and acronyms

BA	Biological Assessment
CFR	Code of Federal Regulations
DOT	Department of Transportation
EDNA	Environmental Designation for Noise Abatement
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
MAP-21	Moving Ahead for Progress in the 21st Century Act
NEPA	National Environmental Policy Act
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
TNM	Traffic Noise Model
U.S.C.	United States Code
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation
WSF	Washington State Ferries

446.10 Glossary

Abatement – Reduction in degree or intensity sometimes referred to as noise mitigation.

Approach – In Washington State defined as within one decibel of the federal noise abatement criteria (NAC).

Barrier – A solid wall or earth berm located between the roadway and receiver location that provides noise reduction.

Design Year – The future year used to estimate the probable traffic volume for which a highway is designed, usually 20 years from the beginning of construction for WSDOT projects.

Environmental Designation for Noise Abatement (EDNA) – an area or zone within which maximum permissible noise levels are established.

Existing Noise Level – Modeled traffic noise level(s) based on the Existing Year peak hour traffic data. Current noise measurements can also be used as Existing Year where no roadway exists.

Impacted Community – Noise sensitive receptor sites (such as schools or neighborhoods) where people would be exposed to substantially increased noise levels or noise levels that approach abatement criteria.

Noise Abatement Criteria (NAC) – Noise levels that when approached or exceeded are traffic noise impacts. NAC vary by activities and/or land use.

Noise Compatible Land Use – Planning of non-noise sensitive land use development and activities adjacent to sources of high noise levels.

Roadway – The entire width between the right of way boundary lines of a publicly maintained travel way when any part thereof is open to the public use for purposes of motorized vehicular travel. May also be referred to as a street, road, or highway.

Traffic Noise Impacts – When the predicted Design Year traffic noise levels approach (within 1 dBA) or exceed the NAC or when the predicted Design Year traffic noise levels substantially exceed (≥ 10 dBA) the Existing Year noise levels.

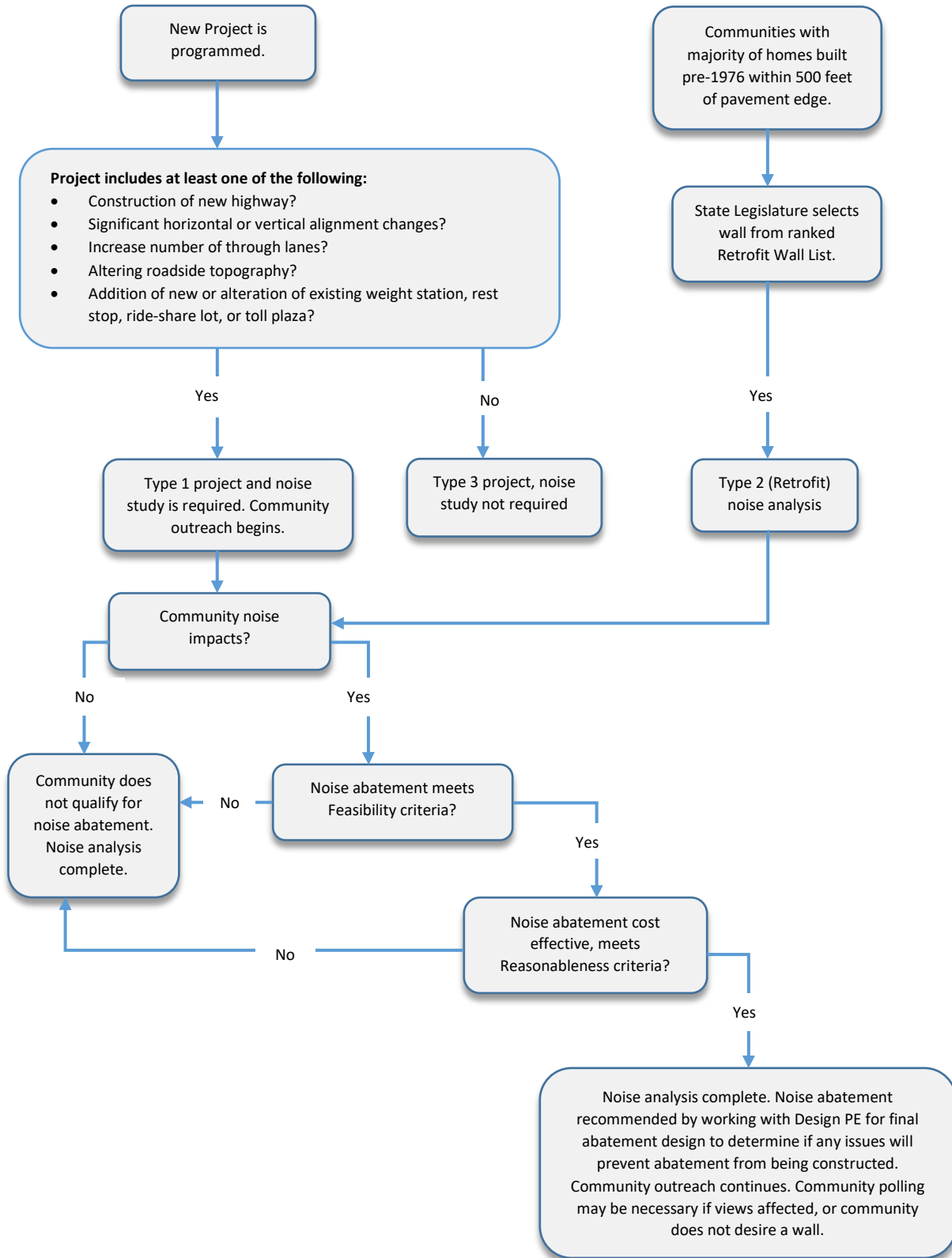
Type 1 Project – Construction of a new highway; significant realignment of an existing highway (either horizontal or vertical realignment); increasing the number of through traffic lanes on an existing roadway; or changing the near road topography to create a new line-of-sight from noise sensitive receivers to the roadway.

Type 2 Project (noise wall retrofit) – Noise abatement on an existing highway targeting residences that existed before May 14, 1976, when traffic noise evaluations were first required.

Type 3 Project – Federal projects that do not meet the requirements of a Type 1 or Type 2 project and do not require a noise analysis.

446.11 Exhibit

Exhibit 446-1 Traffic noise study process



Chapter 447 Hazardous materials (HazMat) and solid waste

447.01	Introduction
447.02	Applicable statutes, regulations, executive orders, and policies
447.03	Considerations during project development
447.04	Analysis and documentation requirements
447.05	External engagement
447.06	Internal roles and responsibilities
447.07	Applicable permits and approval process
447.08	Mitigation
447.09	Abbreviations and acronyms
447.10	Glossary

447.01 Introduction

This chapter contains policies for dealing with known or unknown hazardous and regulated materials (HazMat) encountered on WSDOT right-of-way (ROW) during the planning, scoping, property acquisition, and construction stages of projects. WSDOT conducts hazardous materials investigations that meet regulatory requirements as early as possible in the project development process. WSDOT has a responsibility to consider HazMat issues that may impact a WSDOT project when encountered or improperly managed throughout the lifecycle of a project in order to:

- Provide increased safety by mitigating potential dangers to WSDOT personnel, contract employees, the public and the environment from exposures to hazardous or regulated materials.
- Reduce the likelihood of project redesign, delay, or termination and costs increases.
- Reduce the possibility and costs of litigation against WSDOT during both design and construction.
- Minimize and manage agency cleanup risk and liability.
- Identify possible contamination issues that will influence WSDOT's decision to avoid or minimize property acquisition by a project or appropriate pricing of existing contamination during the Real Estate Services Right of Way appraisal process.

WSDOT must abide by numerous federal, state, and local regulations that govern the handling, transporting and disposal of HazMat. WSDOT projects have the potential to encounter or generate solid waste, which may not designate as hazardous or dangerous waste.

Visit the WSDOT [HazMat](#) webpage for additional information and procedural guidance on addressing HazMat issues.

447.02 Applicable statutes, regulations, executive orders, and policies

447.02(1) **Federal**

- [15 U.S.C. 2601](#) Toxic Substances Control Act
- [42 U.S.C. 7401 et seq.](#) Clean Air Act
- [40 CFR Parts 61 to 71](#) National Emission Standards for Hazardous Air Pollutants
- [40 CFR 763](#) Asbestos Hazard Emergency Response Act
- [29 CFR 1926.1101](#) Occupational Safety and Health Act Asbestos
- [40 CFR Part 112](#) Oil Pollution Prevention
- [40 CFR Part 312](#) All Appropriate Inquiries
- [29 U.S.C. 651 et seq.](#) Occupational Safety and Health Act
- [33 U.S.C. 1251 et seq.](#) Clean Water Act
- [42 U.S.C. 300f et seq.](#) Safe Drinking Water Act
- [42 U.S.C. 4321 et seq.](#) National Environmental Policy Act
- [42 U.S.C. 6901 et seq.](#) Resource Conservation and Recovery Act
- [42 U.S.C. 9601 et seq.](#) Comprehensive Environmental Response, Compensation, and Liability Act

447.02(2) **State**

- [Chapter 173-160 WAC](#) Minimum Standards for Construction and Maintenance of Wells
- [Chapter 173-200 WAC](#) Water Quality Standards for Groundwaters of the State of Washington
- [Chapter 173-201A WAC](#) Water Quality Standards for Surface Waters of the State of Washington
- [Chapter 173-204 WAC](#) Sediment Management Standards
- [Chapter 173-303 WAC](#) Dangerous Waste Regulations
- [Chapter 173-340 WAC](#) Model Toxics Control Act
- [Chapter 173-350 WAC](#) Solid Waste Handling Standards
- [Chapter 173-360 WAC](#) Underground Storage Tank Regulations
- [Chapter 197-11 WAC](#) State Environmental Policy Act
- [Chapter 296-62 WAC](#) General Occupational Health Standards
- [Chapter 296-62-077 WAC](#) Labor and Industries Asbestos Regulations
- [Chapter 296-155 WAC](#) Labor and Industries Safety Standards for Construction Work
- [Chapter 296-843 WAC](#) Hazardous Waste Operations
- [P 1018](#) *Environmental Policy Statement*
- Secretary's Executive Order [E 1033.03](#) *Employee Safety*
- Washington State Department of Ecology (Ecology) Regional Offices (NW, Central, and Eastern) when there is no local Clean Air Agency

447.02(3) Local

- Asbestos [Puget Sound Clean Air Agency](#)
- Asbestos [Olympic Region Clean Air Agency](#)
- [Spokane Clean Air Agency](#)
- 476 Standards for Asbestos Control, Demolition and Renovation [Southwest Region Clean Air Agency](#)
- [Article 3.07 Asbestos Control Yakima County Clean Air Agency](#)
- Regulation 1, Article 8 Asbestos [Benton County Clean Air Agency](#)
- Section 570 – Asbestos Control Standards [Northwest Clean Air Agency](#)

447.03 Considerations during project development**447.03(1) Planning**

Conduct a screening that will inform planners of documented contaminated sites in a general area. This will allow planners to consider other potential options that may be evaluated for a WSDOT facility.

Region planning staff coordinates with the Region or ESO Hazardous Materials Program to screen for documented contaminated sites in a general area. At a minimum, the

Hazardous Materials Program will access and review Ecology's [Facility Site webpage](#) and share categories of hazardous material sites in a planning area.

447.03(2) Scoping

Region staff determine how to proceed with hazardous materials documentation based on the likelihood that a project will encounter contamination. This is a professional judgment made during project scoping when staff completes the Environmental Review Summary (ERS) in the Project Summary Database ([Section 300.02](#)).

Region staff answer the questions in the ERS to determine if further investigations should be scoped into the project to identify potential HazMat issues at a site or within the project area. They also use the information to assess potential project impacts (to the project budget and schedule), mitigation, and required permits or approvals. Region staff are encouraged to work with HazMat staff within the Region or contact ESO Hazardous Materials Program if they have questions.

Cleanup costs for contaminated properties can be extraordinary and the cleanup can take many years to complete. For this reason, WSDOT seeks to minimize or avoid cleanup sites.

WSDOT's Geotechnical Team will work with Headquarters/Region Environmental Team on potential properties that may require borings to determine soil types, groundwater depths, or if contamination exists in the soil or groundwater. Many of these wells are temporary. Please see well decommissioning requirements for the removal of piezometers and the decommissioning of wells (see *Geotechnical Design Manual* [Chapter 3](#)).

Additional information regarding the ERS Hazmat documentation is located at the WSDOT [HazMat](#) webpage.

447.03(3) **Design**

The project design team initiates the need for hazmat and other environmental review with project specific information that will provide details to all Region environmental staff to complete an Environmental Review Summary (ERS). The Region staff analyzes the ERS information and determines if additional investigations are necessary.

Types of further investigations will be discussed later in this chapter within both Sections 447.03 and 447.04 'Analysis and Documentation Requirements' and may include Hazardous Materials Discipline Reports for NEPA/SEPA, Phase I and Phase II Environmental Site Assessments, and Good Faith Inspection reports.

Hazardous Materials Discipline Reports for NEPA/SEPA

WSDOT conducts hazardous material investigations that meet regulatory requirements as early as possible in the project development process.

WSDOT identifies potentially contaminated sites through research and environmental documentation completed during the NEPA/SEPA process to determine if a right-sized discipline report will be required. There are three levels of right-sized discipline reports based on project complexity:

- Comprehensive discipline report
- Standard discipline report
- Technical Memorandum

If the region staff classify a project as a NEPA Categorical Exclusion, the information from the ERS is transferred to the Environmental Classification Summary (ECS) and becomes the hazardous materials NEPA documentation for the project ([Section 400.09\(1\)](#)). Although both forms ask the same questions, the supporting information and level of detail required in an ECS is greater, as project design changes and details of any contamination within a project have been identified.

During the Design phase of a project WSDOT staff follows the Design Environmental Compliance Assurance Policy (ECAP) for any suspected or known non-compliant event as described in *Design Manual* [Section 225.05\(1\)](#).

Additional information regarding the ECS Hazmat documentation is located at the WSDOT [HazMat webpage](#).

Phase I and II Environmental Site Assessments

WSDOT performs investigations called Environmental Site Assessments (ESAs) on known or suspected contaminated properties identified in the initial ERS review and/or the right-sized discipline report. The ESAs may be performed either independent of, or in conjunction with, the NEPA/SEPA process; however, ESAs are not necessary to satisfy NEPA/SEPA environmental documentation requirements. The ESAs are required to be completed before any acquisitions of real property for a highway capital construction project as described in *Design Manual* [Chapter 510](#) and *Right of Way Manual* [Chapter 5](#) and [Chapter 6](#). The extent and potential liability must be considered before acquisition as outlined in DM [510.01](#) The Environmental Protection Agency (EPA) recognizes two American Society for Testing and Materials (ASTM) International Standards, which WSDOT uses to meet compliance when conducting ESAs:

- Phase I ESA (ASTM E 1527-21, as updated)
- Phase II ESA (ASTM E 1903-19, as updated)

The project design team initiates the process by determining whether it is likely that the project will permanently or temporarily acquire either all or a portion of a parcel.

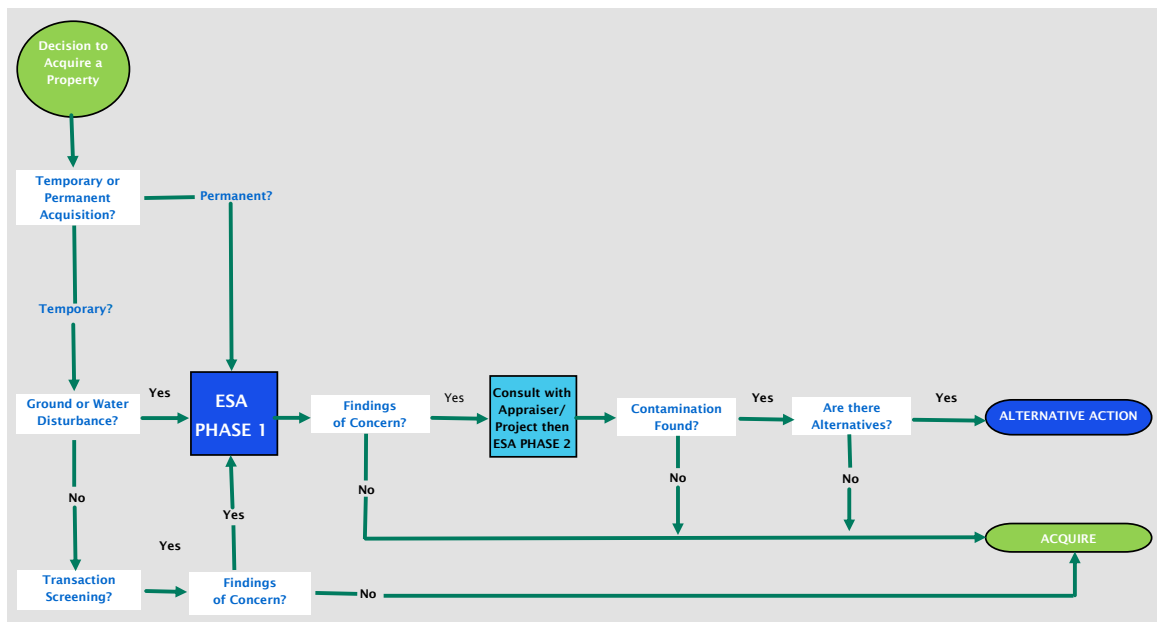
Environmental **due diligence assessments** occur in different scales and levels of detail based on this determination:

Transaction Screening: Lowest level of detail, used in the case of a temporary acquisition where there is no ground or water disturbance anticipated as a result of project related actions.

Phase I Environmental Site Assessments: Used in the case of a permanent acquisition or temporary acquisition where there is ground or water disturbance to determine whether there will be a finding of concern, or used if a Transaction Screening results in a finding of concern.

Phase II Environmental Site Assessments: Highest level of detail, used if a Phase I assessment results in a finding of concern. The sequence and timing of these assessments are related to the type of acquisition and project activities envisioned, and state of progress in design.

Exhibit 447-1 Due Diligence Assessments



At a minimum, a project footprint or defined area needs to be established to estimate the scope of acquisitions that are involved. An evaluation may proceed at an earlier stage as part of a formal or otherwise well-reasoned risk analysis process. [Right of Way Manual Chapter 6](#).

These types of further investigations will be discussed later in this chapter within both [Section 447.03](#) and [Section 447.04](#) 'Analysis and Documentation Requirements' and may include Hazardous Materials Discipline Reports for NEPA/SEPA, Phase I Environmental Site Assessments (for property purchases) and Phase II Environmental Site Assessments, and Good Faith Inspection reports.

If the region staff classify a project as a NEPA Categorical Exclusion, the information from the ERS is transferred to the Environmental Classification Summary (ECS) and can become the hazardous materials NEPA documentation for the project ([Section 300.04](#)). Although both forms ask the same questions, the supporting information and level of detail required in an ECS is greater and may contain additional detailed reports as design changes and initial contamination identified within the project may have changed.

During the Design phase of a project WSDOT staff follows the Design Environmental Compliance Assurance Policy (ECAP) as described in *Design Manual Section 225.05(1)*. Additional information regarding the ECS Hazmat documentation is located at the WSDOT [HazMat](#) webpage.

Good Faith Inspections

WSDOT performs pre-bid Good Faith Inspections (GFI) on all highway capital construction projects to determine whether the project will disturb asbestos containing materials (ACM). Depending on the project, the GFI may also identify additional materials (e.g., lead) present that would require special handling for disposal. The GFI must be performed by an accredited Asbestos Hazard Emergency Response Act (AHERA) Building Inspector. The AHERA Building Inspector must be a WSDOT employee, or a consultant retained by WSDOT. When a site visit and test sample collections will be performed, the AHERA Building Inspector determines the level of inspection necessary and only an accredited AHERA Building Inspector may collect test samples. The AHERA Building Inspector also must write a concise GFI report that summarizes the inspection and findings and provide disposal options for contractors/Design Builders (DBs) to include in their bids.

WSDOT must provide the GFI report as part of the bid package prior to bid opening, as described in *Plans Preparation Manual Section 700.01(10)*, satisfying the Communications of Hazards requirement.

Additional guidance to assist with implementing this GFI policy is located within the Preliminary Design tab on the WSDOT [HazMat](#) webpage.

Planning for sediment management

Projects that occur in marine or freshwater environments, including ferry terminals and bridge crossings, may need to evaluate and characterize sediment for chemical contamination.

WSDOT uses the Sediment Management Standards ([Chapter 173-204 WAC](#)), promulgated by Ecology, to sample and evaluate sediments that may be disturbed. The sediment regulations impose a number of specific requirements, including special sampling and laboratory analysis procedures that make early coordination critical to WSDOT project schedules.

If a project will involve dredging, WSDOT also follows the requirements of the Dredged Material Management Program (DMMP) administered by the US Army Corps of Engineers. The DMMP provides criteria for in-water disposal of dredged sediment. If the sediments are not suitable for open-water disposal, they will need to be disposed of at an appropriate upland disposal facility.

447.03(4) Construction

Managing HazMat During Construction

WSDOT contractors and Design Builders (DB) are responsible for the safe management and disposal of known or suspected HazMat when encountered at a site, as described by Contract Plan Sheets or the use of a Special Provision, WSDOT contractors/DBs should manage HazMat in a cost-effective manner in accordance with all federal, state, and local laws, regulations, and standards.

Even with advanced planning, WSDOT does not know the entire history of every site, and encounters of unknown hazardous or regulated materials that may occur. WSDOT remains prepared for unexpected situations during construction by having policies and procedures in place for the following:

- Encountering unknown underground storage tanks (USTs)
- Suspect ACM not previously identified
- Lead based paint
- Encountering unknown contamination
- Responding to spills /releases from construction activities
- Reporting spills caused by the traveling public

If the contract does not address unknown encounters, the PE works with the region environmental office, a consultant, or ESO HazMat Program and the contractor/DB to coordinate the management of these materials. The WSDOT contractors/DBs are also responsible for managing all HazMat that is brought or generated on site during all construction activities.

These unexpected situations require rapid response actions to minimize impacts to the environment and the project work. WSDOT staff follows the Construction Environmental Compliance Assurance Policy (ECAP) as described in [Construction Manual](#) M 41-01.

WSDOT must appropriately manage the material prior to reuse or disposal at a permitted disposal facility willing to accept the material. For more information about HazMat during construction, visit the [environment during construction](#) webpage.

Only qualified WSDOT HazMat Specialists, Certified Industrial Hygienists, and qualified consultants and/or contract personnel are qualified to handle HazMat and collect samples. If a contractor/DB hires or utilizes qualified consultants or personnel, the Project Engineer should include the WSDOT HazMat Program on all correspondence.

The management of HazMat may include any or all of the activities listed below. Visit the WSDOT [hazmat](#) and the [environment during construction](#) webpages for information on each topic:

- Identifying the type, concentration, and extent of the contamination
- Stockpiling and covering suspect or confirmed HazMat material.
- Containing suspect or confirmed hazmat liquid material
- Sampling and submitting samples for laboratory analysis
- Labeling containers and drums
- Characterizing the material for reuse, or disposal at a permitted disposal facility able to accept the material
- Submitting information to regulatory agencies

If project waste materials are designated as dangerous waste, WSDOT assumes responsibility as the generator of the waste for reporting purposes. Per [Chapter 173-303 WAC](#), WSDOT must obtain a Resource Conservation and Recovery Act (RCRA) Environmental Protection Agency (EPA) Site Identification (ID) number from Ecology. WSDOT is required to track and count quantities of all Dangerous Waste generated, transported, and disposed. While the EPA Site ID number remains open in Ecology's system, the PE is required to submit an Annual

Report¹ to Ecology due no later than March 1st of each year. If the PE has questions on when to use the EPA ID number, please contact the HazMat Program.

Where possible, the PE should consider the opportunity to minimize WSDOT's future cleanup liability, cleanup areas where final construction might prevent or obstruct future cleanup and perform cleanup to protect environmentally sensitive areas. Visit the [HazMat webpage](#) for more information about cleanup options.

Encountering unknown underground storage tanks (USTs)

Due to potential explosion hazards and the specific statues and regulations associated with UST decommissioning, USTs require special consideration when encountered at a WSDOT site. When a contractor/DB encounters an unknown UST, WSDOT policy is for the contractor/DB to stop work in the immediate area and notify the WSDOT Project Engineer (PE).

Ecology has the authority over all "regulated" USTs in Washington State pursuant to [Chapter 173-360 WAC](#). Some USTs are exempt in accordance with [WAC 173-360-0110](#), but may be regulated by local agencies. WSDOT or the contractor/DB will need to contact the local fire marshal, health department, and planning department to determine local requirements.

Local health and fire departments may also require notification of UST site closures.

A registered UST Decommissioner knows local regulations and requirements regarding tank removal.

If there is a confirmed release from a regulated UST, [Chapter 173-340 WAC](#) also applies. If there is a release from either regulated or exempt USTs, the WSDOT PE will initiate the Construction ECAP. In the case of a confirmed release from the regulated UST, WSDOT must also ensure that Ecology receives notification within 24 hours. A status report is then due to Ecology within 20 days.

A Washington State Certified International Fire Code Institute (IFCI) UST Decommissioner must be used to remove regulated USTs. Additionally, a Washington State certified UST Site Assessor must be present during removal to sample and document UST closure activities.

Prior to removing a regulated UST, a [30-Day Notice](#) must be submitted to Ecology. Please note that WSDOT can ask Ecology to waive this requirement if it will cause schedule delays. The ESO [HazMat program](#) and our on call consultants have certified UST Site Assessors to assist in UST removal.

If there is no contamination discovered during a regulated UST removal, Ecology must receive a 2018 [Closure and Site Assessment Notice](#), a [Site Check/Site Assessment Checklist](#), and a Site Assessment Report within 30 days. If there is contamination from a regulated UST or an exempted UST identified as referenced in [WAC 173-360A-0110](#), Ecology must receive a Site Characterization Report within 90 days. The reports should contain required information detailed in the 2003 Ecology document [Guidance for Site Checks and Site Assessments for Underground Storage Tanks](#). For more information, see the [Ecology UST webpage](#).

¹ Ecology implemented an electronic submittal process for annual reports. For user guide information see <https://ecology.wa.gov/regulations-permits/reporting-requirements/dangerous-waste-reporting-requirements>

Encountering unknown contamination

When a contractor/DB encounters unknown hazardous or regulated materials, usually identified by sight or smell, WSDOT policy is for the contractor/DB to stop work in the immediate area and notify the WSDOT PE. The PE initiates the Construction ECAP and should coordinate with the region environmental office, a consultant, or ESO HazMat Program to determine whether the material is contaminated or not. The PE should also consult with the WSDOT Safety Office to confirm if workers can safely continue working in the immediate area.

The PE follows notification procedures established in Construction ECAP to determine internal and external reporting requirements. The region environmental office, a consultant, or ESO HazMat Program can help to coordinate any required regulatory reporting. Per [WAC 173-340-300](#), WSDOT is required to report to Ecology hazardous substances that may be a threat to human health or the environment based on best professional judgment. [WAC 173-340-300\(2\)\(b\)](#) does provide a non-exhaustive list of reportable events and some examples are presented below.

- Contamination in a water supply well.
- Free product such as petroleum product or other organic liquids on the surface of the ground or in the groundwater.
- Any contaminated soil or unpermitted disposal of waste materials that would be classified as a hazardous waste under federal or state law.
- Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances.
- Sites where hazardous substances have leaked or been dumped on the ground.
- Leaking underground petroleum storage tanks not already reported under [WAC 173-340-450](#).

If project waste materials are designated as dangerous waste, WSDOT assumes responsibility as the generator of the waste for reporting purposes. Per [Chapter 173-303 WAC](#), WSDOT must obtain a Resource Conservation and Recovery Act (RCRA) Environmental Protection Agency (EPA) Site Identification (ID) number from Ecology. WSDOT is required to track and count quantities of all Dangerous Waste generated and disposed. While the EPA Site ID number remains open in Ecology's system, the PE is required to submit an Annual Report² to Ecology due no later than March 1st of each year. Note that the EPA number does not apply for the generation, transport, and disposal of wastes that do not designate as dangerous waste.

WSDOT Regional Project Offices should provide copies of all Ecology letters related to contamination on WSDOT properties to ESO HazMat Program within 30 days of receipt. The ESO HazMat Program tracks the information and uses it for GASB 49 reporting.

² Ecology implemented an electronic submittal process for annual reports. For user guide information see www.ecy.wa.gov/programs/hwtr/waste-report/index.html

Responding to spills from construction activities

Spills caused by WSDOT contractors/DBs during project construction are the responsibility of the contractor/DB to clean up, report, and dispose of properly. Ecology and Local Jurisdiction Health Departments require confirmation sampling to verify that the spill was adequately cleaned up and to avoid having the site location listed on Ecology's facility database. The contractor/DB should hire a qualified consultant at their expense to conduct the remedial cleanup activities, and the Regional Project Office may contact the ESO HazMat Program when a spill has occurred to oversee that the cleanup process was appropriately completed.

As a way to prevent and respond to spills on project sites, WSDOT requires contractors/DBs to prepare and implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all projects. The SPCC Plan template can be found on the [Stormwater and water quality](#) webpage under tools and templates.

The plan is a Type 2 Working Drawing and must address the required SPCC elements in their respective order as identified in *Standard Specifications* [Section 1-07.15\(1\)](#), including reporting requirements. The contractor/DB may not begin any onsite construction activities until the Type 2 Working Drawing review and comment process in *Standard Specifications* [Section 1-05.3](#) is completed. The SPCC Plan must remain on site at all times until the completion of the project. The SPCC Plan shall be considered a living document that is required to be updated to reflect current site conditions. For example, if the contractor/DB adds additional spill kits or moves the existing spill kits to another location of the project, this must be reflected in an updated SPCC Plan.

If a spill occurs on a project, WSDOT staff follows the Construction ECAP. Visit the WSDOT [Spill Prevention Control and Countermeasures Plan Template](#) and [Ecology](#) webpages for additional guidance and resources.

Reporting spills caused by the traveling public (Third-Party)

WSDOT personnel or Contract personnel may be a witness to or have to respond to an inadvertent spill from a Third-Party accident. If a spill from the traveling public occurs within a WSDOT construction project or ROW, WSDOT personnel shall immediately notify Washington State Patrol (WSP) and Ecology to report the spill; if possible, identify the responsible party.

WSDOT must report a spill if they have knowledge of a spill that may threaten human health or the environment, or where sites have been material has leaked or been dumped on the ground pursuant to [WAC 173-340-300\(3\)\(b\)\(iv\)\(viii\)](#). If the spill is an immediate threat to human health or the environment (e.g., tank truck leaking into a water body), WSDOT personnel within their limits of expertise should take action to contain the spill until Ecology or the WSP arrive on the scene. Cleanup costs may be recovered at a later date if and when the responsible party is identified.

In accordance with the Revised Code of Washington (RCW) [70.136.030](#), the WSP is the "hazardous materials incident command agency" along state and interstate highway corridors and coordinates all activities at the scene of a spill. Should WSDOT enter into an emergency assistance agreement with the WSP, the agreement does not obligate WSDOT to assist as WSDOT would be considered exercising the "Good Samaritan" law in pursuant to [RCW 70.136.050](#), and WSDOT would not be liable for any civil damages resulting from the manner in which it conducted the cleanup except for gross negligence or willful or wanton misconduct.

Ecology is not obligated to respond to every spill on WSDOT ROW. Upon receiving notification from the WSP Incident Commander, Ecology's Spill Response Team will determine if the release warrants a response. In accordance with [RCW 90.56.020](#) and [90.56.350](#), Ecology is obligated to respond and cleanup spills of oil or other hazardous substances that discharged or will likely discharge into the Waters of the State. In addition, other factors may influence the lack of a response such as limited resources.

The cleanup of spills by the traveling public is regulated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [Section 9607\(b\)](#), which states, "There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

1. an act of God;
2. an act of war;
3. an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
4. any combination of the foregoing paragraphs" (see also [RCW 70.105.040](#)).

In most cases spills are reported to Ecology Spills Program through the Environmental Report Tracking System (ERTS). This information is sometime then relayed to either the WSDOT Incident Response Team (ICR), Regional Maintenance Offices, and/or ESO HazMat.

The WSDOT Hazardous Materials Program occasionally receives notification letters of Third-Party Spills, or through a tracking system called GASB which identifies sites that have been listed on Ecology's databases.

WSDOT can assume financial liability for a Third-Party spill if the spill is not reported, or a liable party (individual who caused the spill) was not identified, then under [RCW 70A.300.060](#), WSDOT as the owner of the property or facility will assume liability of any future cleanup of contamination left in place. Spills that reach pervious soil and/or are not an immediate threat to human health and the environment and are not completely cleaned up under a third-party agreement to MTCA unrestricted cleanup standards, can become the liability under WSDOT. The regulatory oversight of these cleanups is managed by Ecology's Toxic Cleanup Program.

Under CERCLA, persons may be held strictly liable for releases or threatened release of hazardous substances at properties they owned or operated at the time of release. This rule means that a potentially responsible party may be liable for contamination based solely on property ownership without regard to fault.

Petroleum products are specifically excluded from the CERCLA "hazardous substances" in accordance with 42 U.S.C. 9601(14), however are still considered hazardous substances under MTCA.

Reusing or disposing of project waste materials

WSDOT is ultimately responsible for the reuse and disposal of project waste materials. Disposal of materials can be costly and may impact project schedules. It is for these reasons that WSDOT coordinates the sampling and characterization of HazMat as described above. The decision to reuse or dispose of project waste materials is influenced by the following factors:

- Type and level of contamination (e.g., petroleum product vs. solvents)
- Future site use (e.g., residential vs. industrial, a parking lot or roadway)
- Site access and presence of environmentally sensitive areas
- Permit requirements and environmental commitments

WSDOT addresses the reuse and disposal of solid wastes during construction in [Standard Specifications](#) Sections 2-01.2, 2-02.3, and 2-03.3(7). If a contractor/DB provides a disposal site, they are required by [Section 2-03.3\(7\)C](#) to provide the PE with the location of the disposal site and copies of required permits and approvals before they transport any waste off the project site. The contractor/DB shall provide the Engineer with a copy of the shipping manifest or bill of lading for each load indicating the quantity of material hauled to disposal and bearing the disposal site operator's confirmation for receipt of each load of material. The PE keeps a copy of the disposal documentation in the project file.

When HazMat is addressed by a project Special Provision, WSDOT includes a description of the materials and identifies the type of disposal facility that will accept the materials. As a common practice, WSDOT does not direct contractors/DBs where to take materials for disposal. It is required that contractors/DBs dispose of waste in accordance with all applicable federal, state, and local laws and regulations.

Consult the region environmental office, a consultant, or ESO HazMat Program with project-specific questions including disposal options of, but not limited to the following list:

- Solid Waste
- Dangerous Waste
- ACM
- Lead-Based Paint
- Treated Wood

Using construction specifications and provisions

When WSDOT staff follows the policies in this chapter and the procedures on the HazMat webpages, WSDOT can reasonably anticipate and address HazMat issues prior to the advertisement of a project. During construction, WSDOT may need to have a contractor/DB handle and manage issues such as contaminated soil or water, USTs, ACM, cementitious material or wastes, lead based paint, potentially hazardous chemicals such as detergents, polymers, dust palliatives, concrete curing compounds, form release oils, or spills. WSDOT relays this information to contractors/DBs bidding on the work in four main ways:

- [Standard Specifications](#) M 41-10, which are standard protocols that are required for all WSDOT projects.
- [General Special Provisions](#), which are provisions written to describe specific construction requirements and are available for use on multiple projects.

- *HazMat Special Provisions and Plans Sheets*, which are project-specific amendments that describe the location of, and how to handle, HazMat issues requiring special attention.
- *Hazardous Materials Management Plans*, which are project-specific supplements to a HazMat Special Provision and provide detailed instructions for managing materials.

For complex issues, the region environmental office, a consultant, or ESO HazMat Program are available to assist with writing or reviewing HazMat Project-Specific Special Provisions.

Often these provisions define areas with differing types or depths of contaminated soil or water. The Project-Specific Special Provision describes how the contractor/DB will handle and manage the material. Information about how WSDOT will characterize the material for disposal is also often included.

Further information about how specifications and provisions address HazMat topics is available on the WSDOT [HazMat webpage](#).

Maintenance and Operations

The ESO HazMat Program provides technical sampling support to comply with the NPDES Bridge and Ferry Terminal Washing General Permit.

447.04 Analysis and documentation requirements

447.04(1) Right-sizing hazmat discipline report for NEPA/SEPA

A right-sized HazMat Discipline Report (Report) is prepared to satisfy project NEPA/SEPA requirements for environmental documentation. Region staff in coordination with the ESO HazMat Program determine the appropriate level of effort required when they complete the ERS. The purpose of the Report is to identify all potential hazards encountered during a project which may:

- Affect the environment or human health during construction
- Create significant construction impacts
- Incur cleanup risk and liability for WSDOT.

The right-sized Report must document significant unavoidable adverse impacts that WSDOT cannot reasonably mitigate. Whenever possible, include the Report directly in the NEPA/SEPA document. Factors such as project size and type of construction activities, past and current land use in an area, excavation depths and acquisition plans help WSDOT staff determine the best approach. WSDOT provides [Right Size Guidance](#) that describes three levels of Reports, as well as situations where no documentation may be required. Right-size is a common term used to describe the level of detail necessary to analyze a specific project given the setting and anticipated impacts. The level of detail must be sufficient to allow region staff to make informed decisions regarding the selection of alternatives and mitigation measures. Region staff should be able to use the Report to assess budget and schedule impacts and decide when to engage in early coordination with regulatory agencies. The documentation must provide site-specific recommendations for additional investigations needed prior to acquisition and construction. Right-sizing keeps documentation concise as required by NEPA/SEPA.

447.04(2) Transaction Screening and Phase I Environmental Site Assessment (Phase I ESA)

A Transaction Screening is the lowest level of analysis and documentation and includes general document review, walking in and around the parcel, documenting visible hazardous materials, USTs, above ground storage tanks, solid wastes, etc. This can include interviewing homeowners or neighbors.

A Phase I ESA as a standalone document does not fully satisfy NEPA requirements. The Phase 1 can be a standalone document, and addendum to, or a separate section in a Right sized hazmat discipline report.

The purpose of a Phase I ESA is to evaluate the environmental conditions of a property as part of a real estate transaction and assess the likelihood of assuming liability from Recognized Environmental Conditions REC³; whereas, NEPA documents a comprehensive study that details all potential significant impacts from various disciplines relating to the entire project footprint. WSDOT routinely uses the HazMat Discipline Report for NEPA/SEPA in the environmental document to identify potentially contaminated properties; WSDOT completes a Phase I ESA for individual sites as outlined in DM 510.01 WSDOT must complete a Phase I ESA prior to acquisition.

To fulfill the requirements of 40 Code of Federal Regulations (CFR) Part 312, Standards and Practices in order to meet “All Appropriate Inquiry” (AAI) as defined by the USEPA and qualify for one of the defenses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—aka the Superfund law—to limit cleanup liability and potentially recover future cleanup costs. WSDOT also uses the information to assess potential impacts on project design and construction. In accordance with [40 CFR 312.21](#), an [Environmental Professional](#) is responsible for the environmental contents of the Phase I ESA. Additional information regarding a Phase I ESA is available on the WSDOT [HazMat webpage](#).

Under current federal and state hazardous waste cleanup statutes, all former, current, and future property owners can be held individually liable for 100 percent of the cleanup cost for a contaminated property. This is referred to as “joint and several liability” and means that when WSDOT acquires contaminated property, it may be held liable for any or all cleanup and restoration costs regardless of the “degree of guilt.” WSDOT can also be held liable as a prior owner, thus, selling land does not protect the department from liability.

To claim protection from liability as an innocent landowner, contiguous property owner, or bona fide prospective purchaser; property owners, including state and local governments, must conduct an AAI within one year prior to purchasing or acquiring the property as referenced in [40 CFR 312.20\(a\)](#) and pursuant to [CERCLA section 101\(35\)\(B\)](#), and must purchase without knowing, or having reason to know, of contamination on the property.

³ A recognized environmental condition (REC) as defined by ASTM E1527. “the presence of hazardous substances or petroleum products in, on or at the subject property due to a release to the environment; the likely presence of hazardous substances or petroleum products in, on or at the subject property due to a release or likely release to the environment; or the presence of hazardous substances or petroleum products in, on or at the subject property under conditions that pose a material threat of a future release to the environment.”

Notwithstanding paragraph (a) of the above section, in accordance with [40 CFR 312.20\(b\)](#) the following components of the AAI must be conducted or updated within 180 days of and prior to the date of purchase or acquisition of the subject property:

- Interviews with past and present owners, operators, and occupants (see [40 CFR 312.23](#))
- Searches for recorded environmental cleanup liens (see [40 CFR 312.25](#))
- Reviews of federal, tribal, state, and local government records (see [40 CFR 312.26](#))
- Visual inspections of the facility and of adjoining properties (see [40 CFR 312.27](#))
- The declaration by an Environmental Professional (see [40 CFR 312.21\(d\)](#))

If the inquiry and subsequent site investigation identifies actual soil and/or groundwater contamination, the purchaser may pursue a “private right of action” with past or current owners of the property. A private right of action is a legal claim authorized by MTCA ([RCW 70A.305.080](#)) under which a person may recover costs of remedial action from other persons liable under the Act provided that a cleanup is “substantially equivalent” to a cleanup performed or supervised by Ecology. If the source of contamination is on an adjacent property, the persons liable for the adjacent contamination could be responsible for costs associated with cleanup of a site and costs to repair damages to natural resources.

WSDOT also uses property appraisals performed by the WSDOT Real Estate Services Office (RESO) as described in the [Right of Way Manual M 26-01](#). [Right of Way Manual Chapter 4](#) instructs appraisers to document potential HazMat issues on parcels such as odd soil odors or colors, the presence of tanks or drums, and suspected asbestos containing materials. If observed, the manual provides directions on how to proceed with the appraisal. WSDOT typically uses the GFI for a building or structural appraisal but does not use the completed GFI for single family homes in the appraisal process.

If acquiring contaminated properties, WSDOT RES staff follows the steps outlined in [Right of Way Manual Chapter 4](#) to identify and mitigate risk as much as possible. Actions may include, but are not limited to, writing an indemnification clause, or a creating a Prospective Purchaser Agreement. Once the purchase of a contaminated property is complete, the RESO is required to report the information to the Environmental Services Office (ESO).

ESO tracks contaminated properties that WSDOT owns, and their associated cleanup liability, and uses the information to report to the Washington State Office of Financial Management. This reporting is required by the Governmental Accounting Standards Board (GASB) Statement 49, *Accounting and Financial Reporting for Pollution Remediation Obligations*. When appropriate, WSDOT tracks remaining residual contamination in WSDOT right of way (regardless of liability) after a MTCA cleanup.⁴

⁴ An Implementation Agreement (IA) was signed in 2015 between Ecology and WSDOT. WSDOT has agreed to update the [Right of Way Manual](#), utility manuals and right of way plan sheets to identify residual contamination for select sites after a MTCA cleanup has taken place. Ecology submits the proposed IA sites to WSDOT for approval. The ESO HazMat Program and regional environmental managers will review the proposed IA site documentation to affirm, modify, or reject the proposal.

447.04(3) Phase II Environmental Site Assessment (Phase II ESA)

A Phase II ESA is performed to investigate sites that may have contamination based on the findings of the HazMat Discipline Report for NEPA/SEPA, Phase I ESA, or suspect areas encountered and assessed during construction. The Phase II ESA is conducted to characterize the nature and extent of potentially contaminated media prior to acquisition and construction. WSDOT uses information obtained in previous reports, planned areas of construction, and acquisition plans when conducting the assessment. A Phase II ESA is limited in scope and will not always identify all the contamination on a site. Please see DM 510.01 for more information.

When site specific documentation exists in the Ecology files for the planned acquisition or construction areas a Phase II ESA may not be necessary. Additional information regarding a Phase II ESA is available on the WSDOT [HazMat webpage](#).

WSDOT may identify or encounter contamination during geotechnical exploration drilling.

As described in the [Geotechnical Design Manual](#) M 46-03, prior to any drilling activities crews complete a geotechnical field exploration and an environmental assessment⁵. The manual also provides procedures for planning, storing, and disposing of potentially contaminated material generated during drilling activities. Additional information regarding Geotechnical Soil Boring Procedures is available on the WSDOT [HazMat webpage](#).

Identifying the extent of contamination through a Phase II ESA helps WSDOT:

- Select project alternatives and/or mitigation options.
- Prepare real estate transactions and assist in the appraisal process associated with contamination to determine fair market property value.
- Determine appropriate property management options.
- Identify construction impacts and associated costs for mitigation and/or disposal of material.
- Consider worker health and safety needs.

Selection of analytical methods and proper sample-handling techniques are critical to a successful Phase II ESA. Most laboratory methods are selected based on the specific objective of the Phase II ESA, although many are dictated by specific provisions of regulatory requirements. Laboratory analysis must be performed by an accredited analytical laboratory, pursuant to [Chapter 173-50 WAC](#). Improper or incomplete sample or analysis collection may invalidate sampling results or make the results legally indefensible. Proper handling of samples is also crucial to obtaining usable and defensible data, which includes selecting of correct sample containers, properly storing and transporting, meeting holding time requirements, and following strict chain-of-custody protocols.

Per the ASTM standard, field sampling and report writing should be performed only by or under the direct guidance of an [Environmental Professional](#), which may be a WSDOT employee or a consultant retained by WSDOT.

⁵ The Environmental Assessment, at a minimum, should address environmentally sensitive areas, potential cultural resources, and documented or suspect contamination

447.04(4) Good Faith Inspection (GFI)

The purpose of the pre-bid GFI is to determine whether the project will disturb ACM, and to satisfy the Communications of Hazards requirement pursuant to [Chapter 296-62-07721 WAC](#).

The GFI is completed with the intent of complying with and providing an AHERA- level assessment in accordance with federal, state, and local asbestos laws and regulations. These statutes are generally focused on identifying airborne emissions of asbestos fibers. This information informs workers about potential exposures to ACM during construction and abatement work activities.

A GFI must be conducted pre-bid by an accredited AHERA Building Inspector prior to any renovation or demolition in accordance with [40 CFR, Part 763, Subpart E, Appendix C](#), and [Chapter 296-62-07721 WAC](#). Local Clean Air Agencies may also have specific requirements and directives which must be met, in addition to Washington State Department of Labor & Industries (LNI) and other applicable asbestos regulations listed in [Section 447.02](#). Pursuant to [Chapter 296-62-07703 WAC](#), an “Accredited inspector” means any person meeting the accreditation requirements of the Federal Toxic Substance Control Act (TSCA). The AHERA Building Inspector must be a WSDOT employee, or a consultant retained by WSDOT.

WSDOT must complete a GFI [Compliance Form](#), located within the Preliminary Design tab on the WSDOT HazMat Program webpage, for each highway capital construction project. The completed form will indicate either ACM may be disturbed by the project and additional GFI analysis and documentation is necessary, or there is reasonable certainty that ACM will not be disturbed and no additional analysis and documentation beyond completing the form is necessary.

When ACM may be disturbed by the project, an AHERA Building Inspector typically reviews available existing objective data to aid in the identification of suspect materials that may contain ACM. Existing data can include but is not limited to as-built information and corresponding design plans and specifications, and previously written GFI reports.

After reviewing existing objective data, the AHERA Building Inspector determines the level of additional inspection necessary, which can include performing a site visit to visually inspect to identify and/or collect material samples for laboratory test analysis to determine the presence or absence of ACM. The scope of the visual inspection and/or sampling should consider site specific conditions and/or project specifics (i.e., full demolition, renovation, or minor repair). Depending on the project, the AHERA Building Inspector may collect test samples to identify the presence of additional materials (e.g., lead). Collection of these additional samples may be warranted to provide disposal options for the contractor/DB that the contractor/DB can include in their bid. After completing the additional GFI analysis and documentation, the AHERA Building Inspector will write a concise GFI report that summarizes their inspection and findings. The completed GFI Compliance Form and additional GFI report must together be provided in the project bid package, as described in *Plans Preparation Manual* [Section 700.01\(10\)](#), to ensure contractors/DBs are notified of the presence or absence of ACM prior to bid opening.

When WSDOT is reasonably certain that ACM will not be disturbed by the project and no additional GFI analysis and documentation is necessary, the completed GFI Compliance Form will serve as the GFI report and must be provided in the project bid package to ensure contractors/DBs are notified of the presence or absence of ACM prior to bid opening.

Once completed, the GFI report (e.g., completed GFI Compliance Form and all additional GFI reports) must be uploaded into the WSDOT Enterprise Content Management (ECM) Portal for documentation and tracking. The ESO HazMat Program can assist projects with uploading completed asbestos GFI reports into the WSDOT ECM Portal.

WSDOT staff and consultants that are accredited AHERA Building Inspectors are qualified to perform all GFI work described in this chapter. If region staff need additional assistance with conducting GFIs, preparing GFI reports, or reviewing GFI reports, please contact the ESO HazMat Program for assistance. ESO HazMat Program contacts are located within the Contacts tab on the WSDOT [HazMat Program webpage](#).

447.05 External engagement

When applicable, Local Clean Air Agencies and LNI are required to be notified prior to ACM abatement and demolition. Abatement of ACM must be performed by an accredited asbestos abatement contractor with a certified supervisor and certified workers. ACM waste generated during construction must be properly stored, transported and disposed of in a permitted landfill.

447.06 Internal roles and responsibilities

The region environmental offices, consultants retained by WSDOT, and the ESO HazMat Program supports WSDOT's capital construction program to effectively align with all phases of WSDOT project delivery and all delivery methods used by WSDOT to ensure actions and business practices comply with applicable federal, state and local hazardous and solid waste management laws & regulations.

447.07 Applicable permits and approval process

Below are the most common permits or approvals that may be required as part of a HazMat investigation:

- Well installation and decommissioning associated with Geotech and Construction
- Asbestos abatement and demolition
- Waste disposal at an approved facility
- Dangerous waste / RCRA identification
- EPA ID number to transport and dispose of dangerous waste

More information on HazMat permits and approvals is available on the [HazMat](#) webpage. For more information on the permitting process, see [Chapter 500](#).

447.08 Mitigation

The impacts and mitigation measures address typical impacts that WSDOT may encounter on construction projects. The typical impacts apply to sites of concern identified in the HazMat Discipline Report for NEPA/SEPA. Sites of concern are rated based on relative risk to impact the project (low, moderate, or high) and the level of complexity to manage the site (straightforward or complicated). Standard impacts and mitigation measures typically apply to sites with low or moderate risk that are straightforward to manage.

Generally, sites ranked with low or moderate risk and straightforward complexity are situations that can be reasonably predicted based on experience and where mitigation measures can effectively control and/or minimize the impact based on best professional and engineering judgment. Mitigation measures are actions taken prior to and during construction to avoid or reduce the hazardous material impact. Mitigation measures prevent or reduce environmental impacts, minimize construction costs, and avoid or reduce WSDOT's future long-term cleanup costs associated with managing, remediation, and monitoring work.

The table detailing [Standard Impacts and Mitigation Measures](#) is organized by Environmental (Direct, Indirect, Cumulative), Construction and Liability impacts and is available on the Preliminary Design Tab of the [HazMat](#) webpage.

HazMat Discipline Report writers should select only the appropriate standard impacts and mitigation measures and tailor them for the project.

447.09 Abbreviations and acronyms

ACM	Asbestos Containing Materials
AHERA	Asbestos Hazard Emergency Response Act
ASTM	American Society for Testing and Materials
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DB	Design Builder
DM	<i>Design Manual</i>
ECAP	Environmental Compliance Assurance Policy
Ecology	Washington State Department of Ecology
ECS	Environmental Classification Summary
ERS	Environmental Review Summary
ESA	Environmental Site Assessment
ESO	Environmental Services Office
GASB	Governmental Accounting Standards Board
HazMat	Hazardous and Regulated Materials
LNI	Washington State Department of Labor and Industries
MTCA	Model Toxics Control Act
NEPA	National Environmental Policy Act
PE	Project Engineer
RCRA	Resource Conservation and Recovery Act
SEPA	State Environmental Policy Act

SPCC	Spill Prevention Control and Countermeasures
USEPA	United States Environmental Protection Agency
U.S.C.	United States Code
UST	Underground Storage Tank
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation

447.10 Glossary

WSDOT uses the common term “Hazardous materials” to describe waste materials that require special handling and disposal. The term covers all types of contaminated or hazardous media including dangerous waste and regulated materials. The definitions below describe the different terms found in state and federal regulations.

Asbestos Containing Material – Any material containing more than 1% asbestos.

Dangerous Waste – Solid wastes designated in [WAC 173-303-070](#) through [WAC 173-303-100](#) as dangerous or extremely hazardous or mixed waste. Dangerous waste includes all federal hazardous waste, plus certain wastes exhibiting specific characteristics based on toxicity and persistence. The regulatory requirements for disposal of dangerous waste are more complex than the requirements for disposal of problem waste and place additional responsibility both on WSDOT as the generator and on the contractor/DB for safe handling and disposal.

Hazardous Substance – Hazardous substance designated under CERCLA [40 CFR 116](#) that pose a threat to public health or the environment. Federal regulation of hazardous substances excludes petroleum, crude oil, natural gas, natural gas liquids or synthetic gas usable for fuel. State regulation of hazardous substances is more stringent and includes petroleum products, as addressed in [WAC 173-340-200](#).

Hazardous Waste – Solid wastes designated in [40 CFR 261](#) and regulated as hazardous and/or mixed waste by the USEPA. Mixed waste includes both hazardous and radioactive components; waste that is solely radioactive is not regulated as hazardous waste. Hazardous waste includes specific listed waste that is generated from particular processes or activities or exhibits certain reactive, corrosive, toxic, or ignitable characteristics. Hazardous waste is also regulated by Ecology as dangerous waste and State-only dangerous waste.

Solid Waste – State regulation [Chapter 173-350 WAC](#) defines “solid waste,” “waste materials,” or “wastes” as all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials. See [WAC 173-350-021](#) to determine if a material is solid waste.

Chapter 455 **Land use and transportation**

- 455.01 Introduction
- 455.02 Applicable statutes, regulations, executive orders, and policies
- 455.03 Land Use and Transportation considerations during project development
- 455.04 Analysis and documentation requirements
- 455.05 External engagement
- 455.06 Internal roles and responsibilities
- 455.07 Applicable permits and approval process
- 455.08 Mitigation
- 455.09 Abbreviations and acronyms
- 455.10 Glossary

455.01 Introduction

Land use is a term that describes the modification and management of the natural environment for human purposes. Land use and transportation are closely related. Transportation decisions affect land use by modifying accessibility to an area. Land use decisions affect transportation by changing transportation demand around that area.

This chapter includes policies relating to the integration of land use and transportation, including bicycling and pedestrian facilities, transit, farmland, resource conservation areas, recreational lands, and wild and scenic rivers.

In 2024, CEQ revised its NEPA implementing regulations ([40 CFR 1500-1508](#)). Prior to this update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses and mitigation strategies sections of the documentation.

For incorporation of climate change in Land Use discipline reports, see the Land Use, Section 4(f), and Section 6(f) Discipline Report Checklists on the preliminary design tab of the [Land use](#) webpage. Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

455.02 Applicable statutes, regulations, executive orders, and policies

455.02(1) Land Use

Federal statutes, regulations, executive orders, and MOUs that specifically regulate land use include:

- **Rivers and Harbors Act** – Section 10 of the Rivers and Harbors Act ([33 U.S.C. 410](#) et seq.) is administered by the Army Corps of Engineers (Corps).
- **Farmland Protection Policy Act (FPPA) of 1981** – [7 U.S.C. 73 4201-4209](#). Implementing regulations are in the Code of Federal Regulations (CFR) - [7 CFR 658](#) and are administered by the Natural Resources Conservation Service (NRCS).
- **Section 6(f)** – Land and Water Conservation Fund (LWCF) Act codified at [54 U.S.C. 2003 200301-200310](#). In Washington State, the [Recreation and Conservation Office \(RCO\)](#) administers funding in accordance with [Chapter 79A.25 RCW](#).
- **National Trails System Act** – [16 U.S.C. 1241-1251](#).
- **Wilderness Act** – [16 U.S.C. 1131-1136](#).
- **Wild and Scenic Rivers Act (WSRA)** – PL 90-542, [16 U.S.C. Chapter 28](#).
- **Environmental consequences** – [40 CFR 1502.16\(a\)\(5\)](#) – requires that Environmental Assessments (EAs) and Environmental Impact Statements (EISs) include a discussion of possible conflicts between the proposed action and the federal, tribal, regional, state, and local land use plans objectives, policies, controls, and regulations.

State statutes, regulations, executive orders, and MOUs that specifically regulate land use include:

- **Scenic River System Act** – [Chapter 79A.55 RCW](#).
- **Aquatic Lands Act** – [Chapter 79.105 RCW](#). In Washington State, the Department of Natural Resources (DNR) implementing regulations are in [Chapter 332-30 WAC](#).
- **Farmland Preservation** – [Executive Order E 80-01](#).
- **Farmland and Forest Preservation MOU between Washington State Conservation Commission and WSDOT (1982)** – requires coordination between WSDOT and appropriate Washington State Conservation Commission and Conservation District to assure that roadway projects minimize agricultural land conversions. A copy of the MOU is available in [Appendix B](#).
- **Forest Practices** – [Chapter 76.09 RCW](#)
- **Growth Management Act (GMA)** – [Chapter 36.70A RCW](#) (including local Critical Areas Ordinances).
- **Environmental Mitigation in Highway Construction Projects** – [RCW 47.01.35](#)
- **Shoreline Management Act (SMA)** – [Chapter 90.58 RCW](#)

455.02(2) **Transportation**

Federal statutes, regulations, executive orders, and MOUs that specifically regulate transportation include:

- **USDOT Bicycle and Pedestrian Policy Statement** – [CFR Title 23](#) Highways, [Title 42](#) The Public Health and Welfare, and [Title 49](#) Transportation.
- **Section 10 of the River and Harbors Act (1899)** – [33 U.S.C. 403](#).
- **General Bridge Act** – [33 U.S.C. Section 525](#) (formerly Section 9 of the Rivers and Harbors Act) and implementing regulations [33 CFR Parts 114-115](#).
- **National Trails System Act** – [16 U.S.C. 1241-1251](#).
- **FAA Regulations (1975)** – [14 CFR Part 77](#), [23 U.S.C. 318](#), [23 CFR 620 Subpart A](#).
- **FRA Regulations (1999)** – [64 FR 28545](#).
- **FHWA and FTA Regulations** – [23 CFR 771](#).

State statutes, regulations, executive orders, and MOUs that specifically regulate transportation include:

- **Aviation** – [Chapter 14.12 RCW](#), [RCW 36.70A.510](#), and [RCW 36.70.547](#).
- **Bicycle/Pedestrian Traffic** – [RCW 47.30.020](#) and [RCW 47.30.030](#).
- **City Streets as Part of State Highways** – [Chapter 47.24 RCW](#).
- **Design Standards** – [WAC 468-18-040](#).
- **State Environmental Policy Act (SEPA)** – [Chapter 197-11 WAC](#) and [Chapter 468-12 WAC](#).
- **Transportation Facilities and Services of Statewide Significance** – [RCW 47.06.140](#).
- **Vehicular Traffic – Essential Public Facilities** – Growth Management Act (GMA) [Chapter 36.70A RCW](#).
- **DNR Easements** – [Chapter 47.12 RCW](#) grants WSDOT authority to obtain an easement from DNR highway, ferry, rail, and other state transportation projects.
- **Secretary’s Executive Order E 1113** – Sustainability

455.03 **Land Use and Transportation considerations during project development**

455.03(1) **Planning**

Land use is controlled by city and county governments through the comprehensive planning process under the Growth Management Act (GMA). See the [Land use and transportation planning](#) webpage for more information on GMA comprehensive planning. WSDOT plans must be consistent with adopted comprehensive plans developed under GMA.

During project planning and environmental analysis, WSDOT projects should:

- Determine if there is a completed WSDOT transportation plan for the project area.
- Determine the existing and planned land uses adjacent to and served by the study area.
- Determine if relevant federal land management plans, metropolitan and regional multimodal plans, area habitat plans, or tribal land use plans exist for the project area.

- Consider planned development, population growth, changes in land use, effects on communities and the environment, future demand on the system, applicable or likely zoning changes, travel trends, and other relevant issues for the planning study or product conclusions and recommendations.
- Review WSDOT's modal and system plans on the [Statewide plans webpage](#) to ensure project land use considerations are consistent with applicable approved statewide plans.

[Chapter 200](#) explains WSDOT's transportation planning and Planning and Environmental Linkages (PEL) policies, including the adoption, incorporation, or use of planning products during the environmental review process (in National Environmental Policy Act (NEPA) documents).

455.03(2) Scoping

See [Chapter 300](#) for more information on Scoping. Review any relevant planning products.

The following are documented in the Environmental Review Summary (ERS) Land Use tab to help determine the level of analysis needed for NEPA and State Environmental Policy Act (SEPA). These assessments are usually conducted as a desktop exercise and do not require field verification.

- Determine if there are any properties within the project limits that used funds from the federal Land and Water Conservation Fund (LWCF) Act (1965) or any other RCO grant funds. If yes, refer to the [Section 455.04\(2\)](#) and WSDOT's [Land use webpage](#) for Section 6(f) guidance.
- Determine if there is a Wild and Scenic River (state or federally designated, 'study river', or on the [Nationwide Rivers Inventory \(NRI\)](#) in or near the project area. If yes, refer to the Wild and Scenic Rivers guidance on the [Land use webpage](#) scoping tab.
- Determine if the project is located on a state or national scenic byway. If yes, the project may need a visual assessment. Refer to [Chapter 459](#) and WSDOT's [Visual resources webpage](#).
- Determine if your project area includes designated farmland. If yes, refer to WSDOT's [Farmland guidance](#).

455.03(3) Design

The design of state transportation improvement projects should support approved land use and transportation plans.

Follow the Design Standards in [WAC 468-18-040](#).

Refer to *Design Manual* [Section 1102.02](#) for Land Use context. Refer to *Design Manual* [Section 1102.03](#) for Transportation context.

Early consultation is required with the Natural Resources Conservation Service (NRCS) and appropriate state and local agricultural agencies where farmlands are directly or indirectly impacted by any alternative. WSDOT's [Land use webpage](#) includes additional Farmland information and helpful contact information.

The United States Forest Service (USFS) is the administering agency for each Wild and Scenic River in Washington State. Consultation with the USFS is required for projects that may affect rivers in the [NRI](#) that are suitable for inclusion in the Wild and Scenic Rivers System.

The design team shall consider the effects climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

If NEPA is complete, then there may still be design needs for permitting. For example, wetland mitigation site design can impact farmlands.

455.03(4) Construction

Take measures to reduce impacts to all modes of transportation and surrounding land uses during construction. Implement agreed-upon mitigation actions during construction to offset construction impacts. For more information on incorporating environmental commitments into contracts, see [Chapter 590](#). For information on commitments during construction, see [Section 600.03](#).

If construction has significant impacts to traffic, as defined in *Design Manual Chapter 1010*, follow the approved Transportation Management Plan.

455.03(5) Maintenance and Operations

WSDOT owns and manages approximately 100,000 acres of unpaved land adjacent to the highway system. Performance criteria for maintaining these areas is outlined in region maintenance area [Integrated Roadside Vegetation Management Plans](#).

455.04 Analysis and documentation requirements

The land use and transportation analyses are core elements, providing the basis for modal choice, alternative development, and selection of design elements. The project's study or identified influence area should be large enough to encompass a greater area than just the highway corridor and should allow for adequate evaluation of the relationship between land use and transportation in the project vicinity. The potential effects of projects on transit, pedestrians, bicycles, rail crossings, ferry operations, airport safety zones, parking, local development patterns, and vehicle traffic on adjacent and connecting roadways need to be evaluated and discussed in the environmental document. The effects can be positive or negative, temporary, or long-term. Mitigation for unavoidable impacts should also be discussed. Consult with local, regional, and tribal entities to ensure consistency with land use plans.

The goal of the analysis is to help decision makers understand the effect the transportation project has on land use and development patterns. The analysis must:

- Describe any direct project impacts resulting from the conversion of land to transportation uses. The analysis should include a discussion of the temporary (construction) impacts and long term (operational) impacts. It is best to include a map showing the existing and proposed right of way lines, existing land use (as described in the adopted comprehensive plan) and acreage to be converted to transportation uses in support of the analysis.

- Determine if the project is consistent with the existing adopted comprehensive plans and development policies. In Washington State, land use is controlled by city and county governments through the comprehensive planning process required by the GMA. The state Local Project Review Act of 2001 ([Chapter 36.70B RCW](#)) precludes WSDOT from revisiting land use decisions included in the adopted comprehensive plan during project review. To receive Federal funding, a transportation project must be consistent with local planning. In other words, the goals and objectives of the project should match the goals and objectives stated in the comprehensive plan.
- Describe development trends in the study area and any reasonably foreseeable impacts caused by development that may occur in response to the project. This includes potential development or redevelopment of buildable lands within the influence area of the transportation project. These changes are driven and constrained by social and economic factors beyond WSDOT or the local public agency's control. Such effects are difficult to predict and often controversial. Projects that do not increase vehicle capacity, change the Level of Service (LOS), or significantly reduce travel time are unlikely to change land use. However, projects that add transit or active transportation capacity can have positive impacts on land use and economic development. Project teams should also review the potential impacts of planned local development or redevelopment on the project. See [Chapter 412](#) for more information on indirect and cumulative effects.
- Discuss actions that were taken to avoid, minimize, or mitigate direct land use impacts. Potential or recommended mitigation measures for indirect impacts should also be described. The discussion should include the party responsible for such mitigation and the likelihood of implementation of such measures. See more in [Section 455.08 Mitigation](#).
- Evaluate and compare the potential impact for all alternatives, including the No-Build alternative (see [Section 400.07](#)). The results of this analysis should inform the indirect effects analysis conducted for other disciplines and support the cumulative effects analysis.

455.04(1) Right size to classification (CE, EA, EIS) or level of significance to land use and transportation

Determine the level of detail that is needed based on complexity/size of project and severity of impacts.

Projects classified as Categorical Exclusions/Categorical Exemptions (CE – see [Chapter 300](#)) typically do not require analysis for potential land use impacts under [23 CFR 771.117\(a\)](#) because, by definition, these projects:

- Do not induce significant impacts to planned growth or land use.
- Do not require relocation of significant numbers of people.
- Do not have significant impacts on travel patterns.
- Do not have significant environmental impacts.

For CEs, document:

- The potential direct project impacts to resource lands by completing the appropriate section of the ERS/ECS form and/or a SEPA Checklist (see [Chapter 400](#)). Resource lands include critical areas, shorelines, forest/timber lands, mineral resource lands, farmland, scenic highways and byways, and parks and recreation lands.
- The temporary construction impacts to traffic and ways to minimize those impacts in the ERS/ECS form (see *Design Manual Chapter 1010*) or by completing a SEPA checklist. If the project has significant construction impacts to traffic, as defined in *Design Manual Chapter 1010*, attach a copy of the Transportation Management Plan to the ECS form.

More detailed analysis may be needed for complex projects that do not qualify as a CE. This may include projects:

- With substantial direct land use effects (positive or negative) despite proposed mitigation. For example, a project with many right of way acquisitions or displacements.
- With substantial indirect effects (positive or negative) on land use despite proposed mitigation. For example, a project that would cause sizable changes in planned development within the study area, or a project found to be inconsistent with planned growth.
- In fast growing areas with significant amounts of undeveloped land, where additional analysis is needed to determine probable effects. For example, construction of a new interchange in a rural area.

455.04(2) Analysis and documentation for NEPA

This section describes the analysis requirements and what to consider when evaluating the significance of potential impacts for actions that are subject to NEPA.

Land Use

Large, complex, or environmentally controversial projects will need more detailed documentation of the land use analysis. Because the land use analysis influences many other disciplines, such as transportation, noise, air quality, visual, and communities, it is important to thoroughly document the participants, assumptions, methodologies, results, and uncertainties to provide transparency and legal sufficiency. This may be done in a technical appendix to the environmental document.

Four key areas should be documented:

- Identify and explain key underlying assumptions (such as growth rates) and explain how those assumptions were made.
- Describe the methods used to develop land use forecasting results. Explaining the inherent advantages and limitations in the analysis process and data sources can be especially useful in establishing a “reasoned basis” for the methodology.
- Summarize and explain the land use analysis results including an explanation of patterns in the data, causal relationships, and anomalous or unexpected results.
- Systematically review assumptions, data, and results to ensure internal consistency across related disciplines such as noise, air quality, visual quality, and communities, to make sure they do not contradict the land use analysis results.

For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and [WSDOT’s Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#).

Growth Management Act (GMA)

[RCW 36.70A.070](#) requires that cities and counties that are subject to the GMA include a land use element in their comprehensive plan. Determine existing and planned land uses in cities and counties and how the project may affect local land use decisions.

Transportation

The transportation analysis supports the Purpose and Need by providing quantitative measures that demonstrate the effectiveness of the proposed project. It may also provide a method of comparing the relative merits of the alternatives.

The transportation analysis should consider the significance of estimated induced demand. Induced demand is the volume of traffic that is drawn to a new or expanded road by providing additional capacity. The induced demand comes from numerous sources, including trips diverted from other routes, discretionary trips that may not have been made without the added service, and additional access to employment and other activity locations.

Induced demand may be estimated using models, such as travel or trip generation models. Although models may be used to approximate results, all models rely on assumptions and are inherently limited. Therefore, known assumptions and limitations should be documented with any modeling results.

Section 24 of FHWA's Technical Advisory [TA 6640.8A](#) states that the analysis should include:

- A review of the local comprehensive transportation and land use plans (see *Design Manual Chapter 1102*).
- An evaluation of the proposed project's consistency with traffic requirements generated by planned land use. The discussion should include effects (both positive and negative) on safety, vehicles, transit, freight, bicycles, pedestrians, and parking.
- A discussion of how the project's short-term impacts (both positive and negative) and use of resources contribute to the enhancement of the area's long-term productivity.

Compliance with [FHWA's Interim Guidance on the Application of Travel and Land Use Forecasting in NEPA](#) is recommended, but not required for projects that use a travel demand model.

Farmland

The [Federal Farmland Protection Policy Act](#) (FPPA) is intended to minimize the extent to which federal activities contribute to the conversion of farmland to nonagricultural uses. The FPPA requires agencies to examine the impact of their programs and projects before they approve any activity that would convert farmland to other uses. WSDOT complies with this requirement by completing the appropriate form in coordination with the NRCS.

The NRCS recognizes three categories of farmland (see [Section 455.10](#) Glossary for definitions) based on their soil types:

- Prime Farmland.
- Unique Farmland.
- Farmland of statewide or local importance.

The following are exempt from farmland analysis:

- Lands with soil types not suitable for crops (for example, sand dunes).
- Farmlands that have already been converted to industrial, commercial, residential, or recreational use.
- Farmlands already committed to urban development (for example, land within the adopted Urban Growth Area (UGA) and other urbanized areas).

The definition in [7 CFR 658.2\(a\)](#) includes specific information to better understand how urban development lands are determined that will help project teams decide whether a project is exempt from analysis.

Because the rating is based on soil type, soils such as timber land, vacant land, and open space that has never been farmed may be designated as prime farmland. Therefore, for all non-exempt projects, the WSDOT project office should refer to WSDOT's [Land use](#) webpage for information on the documentation process and the [NRCS farmlands](#) webpage for FPPA procedural requirements.

State law [RCW 47.01.305](#) also directs WSDOT to use public lands for wetland mitigation sites before using land designated as agricultural land of long-term commercial significance (as defined in [Chapter 36.70A RCW](#)) for highway projects. If public lands are unavailable, WSDOT is directed to make every effort to avoid any net loss of agricultural lands.

Notify the [NEPA/SEPA Program](#) immediately if eminent domain is being considered. See more in [Section 455.08](#) Mitigation.

Wild and Scenic Rivers

The Wild and Scenic Rivers Act (WSRA) designates certain rivers (or river segments) for special protection to preserve them in a free-flowing condition for the benefit and enjoyment of present and future generations. The act also identifies various "study rivers" for possible inclusion in the Wild and Scenic Rivers System. Currently, all of the designated Wild and Scenic Rivers in Washington State are administered by the United States Forest Service (USFS) in accordance with [36 CFR 297](#). See [Chapter 457](#) for guidance on how the WSRA applies to Section 4(f) (of the Department of Transportation Act of 1966) resources.

Closely examine the management plan and coordinate with the appropriate USFS office early in the environmental review and design process. Projects in a designated or study wild and scenic river that require a Section 404 permit from the Corps also require completion of a written Endangered Species Act (ESA) Section 7 determination by the USFS. Find more guidance on how to comply with the Wild and Scenic Rivers Act and NRI on WSDOT's [Land use webpage](#).

Federally designated Wild and Scenic Rivers within Washington include:

- Skagit River from the pipeline crossing at Sedro-Wooley upstream to and including the mouth of Bacon Creek and tributaries as listed below:
 - The Cascade River from its mouth to the junction of its North and South Forks.
 - The South Fork to the boundary of the Glacier Peak Wilderness Area.
 - The Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Milk Creek.
 - The Sauk River from its mouth to its junction with Elliot Creek.
 - The North Fork of the Sauk River from its junction with the South Fork of the Saul to the boundary of the Glacier Peak Wilderness Area.

- Klickitat River from Wheeler Creek to the confluence with the Columbia River, classified as a recreational river.
- White Salmon River from the confluence of Gilmer Creek (near the town of BZ Corner) to the confluence with Buck Creek; classified as a part wild and part scenic river.

There are other federally designated rivers outside of the state-owned transportation network, as well as rivers for which studies have been completed. See the [National Wild and Scenic River System](#) for more information on these rivers.

The President's 1979 Environmental Message Directive on Wild and Scenic Rivers requires federal agencies to protect and manage rivers in the NRI that are suitable for inclusion in the Wild and Scenic Rivers System as part of their normal planning and environmental review process. The directive, a listing of NRI rivers in Washington State, and the procedure for consulting on projects that may affect these rivers is available on the [Department of Interior's NRI](#) webpage.

Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF)

Projects that impact recreational lands require special consideration. [Chapter 457](#) describes United States Department of Transportation (USDOT) specific requirements for considering impacts to recreation and resource lands (i.e., Section 4(f) properties). However, there are several federal and state grants given to recreation managers that require some type of compensation when lands are converted and can no longer be used for recreational purposes.

The Land and Water Conservation Fund Act (LWCF) is a federal grant program which helps pay for the acquisition and development of public outdoor recreation areas. Grants are awarded to cities, counties, Native American Tribes, state agencies, and park and school districts. In Washington State the [Recreation and Conservation Office \(RCO\)](#) oversees many grant programs including the LWCF and represents the interests of the National Park Service (NPS) to ensure compliance with federal requirements.

Section 6(f) of the LWCF prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the NPS or their state designee. Therefore, a Section 6(f) analysis is also required if the project must use land purchased or improved using LWCF funding.

If property purchased or improved through LWCF is impacted by a project, the property owner (grant sponsor) is responsible for compliance with all Section 6(f) requirements even if the impact is caused by another party, such as WSDOT. Therefore, conversion of a Section 6(f) property to transportation uses requires early coordination with RCO and the property owner (grant sponsor) to ensure:

- All practical alternatives to property conversion have been evaluated and no reasonable alternative exists to the conversion that would meet the project's purpose and need.
- A mutually acceptable replacement property is found. The replacement property is reasonably equivalent in usefulness and location and fulfills the same recreational functions as the original property.
- The replacement property has an equal or greater fair market value than the original property.
- The public has been informed of the proposed conversion, been given a minimum of 30 days to comment on the change and their comments have been considered and adequately addressed by RCO/NPS.

- The replacement property is not designated recreation land owned by another public agency (i.e., you cannot replace a park with an existing park and thereby reduce the total amount of recreation land available to the community).
- A partial conversion will not adversely affect the recreational function of the remainder. If the remainder is not viable, the whole parcel must be replaced.
- NEPA, ESA, Section 106 of the National Historic Preservation Act (NHPA), and all other Federal approval requirements have been satisfactorily completed for the project as well as the conversion. Remember: the environmental approvals must include review of the portion of the recreation land to be converted and the proposed replacement site ([LWCF State Assistance Program Manual](#) Chapter 8 (E)(3)(g)).

The Federal regulations stipulate that the environmental review be conducted in a neutral and factual manner and should not include statements that promote or justify the action precipitating the conversion.

WSDOT project teams should coordinate with RCO as soon as the possibility of conversion is discovered to minimize project delay by ensuring:

- Agreement on the extent of impact caused by the project.
- The replacement property (if proposed) is determined acceptable by RCO prior to expenditure on appraisals or environmental review.

If RCO discovers an unauthorized conversion, RCO must notify WSDOT of the violation. RCO's notice will require that the project cease immediately until WSDOT satisfactorily completes the conversion process. WSDOT will also need to provide additional documentation to RCO. This documentation could include discussion of alternatives considered and a description of the work that required the use of a Section 6(f) property without prior notification and coordination with RCO. Standard procedures for working with RCO are described in their manual ([RCO Manual 7 Section 3\(6\)](#)).

The [Recreation and Conservation Funding Board \(RCFB\)](#) must approve conversions of Section 6(f) properties. The conversion approval process can be very lengthy, so plan for this in the overall project schedule. RCO advises that any request for a conversion approval be pursued as soon as a potential conversion is identified. The complicated conversion process includes several administrative tasks before a proposal will be reviewed by the RCFB. Furthermore, the RCFB meets on a quarterly schedule, and the proposal must be received at least six weeks in advance of a decision by the RCFB. Further details regarding the approval process and document requirements should be sought from an [RCO Grant Manager](#).

Small conversions of less than 5 acres or 10 percent of the Section 6(f) property (whichever is smaller) may be accomplished under a less complex process. To qualify, the conversion must meet specific minimum size and cost requirements. WSDOT project teams must coordinate with RCO for small conversions. Size and cost requirement and the review process are described on RCO's website in [Manual 7 Section 3](#)).

Because properties purchased with LWCF are to be used for recreation, LWCF properties (Section 6(f) properties) qualify as Section 4(f) properties (see [Chapter 457](#)). Although all Section 6(f) properties are Section 4(f) properties, two different processes are needed to assess a project's impacts to satisfy federal requirements. While Section 6(f) and Section 4(f) often apply to the same resources they are parts of different laws and there are some key differences:

- Section 6(f) applies only to properties acquired or improved with LWCF.
- Section 4(f) applies to all publicly owned parks, recreation areas and wildlife and waterfowl refuges regardless of the funding source or any publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places.
- Section 6(f) applies to all programs and policies for all federal agencies. Section 4(f) only applies to USDOT programs and policies.
- Mitigation for impacts to Section 6(f) requires replacement with land of equal value, location, usefulness, and function as the impaired property. Mitigation for Section 4(f) impacts is much more flexible and may not require replacement.

Comparison of Section 6(f) and Section 4(f) below summarizes the differences between Section 6(f) and Section 4(f).

Exhibit 455-1 Comparison of Section 6(f) and Section 4(f)

Law	Section 6(f)	Section 4(f)
Legislative Reference	Land and Water Conservation Fund Act, Section 6(f).	Section 4(f) of DOT Act
Purpose	Preserve, develop, and assure the quality and quantity of outdoor parks and recreation areas and refuges for present and future generations.	Avoid use of public parks, waterfowl and wildlife refuges, and significant historic sites.
Application	Applies to programs and policies of any federal agency and can apply to fully state funded projects where no federal nexus exists. When projects impact recreational lands purchased or improved with Land and Water Conservation Funds.	Applies only to programs and policies undertaken by USDOT agencies. When projects impact significant public parks, recreation areas, wildlife and waterfowl refuges, and significant historic sites are “used” for a highway project regardless of funding source.
Mitigation	Requires that impacted resourced be replaced with lands of equal value, location, and usefulness.	Allows flexible mitigation opportunities.
Final Approval	NPS through RCO.	USDOT Agency lead.
Relationship to Each Other	Section 4(f) is not an integral part of the Section 6(f) process.	Section 6(f) may influence the decision making during the consideration of minimization of harm during the Section 4(f) evaluation process, but they are independent processes.

For more information about Section 4(f) evaluations see [Chapter 457](#).

Documentation and procedural requirements for complying with NEPA differ between federal lead agencies. Conversion of a Section 6(f) property cannot be accomplished until we have satisfied all the NEPA, ESA, and Section 106 requirements for both the property proposed to be converted and the proposed replacement property. The exact requirements will vary depending on individual circumstances and the other federal agencies involved. Early coordination with RCO, NPS, and any land-owning agencies involved is recommended to ensure that our process meets their requirements and eliminate rework.

The RCO also manages many other state and federal grant programs, aside from the Land and Water Conservation Fund Program. These grants fund public recreation sites and facilities (such as parks, trails, trailheads, boat launches, habitat areas and gun ranges), and habitat improvements. RCO awards grants to counties, cities, nonprofit organizations, lead entities, state and federal agencies and Native American Tribes. Decisions on granting and conversion of lands that have received grants occur through one of two funding boards: the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board. It is important to research potentially impacted trails, parks, habitat areas, etc. to determine if RCO grant funds have been used to purchase and/or support the site. Impacts to these funded sites are handled in a similar manner to what is described in the section above concerning Section 6(f). Early coordination with RCO and the land owner (grant sponsor) is important to ensure all compliance and conversion policies are followed as outlined in the signed project agreement form, as found in RCO [Manual 7 Section 3](#).

Resource Conservation Areas

Resource Conservation Areas have previously been called Beautification Areas, Landscape Areas, Landscape or Conservation Easements, or Environmental Commitment Areas depicted on Right of Way Plans and Real Estate Services Maps. They are natural areas, outside of limited access areas, that were purchased or set aside to provide a natural, vegetated buffer between the highway and adjacent land uses.

It is FHWA and WSDOT policy that impacts to these areas must be avoided - see [2016 FHWA letter](#) regarding impacts to Resource Conservation Areas. However, due to the constrained, linear character of highway facilities, project impacts may be unavoidable. If impacts are unavoidable, they must be minimized and mitigated. See the [Roadside Policy Manual M 3110](#) for more information.

Transit

The state's multimodal system supports local and regional transit operators. Buses and vanpools use state highways, park and rides, and other WSDOT managed assets. WSDOT projects have the potential to benefit and impact transit operations by changing traffic flow and travel patterns. Highway, ferry, and rail construction projects may affect travel time, relocate or remove transit stops, or change pedestrian access to transit stops by adding median barriers or relocating crosswalks. Consult with the WSDOT Regional Transit Coordination Division in the Central Puget Sound area and with the WSDOT Public Transportation Division elsewhere in the state to locate the transit agencies most likely to be affected by your proposed project. Early and continuous coordination with local and transit agencies should be undertaken to maximize the potential benefits to transit operations of the proposed project and mitigate any negative construction or operational impacts.

The environmental review should include potential impacts to the transit system. Areas of concern include the effect on existing transit operations (area and frequency of service, travel time, and patronage), access to transit by people walking and bicycling, changes in traffic distribution, local circulation patterns, and parking. Impacts include temporary (detours, temporary route closures, etc.) and long-term.

For more information on assessing environmental impacts related to transit, refer to the Federal Transit Administration (FTA) [Transportation Impacts webpage](#).

Waterborne Navigation and Ferry Facilities

Ferry Terminals are typically located in navigable waters within the corporate limits of cities where harbor lines have been established by the state Harbor Lines Commission. According to the [State Constitution](#) (Article XV Harbors and Tide Waters), harbor areas are “forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.”

The DNR manages the use of harbor areas in accordance with the Aquatic Lands Act ([Chapter 79.105 RCW](#)). These areas are also subject to local land use regulations, including shorelines, critical areas, and zoning regulations.

U.S. Homeland Security regulations ([33 CFR 165](#)) impose security zones at ferry terminals and around vessels. A 25-yard separation zone is required when vessels are at the dock, and a 100-yard separation zone is required when the vessel is in route. Potential impacts to these security zones should be addressed in the land use analysis.

Washington State Ferries (WSF) ferry terminal projects often receive FTA funds, and/or the facilities may have received FTA funding. WSF projects may also be subject to FTA requirements. These procedures are described on FTA’s [Environmental Policy and Programs webpage](#) process for complying with the NEPA and federal surface transportation statutes is defined in the joint Federal Highway Administration (FHWA)/Federal Railroad Administration (FRA)/FTA Environmental Impact and Related Procedures ([23 CFR 771](#)).

Road projects typically have little impact on waterborne navigation. However, river crossings may affect shipping routes or access to port facilities. Section (V)(G)(11) of FHWA Technical Advisory [TA 6640.8A](#) requires an analysis of potential impacts to waterborne navigation and a discussion of mitigation for adverse impacts. Any project that requires a U.S. Coast Guard (USCG) Bridge permit must also show evidence of coordination with the USCG in accordance with the Memorandum of Agreement (MOA) between the US Coast Guard and FHWA for NEPA coordination requirements ([Appendix B](#)). More information can be found on the [USCG Bridge Permits webpage](#). Early coordination is required during the project planning phase, prior to formal project initiation (see the table in Section V for specific requirements). Where the preferred alternative requires a USCG Bridge permit, the NEPA documentation should include an exhibit showing the horizontal and vertical navigational clearances for each permit activity.

Highway projects adjacent to ferry terminals may affect ferry loading and unloading procedures, transit access, or parking. Coordination with WSF terminal operations staff and a discussion of the affects (both beneficial and adverse) to ferry operations should be included in the environmental document. Signal timing, turning movements, access to parking, transit stops, pedestrian flow and bicycle connections may be important factors.

The environmental document must evaluate the effect of proposed ferry operations on the adjacent street system for vehicular traffic, transit access, pedestrian flow, and bicycle access.

Rail Facilities

There are over 3,000 miles of railroad lines in Washington, providing mobility for freight and passengers moving into, out of, within, and through the state. Two Class I railroads, the BNSF Railway and the Union Pacific Railroad, as well as 23 short-line railroads, operate through communities in Washington.

The Palouse River and Coulee City (PCC) rail system, owned and operated by WSDOT, is the longest short-line freight rail system in Washington. WSDOT contracts with private railroads to operate each of the branches.

In addition, Sound Transit owns and operates some rail lines, such as the Point Defiance Bypass route in Tacoma, and commuter light rail.

WSDOT works with a diverse group of federal agencies depending on who owns or regulates the rail line, including the FHWA, FRA, FTA, and Surface Transportation Board (STB).

FHWA is typically the lead when a multimodal transportation project includes work on, over, or adjacent to rail facilities. Types of projects include grade crossing improvements, nearby roadway intersection improvements, and infrastructure improvements to support passenger rail service. When FHWA is the sole lead federal agency, apply the *Design Manual Chapter 1350* policies and procedures for coordinating highway and rail projects. It also includes requirements for conducting a safety analysis for at-grade crossings and signalized intersections in the vicinity of rail crossings.

If FRA is the federal lead, the EA/EIS must assess the direct, indirect, and cumulative impacts on both passenger and freight transportation, by all modes, including bicycles and pedestrians. The analysis should address local, regional, national, and international perspectives and include a discussion of construction and long-term impacts on traffic congestion. When FRA is the federal lead, refer to their agency-specific information on assessing environmental impacts on the [FRA and NEPA webpage](#). As of November 28, 2018, FRA conducts environmental reviews according to its revised NEPA legislation and regulations contained in [23 CFR Part 771](#), Environmental Impact and Related Procedures, and [23 CFR Part 774](#), Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) for transportation projects.

The STB is an economic-regulatory agency and has jurisdiction over rail related proposals that include construction of new rail lines and connecting track, rail line abandonments, as well as discontinuing rail service. These types of projects are generally proposed by freight railroads and do not typically involve WSDOT. STB's environmental rules can be found at [49 CFR 1105](#). The environmental rules implement various environmental statutes that include NEPA, the NHPA, ESA, and the Coastal Zone Management Act.

Aviation Facilities

WSDOT manages and operates 16 airports. These serve the public and play key roles in emergency response, search and rescue, and fire suppression. Capital projects to improve these airports may be subject to Federal Aviation Administration (FAA) rules as well as SEPA. FAA retains jurisdiction, but [WSDOT Aviation](#) is required by law to review all development permits and ordinances and then comment on whether there are potential impacts to the airspace based on the submitted information.

Any proposed highway construction or alteration in the vicinity of a public or military airport will require early coordination with WSDOT's [Aviation Division](#). WSDOT Aviation is required to review projects within the areas of these projects and then determine potential impacts

to the airport. Projects located within 3.8 miles of an airport may require an obstruction evaluation and must comply with FAA regulations to ensure that airway highway clearances are adequate for the safe movement of air and highway traffic ([23 U.S.C. 318](#) and [23 CFR 620 Subpart A, Highway Improvements in the Vicinity of Airports](#)). For additional information, see WSDOT's [Land use around airports webpage](#).

The guidance addresses:

- The effect of airports on adjacent land use and appropriate environmental documentation of proposed airport actions.
- The kinds of information on existing and planned land use that should be provided in an environmental document for highway projects within 3.8 miles of an airport, including “significance thresholds” for various land use related topics.

Aviation also has an [Airport Mapping Application](#) that can help determine if the project could potentially impact the airspace. A WSDOT Airports and Compatible Land Use Guidebook is also available by contacting a [WSDOT Aviation Planner](#).

Review of the [Airport Stormwater Design Manual M 3041](#) is recommended to evaluate potential impacts from the construction and operation of stormwater detention facilities in close proximity to airports.

If the Federal Aviation Administration (FAA) is the lead federal agency, the environmental document must evaluate the effect of airport expansion or rehabilitation projects on the local transportation network, including effect on parking, transit, vehicle congestion, travel time, and transportation demand. FAA guidance on how land use compatibility should be addressed in airport planning and NEPA documents is found in FAA Orders [1050.1E](#) and [5050.4B](#). Contact the [WSDOT Aviation Division](#) for assistance.

Bicycling and Pedestrian Facilities

The state's 2022 [Move Ahead Washington](#) transportation package contains significant investments in transit and active transportation – including projects to improve safety for bicyclists and pedestrians. WSDOT projects often include these elements. The [Active Transportation Plan 2020 and Beyond](#), is a compass for creating the future of walking, biking and rolling on or across state highways in Washington. It is used in decisions to help connect people to where they want to go, whether they use active transportation for the whole trip or just a part of it, such as the walk to a bus stop, the bike ride to work or rolling home from a ferry terminal.

The [FHWA Bicycle and Pedestrian Policy](#) is to incorporate safe and convenient walking and bicycling facilities into transportation projects and to go beyond minimum standards to provide safe and convenient facilities for these modes. Bicycle and pedestrian facility projects should be defined as standalone projects and not be inappropriately segmented from larger highway projects to simplify their environmental review.

Projects must consider impacts of construction of pedestrian access routes and bicycle and pedestrian lanes, paths, and facilities in order to verify the appropriate use of the FHWA CE ([23 CFR 771.117\(c\)\(3\)](#)). This CE applies regardless of needing right of way or total project cost.

Section 7 of FHWA's Technical Advisory [T 6640.8A](#) states that the environmental document should discuss current and anticipated use of the bicycle and pedestrian facility, potential impacts, and measures to avoid or reduce adverse impacts. This applies to formal trails and informal pathways with identified use by bicyclists and pedestrians. If the preferred alternative would sever an existing major route for non-motorized transportation traffic, the proposed project needs to provide a reasonable alternative route or demonstrate that such a route exists ([23 U.S.C. 109\(m\)](#)).

When new bicycle and pedestrian facilities are proposed as part of a highway project, the environmental document should:

- Include sufficient information to explain the basis for providing the facilities (e.g., proposed bicycle facility is a link in the local plan, or sidewalks will reduce project access impact to the community).
- Identify the facilities to be included in the preferred alternative.

455.04(3) Analysis and documentation for SEPA only (no federal nexus)

For projects with no federal nexus, WSDOT project teams should still follow the analysis and documentation requirements in [Section 455.04\(2\)](#). Exceptions include the Wild and Scenic Rivers Act and the FPPA, which only apply to federal activities.

455.04(4) Other Considerations

This section describes other considerations that should be included during environmental review.

Scenic River System Act

[Chapter 79A.55 RCW](#) established a scenic river system in Washington State. The system is managed by the State Parks and Recreation Commission to “protect and preserve the natural character of rivers with outstanding natural, scenic, historic, ecological, and recreational values”. The protected lands include river and publicly owned or leased lands up to one quarter mile on each side of the river. The State Parks Commission has developed and adopted management policies for the public lands along designated rivers. [RCW 79A.55.040](#) requires that the management policies be integrated into local Shoreline Management Master Plans.

State designated Scenic Rivers include:

1. The Skykomish River from the junction of the north and south forks of the Skykomish (within the jurisdiction of Snohomish County):
 - a. Downstream approximately fourteen miles to the junction of the Sultan River.
 - b. Upstream approximately twenty miles on the south fork to the junction of the Tye and Foss rivers (within the jurisdiction of King County).
 - c. Upstream approximately eleven miles on the north fork to its junction with Bear Creek (within the jurisdiction of Snohomish County).
2. The Beckler River from its junction with the south fork of the Skykomish River upstream approximately eight miles to its junction with Rapid River (within the jurisdiction of King County).

3. The Tye River from its junction with the south fork of the Skykomish River approximately fourteen miles to Tye Lake (within the jurisdiction of King County).
4. The Little Spokane River from the upstream boundary of the state park boat put in site near Rutter Parkway and downstream to its confluence with the Spokane River (within the jurisdiction of Spokane County).

Shoreline Management Act

The Shoreline Management Act (SMA) aims to “prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines” ([Chapter 90.58 RCW](#)). SMA also recognizes that “shorelines are among the most valuable and fragile” of the state’s resources.

The SMA provides for the management and protection of the state’s shoreline resources by requiring planning for their reasonable and appropriate use. The area regulated under the Act includes lands within two hundred (200) feet of designated shorelines as well as certain wetlands, river deltas, floodways and floodplains associated with such shorelines.

The SMA establishes a balance of authority between local and state governments. Cities and counties have the primary review responsibility for development along their shorelines, and the state (through the Washington State Department of Ecology) has authority to review local master programs and local shoreline development permit decisions.

Shorelines of the state include:

- All marine waters.
- Streams with greater than twenty cubic feet per second (20 cfs) mean annual flow.
- Lakes twenty (20) acres or larger; Upland areas called shorelands that extend two hundred (200) feet landward, in all directions on a horizontal plane, from the edge of the ordinary high watermark (OHWM) of these waters.
- The following areas when they are associated with one of the above:
 - Wetlands and river deltas.
 - Floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways.

National Trails System Act

The National Trails System Act 1968 ([16 U.S.C. 1241-1251](#)) requires federal agencies that abandon roadways, utility right of way, or other properties suitable for improving or expanding the national trails system to consider the possibility of using the abandoned right of way to extend the national trail system.

Safe Routes to Schools

WSDOT oversees the Safe Routes to Schools grant program. This provides funds for pedestrian and bicyclist safety infrastructure improvements within two miles of a school (typically, also includes preliminary engineering, and right of way). Local agencies, tribes and schools identify biking and walking routes. Areas that include state routes have typically undergone some evaluation by the WSDOT region as well.

WSDOT's Active Transportation Division can provide project teams with information on how to coordinate proposed projects near schools. Efforts to avoid, minimize, or mitigate adverse impacts and coordinate with school officials should be discussed in the environmental document.

Parking

If a project provides, removes, or relocates parking, the local jurisdiction's zoning, road standards, and off-street parking regulations may apply. Links to appropriate city and county regulations can be found by searching the Municipal Research and Services Center ([MRSC](#)) website.

455.05 External engagement

The conversion of a Section 6(f) property to transportation uses requires that the public has been informed of the proposed conversion, been given a minimum of 30 days to comment on the change, and their comments have been considered and adequately addressed by the RCO and NPS.

455.06 Internal roles and responsibilities

The following represent typical roles and responsibilities for key offices. Actual roles and responsibilities may vary within the regions and modes.

455.06(1) Planner

Conduct environmental screening for potential land use impacts. Notifies the [NEPA/SEPA Program](#) and region environmental if land use impacts are anticipated. Review GMA comprehensive plans and other local, regional, state, and tribal land use plans for consistency with the plan's recommendations. Coordinate the annual process to review and approve the conformity determination in Metropolitan Planning Organization (MPO) Transportation Improvement plans (TIP), See [Chapter 425](#) and [Section 455.03\(1\)](#).

455.06(2) Project engineer

Oversee all engineering studies and technical reports are prepared as needed and provide appropriate levels of analysis to support the environmental review process and permitting activities to the environmental staff. Coordinate with Region Environmental to discuss potential environmental impacts of the project. Ensure that the Practical Design process is documented in the project in sufficient detail to support the administrative record and environmental documentation. The *Design Manual* [Chapter 1100](#) describes Practical Design.

455.06(3) Region environmental

Oversee the development of environmental review documents. Research and provide information describing the environmental context for the project commensurate with the level of design detail provided and the potential environmental impacts of the project. Right-size the research and analysis using GIS data, windshield surveys, coordination with subject matter experts, or site-specific analysis as appropriate. Communicate environmental information to the environmental and engineering teams so that potential budget, schedule, and permitting issues are clearly understood, taken into consideration throughout the process, and incorporated as needed for permits and other agency approvals.

455.06(4) Environmental services office

The primary role of the Environmental Services Office (ESO) is to keep policies and procedures current with evolving and changing rules and regulations. ESO staff also provide expert assistance for developing scopes of work for consultants and internal WSDOT staff as well as reviewing environmental documents. The ESO [NEPA/SEPA Program](#) is available to consult on projects requiring Land Use and Transportation analyses. For EAs and EISs, the [NEPA/SEPA Program](#) also reviews Land Use and Transportation analyses for procedural accuracy, substantive adequacy, and legal sufficiency.

ESO's Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

455.07 Applicable permits and approval process

Clean Water Act

Projects in a "designated" or "study" wild and scenic river area may require a Section 404 permit from the Corps for compliance with the Clean Water Act, and an ESA Section 7 determination by the USFS.

Navigable waters

Projects that impact waterborne navigation require a USCG Bridge Permit. Any project that requires a Bridge Permit must also show evidence of coordination with the USCG in accordance with the MOA between the US Coast Guard and FHWA for NEPA coordination requirements ([Appendix B](#)).

Projects that include plans for a bridge or structure over or involving waters of the US where the navigable portions of rivers or other waterways involved in the project are not within a single state may require a USCG Bridge permit.

Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF)

The conversion of a Section 6(f) property to a transportation use also requires approval by the [RCFB](#).

Forest Practices

The DNR requires a forest practices permit for certain work on private or state forest lands ([Chapter 76.09 RCW](#); [Chapter 222 WAC](#)). Project activities that trigger permits include converting timberland to other uses, harvesting timber, and installing/replacing water crossings on forest roads.

Aquatic Use Authorization

The DNR requires an Aquatic Use Authorization permit if work is performed on state-owned aquatic lands. Coordinate with your WSDOT Real Estate Services (RES) office to work with DNR to determine if your project is on state-owned aquatic lands ([Chapter 79.105 RCW](#); [Chapter 332.30 WAC](#)). If an Aquatic Use Authorization is needed, WSDOT Real Estate Services completes the request for permit to DNR.

Critical Areas Permits

The GMA directs local agencies to develop comprehensive plans and ordinances that protect locally delineated wetlands, wellhead protection areas, frequently flooded areas, geographically hazardous areas, fish and wildlife habitat, and other conservation areas ([Chapter 36.70A RCW](#); [Chapter 36.70B RCW](#); [Chapter 365-190 WAC](#); [Chapter 365-195 WAC](#); [Chapter 365-196 WAC](#)). Local governments typically require a Critical Areas permit or approval if work is performed within areas designated by their critical areas ordinance.

Property acquisition

Coordination with WSDOT RES may be necessary should a future acquisition be contemplated. Early engagement with federal, state, and local agencies is imperative for a successful acquisition. For more information on the permitting process, see [Chapter 500](#), and WSDOT's *Right of Way Manual* [Chapter 6.5.3](#).

455.08 Mitigation

The environmental documentation should describe any recommended mitigation measures and commitments to interested parties for the design, construction, and post-construction phases. The documentation should also describe whether additional mitigation measures were considered and why these were not included.

[RCW 47.01.305](#) requires that WSDOT considers agricultural lands of long-term commercial significance, as defined in [RCW 34.70A.030](#), when reviewing and selecting sites to meet environmental mitigation requirements under NEPA. It also requires WSDOT to consider using public lands first before using land defined as agricultural land of long-term commercial significance, as defined in [Chapter 36.70A RCW](#). If public lands are not available that meet the required environmental mitigation needs, then WSDOT may use other sites while making every effort to avoid any net loss of agricultural lands that have a designation of long-term commercial significance.

Mitigation for impacts to Section 6(f) properties requires replacement with land of equal value, location, usefulness, and function as the impaired property. See [Section 455.04\(2\)](#).

Refer to Section 2.2(7) of the [Roadside Policy Manual](#) for mitigation of unavoidable impacts to Resource Conservation Areas.

The Department of Interior's NRI webpage provides guidance on how to avoid, minimize, and mitigate adverse effects on NRI rivers.

[Chapter 490](#) provides guidance on how to incorporate environmental commitments into project contracts. This is important for NEPA/SEPA commitments as well as regulatory permit commitments.

455.09 Abbreviations and acronyms

4(f)	Section 4(f) of the Department of Transportation Act of 1966
6(f)	Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF)
CE	Categorical Exclusion (NEPA); Categorical Exemption (SEPA)
CEQ	Council for Environmental Quality
CFR	Code of Federal Regulations
Corps	United States Army Corps of Engineers
EA	Environmental Assessment (NEPA/SEPA)
EIS	Environmental Impact Statement (NEPA/SEPA)
ERS/ECS	Environmental Review Summary/Environmental Classification Summary
ESA	Endangered Species Act
ESO	Environmental Services Office
FAA	Federal Aviation Administration
FCIR	Farmland Conversion Impact Rating form
FHWA	Federal Highway Administration
FPPA	Farmland Protection Policy Act
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GMA	Growth Management Act
LOS	Level of Service
LWCF	Land and Water Conservation Fund Act
MOA	Memorandum of Agreement
MRSC	Municipal Research and Services Center of Washington
NEPA	National Environmental Policy Act
NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRI	Nationwide Rivers Inventory
PEL	Planning and Environmental Linkages
RCFB	Recreation and Conservation Funding Board
RCO	Washington State Recreation and Conservation Office
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
STB	Surface Transportation Board
U.S.C.	United States Code
USCG	United States Coast Guard
USDOT	United States Department of Transportation
USFS	United States Forest Service
WAC	Washington Administrative Code
WSF	Washington State Ferries

455.10 Glossary

These definitions provide context for the Land Use analysis. Some terms may have other meanings in a different context.

Essential Public Facilities – As defined under GMA, essential public facilities that are typically difficult to site, including airports, state or regional transportation facilities, and services of statewide significance as defined in [RCW 47.06.140](#) (including improvements to such facilities and services identified in the statewide multimodal plan) and other public facilities that are typically difficult to site.

Farmland of Statewide or Local Importance – FPPA defines farmland of statewide or local importance as land used to produce food, feed, fiber, forage, or oilseed crops, as determined by the state or local government agency or agencies, using U.S. Department of Agriculture guidelines.

Federal Nexus – A determination that at least one federal agency is involved as a proponent of a specified proposal and/or as an agency that needs to act on a federal permit, license, or other entitlement (such as a request to use federal funds or federal land) needed to implement the proposal. A federal nexus (even on an otherwise non-federal proposal) typically triggers the need for the federal agency or agencies to comply with various federal statutes include, but not limited to, NEPA, Section 106, Section 4(f), Section 6(f), and ESA Section 7.

Indirect Effects – The indirect land use effects involve potential development, or redevelopment of buildable lands within the influence of the transportation project. These changes are driven and constrained by social and economic factors beyond WSDOT or the local public agency's control. Such effects are difficult to predict and often controversial. Projects that do not increase capacity, change the level of service (LOS), or significantly reduce travel time are unlikely to change land use.

Level of Service (LOS) – LOS describes the minimum amount of a public facility which must be provided to meet the community's basic needs and expectations. Please consult with Multimodal Planning and Data Division and Traffic Operations for current best practices.

Prime Farmland – As defined in the FPPA, Prime Farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion. Prime farmland includes land that possesses the above characteristics and may include land currently used as cropland, pastureland, rangeland, or forestland. It does not include land already in or committed to urban development or water storage.

Resource Conservation Areas – Previously called Beautification Areas, Landscape Areas, Landscape or Conservation Easements, or Environmental Commitment Areas depicted on Right of Way Plans and Real Estate Services Maps, these are natural areas outside of the limited access hachures that were purchased or set aside to provide a natural, vegetated buffer between the highway and adjacent land uses.

Section 4(f) Property - Applies to all publicly owned parks, recreation areas and wildlife and waterfowl refuges regardless of the funding source or any publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places. See [Section 455.04\(2\)](#).

Section 6(f) Property – Any property acquired or developed with financial assistance under Section 6(f) of the federal LWCF Act. See [Section 455.04\(2\)](#).

Transportation Facilities and Services of Statewide Significance – Defined in [RCW 47.06.140](#) to include the interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities, and services that are related solely to marine activities affecting international and interstate trade, and high capacity transportation systems serving regions as defined in [RCW 81.104.015](#).

Unique Farmland – As defined in the FPPA, Unique Farmland is land other than prime farmland that is used for production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include lentils, nuts, annually cropped white wheat, cranberries, fruits, and vegetables.

Urban Growth Area (UGA) – UGAs are those areas designated by a county pursuant to the GMA, which are planned to support urban development and densities within the next 20 years. Growth within UGAs is intended to be urban, and growth outside of UGAs can only occur if it is not urban in nature. These rules are to concentrate growth and reduce urban sprawl into natural areas and landscapes.

Chapter 456 Cultural resources

456.01	Introduction
456.02	Applicable statutes, regulations, executive orders, and policies
456.03	Cultural resources considerations during project development
456.04	Analysis and documentation requirements
456.05	External engagement
456.06	Internal Roles and responsibilities
456.07	Mitigation
456.08	Applicable permits and approval process
456.09	Abbreviations and acronyms
456.10	Glossary
456.11	Exhibit

456.01 Introduction

It is WSDOT policy to avoid, minimize or mitigate adverse impacts to cultural resources in planning, constructing, operating, or maintaining the state's transportation system. The term *cultural resources* refers to sites, buildings, structures, districts, and objects fifty-years of age or older. Archaeological sites include precontact and historic-era surfaces, buried or underwater features, and artifacts. Historic built environment resources include buildings, roads, bridges, railways, vessels, canals, ditches, and other cultural features of the landscape.

Transportation projects and maintenance activities sponsored or performed by WSDOT Regions and Modes have potential to impact cultural resources. These actions are subject to compliance with state and federal regulations that govern the treatment of archaeological, historical, and cultural resources.

456.02 Applicable statutes, regulations, executive orders, and policies

456.02(1) Federal

- Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, and its implementing regulations [36 CFR 800](#)
- Section 4(f) of the Department of Transportation Act 49 U.S.C. 303
- Historic Bridge Program 12 U.S.C 144(g)
- National Environmental Policy Act (NEPA) of 1969 42 US 4321
- Archaeological Resources Protection Act [43 CFR 7.6-7.11](#)
- Curation of Federally Owned and Administered Archaeological Collections [36 CFR 79](#)

456.02(2) State

- [Centennial Accord](#)
- Governor's Executive Order (GEO) [21-02 Archeological and Cultural Resources](#)
- State Environmental Policy Act [Chapter 197-11 WAC](#) and [Chapter 468-12 WAC](#)
- Abandoned and Historic Cemeteries Act [Chapter 68.60 RCW](#)
- Indian Graves and Records Act [Chapter 27.44 RCW](#)
- Archaeological Sites and Resources Act [Chapter 27.53 RCW](#)
- Archaeology and Historic Preservation [RCW 27.34.200](#)

456.02(3) Local

Some local jurisdictions have local landmark or cultural resources ordinances.

456.03 Cultural resources considerations during project development**456.03(1) Planning**

[Chapter 200](#) explains how planning projects (any pre-NEPA plan) can consider environmental issues. Project teams should check to see if a planning study has been done in their project area, and if so, refer to any cultural resources documented in that study.

Cultural resources compliance begins with notifying the Region, Division, or Mode [WSDOT Cultural Resources Specialist](#) (CRS) of the proposed activity. This notification must include the project location, scope and extent of planned work, and funding sources and required permits.

456.03(2) Scoping

Consideration of project impacts to cultural resources (i.e., archaeological sites, buildings, historic highway bridges, or cultural places) early in the planning process will help identify potential scope and scheduling impacts. Coordinate with the Region, Division, or Mode [CRS](#) to determine the presence of known cultural resources and potential for previously unrecorded resources in the project area.

456.03(3) Design

Coordinate with the Region, Division, or Mode [CRS](#) to identify the appropriate regulatory environment and compliance process for the proposed activity, as illustrated in Exhibit 400-2. The majority of WSDOT projects are subject to review under Section 106 of the NHPA, and primarily follow the compliance process defined in the [Statewide Programmatic Agreement](#) with the Department of Archaeology and Historic Preservation (DAHP), Federal Highway Administration (FHWA), US Forest Service Region 6 (USFS), and Advisory Council on Historic Preservation (ACHP). A CRS may exempt certain activities presumed to have minimal or no potential to affect cultural resources from Section 106 review per Stipulation VII and Appendix B of the [Statewide Programmatic Agreement](#).

456.03(4) Construction

Consult the Region, Division, or Mode CRS to develop a project specific Inadvertent Discovery Plan (IDP) for the unanticipated discovery of cultural resources or human skeletal remains during construction. An IDP is required for all projects as stipulated in Sections [1-07.16\(4\) Archaeological and Historical Objects](#) and [1-07.16\(4\) Inadvertent Discovery of Human Skeletal Remains](#) of the [Standards Specifications](#) manual. The IDP must be kept on site and provides guidance for the treatment of cultural resources if encountered during project activities. The IDP must be provided to the construction inspectors, the Project Engineer, and the construction contractor Project Manager and Foreman.

Archaeological monitoring may be required if results of the cultural resources survey indicate resources are likely to be encountered in the project area during construction (see General Special Provisions 071604.GR1 - Construction Procedures for Discovery of Archaeological and Historic Objects).

456.03(5) Maintenance and Operations

Notify the Region CRS of highway maintenance activities that include ground disturbing activities. The WSDOT Maintenance Program Cultural Resources Checklist provides a mechanism to review ground disturbing maintenance work for potential impacts to cultural resources. In the case of maintenance activities that occur on tribal reservations or federal lands, WSDOT must comply with provisions of Maintenance agreements with the affected tribes or federal land-owning agencies (USFS, NPS, BLM, BIA, USFWS, etc.). Certain maintenance activities may also be subject to review under [GEO 21-02](#).

456.04 Analysis and documentation requirements

Section 106 is a separate regulatory process from NEPA. However, Section 106 compliance must be documented prior to NEPA completion (regardless of NEPA classification). The level of detail that is needed for compliance with Section 106 and state requirements depends on the scale and scope of the project. The size of the Area of Potential Effects (APE) and the project activities are the key factors.

456.04(1) Analysis and Methodology

Federal

Section 106 of the NHPA ([36 CFR 800](#)): Federally funded projects or permitted activities, or projects that occur on federal (including Indian/tribal) land are subject to review under Section 106 of the NHPA (implementing regulations [36 CFR 800](#), see below). Section 106 is a consultative process and federal requirement to avoid, minimize or mitigate impacts to historic properties. Historic properties consist of any precontact or historic districts, sites, buildings, structures, or objects included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term also includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

WSDOT recognizes the historical significance of roads and highways in Washington State and considers project impacts to roadways at least 50 years of age and deemed significant according to the National Register criteria as determined by the CRS Historian. The evaluation methods developed by WSDOT and described in the [Guidelines for Identifying and Evaluating the Historic Significance of Washington State Highways](#) (PDF 57KB) focus on engineered features. This approach takes into consideration the original alignment, road prism and site distance that reflect the historic character of a roadway.

Projects impacting historic highway bridges must also comply with stipulations of the Historic Bridge Program (23 U.S.C. 144(g)) requiring that WSDOT provide an opportunity for the sale or donation of National Register eligible or listed bridges proposed for demolition as part of a replacement project. The [WSDOT Cultural Resources Compliance Guidance for Historic Bridge Projects](#) (PDF 113KB) provides a step-by-step guide to the Section 106 and Section 4(f) review process for highway bridges.

The majority of WSDOT projects are reviewed under Section 106 and primarily follow the compliance process defined in the [Statewide Programmatic Agreement](#) with DAHP, FHWA, and the USFS. WSDOT, on behalf of FHWA or USFS, will (1) define the APE, (2) initiate consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation

Officer (THPO), tribes and other interested and affected parties, (3) identify historic properties with potential to be impacted by project activities within the APE or oversee and review work done by consultants hired to identify historic properties, (4) determine NRHP eligibility of resources and project effects, and (5) work with the Region and consulting parties to develop ways to avoid, minimize or mitigate adverse impacts to cultural resources. Mitigation to resolve adverse effects is achieved through consultation and formalized in a legally binding agreement, either a Memorandum of Agreement (MOA) or Programmatic Agreement (PA).

If there is no FHWA or USFS nexus for the project but there is another federal agency involved (e.g., FRA, FAA, BLM, NPS, etc.), the WSDOT CRS will work with that agency's cultural resources staff to determine how the Section 106 process will be done and who will do the consultation; some federal agencies are willing to adopt the terms of the FHWA [Statewide Programmatic Agreement](#).

If the Corps of Engineers (Corps) is the only federal agency nexus (e.g., a state-funded project that needs a Corps permit), the project follows one of the Track processes in the Memorandum For Record (MFR) between the Corps and WSDOT. The WSDOT CRS will work with the Corps cultural resources staff to determine which Track (A, B, or C) the project falls under. The MFR allows WSDOT to initiate Section 106 consultation for the project prior to the permit request being processed by the Corps.

Section 106 is a separate regulatory process from NEPA and must be completed for projects that are Categorical Exclusions under NEPA. While both NEPA and NHPA require federal agencies to consider project impacts to historic properties, projects that are categorical exclusions under NEPA are not exempt from Section 106 review.

Section 106 is a procedural law whereas Section 4(f) of the US Department of Transportation Act is a substantive law that requires avoidance to use of NRHP eligible or listed historic properties, if prudent and feasible. Section 4(f) applies only to agencies within the US DOT. Requirements for documentation of the Section 4(f) resource (historic property) differ by level of use or impact (see [Section 4\(f\) Evaluation Guidance](#)).

A prescribed list of activities presumed to have minimal or no potential to affect cultural resources may be exempted from Section 106 and GEO 21-02 review per stipulations of the [Statewide Programmatic Agreement](#). The Region, Division, or Mode CRS will determine if a project meets criteria for exemption. If the activity cannot be exempted, the Region, Division, or Mode CRS will provide guidance on Section 106 or GEO 21-02 consultation for the proposed project.

The [Program Comment for Common Post-1945 Concrete and Steel Bridges](#) issued by the ACHP in 2012 exempts common (mass produced) post-1945 concrete and steel bridges and culverts from Section 106 review. The intent of the Program Comment is to streamline the review process for those structures lacking distinction; that have not previously been listed or determined eligible for listing on the National Register; and that are not located in or adjacent to historic districts. A list of exceptions to the Program Comment ([Bridge Program Comment Excepted Bridges List](#)) identifies structures of exceptional quality that remain subject to Section 106 review.

The 2005 [Section 106 Exemption Regarding Effects to the Interstate Highway System](#) by the ACHP excludes the majority of Interstate Highway Features from consideration as historic properties under Section 106 of the NHPA. FHWA maintains a list (by state) of [Nationally and Exceptionally Significant Features of the Federal Interstate Highway System](#) that identify

interstate highway bridges and segments of highway containing bridges determined by the FHWA to be of exceptional national significance in Washington State. These properties are subject to review under Section 106.

State (No federal nexus)

Projects reviewed under Section 106 are not required to undergo a separate State level review for compliance with [GEO 21-02](#). State funded projects with no federal permit or nexus undergo a similar review process to Section 106. The Region, Division, or Mode CRS will work with the project office to determine the area of impact and initiate consultation with DAHP and interested tribes subject to GEO 21-02. Certain projects with minimal or no potential to effect cultural resources may be exempted from review. The Region, Division, or Mode CRS will determine if the project meets the criteria for exemption.

The GEO 21-02 compliance process is ongoing until project impacts are determined and an approach to avoid, minimize, or mitigate any impacts is developed and formalized through an MOU with DAHP.

Required Documentation

Cultural resources study documents shall be prepared by the Region, Division, or Mode CRS or by consultants under the direction of the WSDOT CRS for compliance with GEO 21-02 and Section 106. The survey report will conform to the [Washington State Standards for Cultural Resources Reporting](#) and provide substantive information on each archaeological site or historic structure within the study area, including a physical description, recommendation on significance (NRHP eligibility), and justification for the findings. Properties recommended eligible for NRHP listing must possess significance under the National Register Criteria and possess integrity necessary to convey that significance.

Cultural resources consultants may recommend eligibility determinations, but the formal determination of eligibility must be made by the Region, Division, or Mode CRS. A general historical context and ethnographic background should be provided and supported by maps and photographs of the project area. Survey results will also address the potential for resources to be encountered during construction and the need for archaeological monitoring. The Environmental Coordinator will develop a project specific IDP using [WSDOT IDP template](#) (DOCX 62.5KB) to provide guidance for the unanticipated discovery of resources during construction. If archaeological monitoring is required, a monitoring report will be submitted to consulting parties for review by the Region, Division, or Mode CRS.

If an adverse impact to cultural resources will occur because of project activities and avoidance is not feasible, mitigation will be required. Mitigation measures to resolve the adverse impact will be developed through consultation and formalized in an agreement (MOU for GEO 21-02, or MOA for Section 106).

Section 4(f) documentation to comply with the US Department of Transportation Act may be required to address project impacts to NRHP eligible or listed cultural resources, if no feasible or prudent alternative is possible to minimize harm (see [Section 4\(f\) Evaluation Guidance](#)).

456.04(2) Curation

WSDOT's policy on the curation of artifacts and records recovered during investigations undertaken in compliance with either Section 106 of the NHPA or the Washington State Archaeological Sites and Resources Act ([Chapter 27.53 RCW](#)) is provided in [Exhibit 456-1](#).

456.05 External engagement

Section 106 of the NHPA is a consultative process that requires input from interested and affected parties and the public on federally funded or permitted projects or those on federal land. Section 106 consultation is initiated by the Region/Mode Environmental Manager (in coordination with the CRS) with consulting parties, including the SHPO, THPO, tribes, partner agencies and the public when a proposed project has potential to affect historic properties. Consultation is an iterative process and provides an opportunity for interested parties and the public to weigh in on decision making throughout the Section 106 review process.

Federally recognized tribes have a specific role in the Section 106 process, per the implementing regulations in [36 CFR 800](#). Federally recognized tribes maintain the right to ask for government-to-government consultation with federal agencies, and the level of tribal participation in technical consultation is decided by the tribes, not by WSDOT. Federally recognized tribes are not considered the “public” and can request separate meetings outside of and in addition to public meetings.

Stipulations of the Historic Bridge Program ([23 U.S.C. 144\(g\)\(5\)](#)) require WSDOT to provide an opportunity for the adoption or reuse of historic highway bridges proposed for demolition as part of a replacement project. Proposals are welcome from the public and must demonstrate the recipient can successfully (a) relocate or preserve the bridge in place, and (b) maintain its historic character.

456.06 Internal Roles and responsibilities

456.06(1) *Region/Mode Environmental Manager*

Consult with tribes annually on proposed transportation projects and maintenance activities planned for the Region, Division, or Mode, as required per stipulations of the [Statewide Programmatic Agreement](#). In coordination with the Region, Division, or Mode CRS, initiate consultation with the SHPO or THPO, affected tribes, partner agencies and the public when a proposed project has potential to affect historic properties.

Coordinate with the Region, Division, or Mode CRS to develop mitigation measures and consult on formal agreements (MOU per GEO 21-02, or MOA per Section 106).

456.06(2) *Project Engineer*

Coordinate with the Region/Mode Environmental Manager, Environmental Coordinator, and Region, Division, or Mode CRS assigned to the project to identify potential cultural resource concerns during project planning and scoping and develop the project APE.

Work with CRS to avoid or minimize impacts to cultural resources impacted by project design, or to develop potential mitigation to resolve adverse effects. Mitigation costs are the responsibility of the project and come from project funds.

456.06(3) *Environmental Coordinator*

Work with the Region, Division, or Mode CRS to determine appropriate state or federal regulatory environment for projects and determine exemptions, if applicable. Work with the CRS and Project Engineer to develop the project APE, identify consulting parties and participate in consultation under the applicable state or federal regulation.

If a cultural resources survey is required, work with the CRS to develop a Scope of Work for consultants. Cultural resources work must be reviewed by the Region, Division, or Mode CRS for compliance and quality, prior to submission to consulting parties.

Work with the project CRS to develop mitigation strategies to resolve adverse impacts to cultural resources, assist in consultation, and draft agreement documents.

Review with Region CRS maintenance activities (see checklist for cultural resources for maintenance activities) for potential impacts to cultural resources.

Consult CRS to identify environmental commitments for construction, including archaeological monitoring and curation requirements (see [Exhibit 456-1](#)). The WSDOT project office, with the aid of the project CRS, is responsible to address curation of archaeological collections in contracts with cultural resource consultants.

The Environmental Coordinator, with input from the project CRS, will develop a project specific IDP to address the unanticipated discovery of cultural resources during project activities.

456.06(4) Cultural Resources Specialist

Each WSDOT Region, Mode, and Division has an assigned [Cultural Resources Specialist](#), either place-based in the Region or Mode or within the Cultural Resources Program at Headquarters. The CRS reviews all Region, Mode, and Division projects for their potential to impact cultural resources, and determines if exemptions from the [Section 106 Statewide Programmatic Agreement](#) can be applied. If the project can be exempted, the CRS documents the exemption and notifies the Environmental Coordinator. If the project cannot be exempted, the CRS works with the Project Engineer and Environmental Manager or Coordinator to develop an APE description and map, and coordinates consultation with DAHP, federal agencies, tribes, and the public to complete the steps of the Section 106 process.

The ESO Cultural Resources Program Supervisor will be notified by either the Region, Division, or Mode CRS or the Environmental Manager when issues arise with consulting parties that might have agency-wide implications for WSDOT, or that might set a precedent for other WSDOT projects. The Cultural Resources Program Supervisor is responsible for developing statewide WSDOT policies regarding cultural resources, and provides expert technical assistance for any Region, Division, or Mode project that encounters difficulties in cultural resources compliance.

456.07 Mitigation

If cultural resources cannot be avoided during project planning or construction, mitigation is required to resolve adverse effects to NRHP eligible or listed resources. Mitigation will be determined through consultation and formalized in an agreement (MOU per GEO 21-02, or MOA per Section 106). The [Statewide Programmatic Agreement](#) provides guidance for mitigating project impacts. Mitigation efforts must always be commensurate to the scope of the project, be reasonable, cost effective and designed to address the actual effects of the project on historic properties. Standard mitigation measures are often applied, but development of creative mitigation measures is encouraged. Common mitigation measures include excavation, relocation, rehabilitation, recordation, screening, signage and public interpretation. Consult the Region, Division, or Mode CRS and the ESO Cultural Resources Program Supervisor to develop appropriate mitigation measures.

456.08 Applicable permits and approval process

State funded projects subject to review under [GEO 21-02](#) may require an [Archaeological Site Alteration & Excavation Permit](#) issued by DAHP for alterations to sites (as defined under [RCW 27.53.030\(3\)](#)). Precontact sites, regardless of NRHP eligibility status, and NRHP eligible or listed historic- era sites require a permit for alterations or disturbance. Alterations are defined as any level of disturbance that would change or potentially impact a site but primarily include archaeological excavation, removal and collection of artifacts.

The Section 106 compliance process fulfills obligations for the DAHP permit. Archaeological investigations or disturbance of sites, including excavation or removal of archaeological resources from federal lands require a permit issued under the [Archaeological Resources Protection Act \(ARPA\) 16 U.S.C 470](#). ARPA permits are completed by a WSDOT CRS (qualified applicant) and outline the nature and location of the archaeological investigation or research, and arrangements for curation of artifacts and records.

456.09 Abbreviations and acronyms

ACHP	Advisory Council on Historic Preservation (federal)
BLM	Bureau of Land Management, U.S. Department of the Interior
Corps/COE	US Army Corps of Engineers
CRS	Cultural Resources Specialist
DAHP	Department of Archaeology and Historic Preservation
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GOIA	Governor's Office of Indian Affairs
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
SHPO	State Historic Preservation Officer
TCP	Traditional Cultural Property
THPO	Tribal Historic Preservation Officer

456.10 Glossary

Adverse Effect – Occurs when an effect on an historic property diminishes the integrity of the property's aspects of integrity (see below). See also Determination of Effect (Criteria of adverse effect: [36 CFR 800.5\(a\)\(1\)](#)).

Advisory Council on Historic Preservation – An independent federal agency, established under the NHPA, which: (1) advises the President and Congress on matters of historic preservation; (2) carries out Section 106 reviews; and (3) provides technical assistance in historic preservation actions.

Affect (Verb) – Action that may change the character of an historic property.

Area of Potential Effects (APE) – The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. The APE is three dimensional and should take into account potential auditory and visual effects in addition to ground disturbing activities. The APE is influenced by the scale and nature of

an undertaking and may be different for different kinds of effects caused by the undertaking. The APE should be defined before historic properties are identified and is not based on land ownership.

Building – A construction created to shelter any form of human activity, including animal husbandry.

Centennial Accord – The Centennial Accord Plan was created in accordance with the 1989 Centennial Accord and the 1999 Centennial Accord Implementation Guidelines. The Centennial Accord mandated that each state agency must have a procedure to implement effective government-to-government relations.

Consulting Party – In the Section 106 process, consulting parties include the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Indian tribes, representatives of local governments, applicants for federal assistance or approvals, and organizations and individuals with legal or economic relation to the undertaking, or who have concerns with the undertaking's effect on historic properties.

Criteria for Evaluation (National Register Eligibility Criteria) – Standards used for determining the eligibility of properties for inclusion in the National Register of Historic Places ([36 CFR 60.4\(a-d\)](#)). See National Register Bulletin 15, pp. 11-24.

Cultural Resource – A place, object, location or site of an event that is important to a community or region's history, traditions, beliefs, customs, or social institutions.

Cultural Resources Specialist (CRS) – A WSDOT employee meeting the Secretary of the Interior's Professional Qualification Standards (per [36 CFR 61](#)) who advises department staff on policies relating to items of historic/archaeology significance that may be affected by a project and who conducts regulatory compliance procedures.

Cultural Resources Management – The body of laws and regulations pertaining to historic, archaeological, and cultural properties, and the manner in which those directives are implemented.

Department of Archaeology and Historic Preservation (DAHP) – This agency houses the Washington State Historic Preservation Officer (SHPO) who serves as SHPO and director of the agency. SHPO locations in state governments are unique to each state.

Determination of Effect – A finding, by a federal agency in consultation with SHPO and consulting parties, pursuant to compliance with Section 106 (see definition) that a proposed undertaking will have an effect on historic properties. If an effect is identified, the Criteria of Adverse Effect is applied to determine potential Adverse Effect (see definition). Other possibilities are determinations of No Effect and No Adverse Effect.

Determination of Eligibility – Per Section 106 of the NHPA, formal recognition of a property's eligibility for inclusion, but not actual listing, in the National Register of Historic Places.

Determinations of Eligibility may be prepared on National Register Registration Forms (NPS 10-900).

District – A significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. May be an archaeological or historic district or may contain elements of both.

Effect – Occurs when an undertaking may alter characteristics that qualify a property for inclusion in the National Register (Criteria of Effect: [36 CFR 800.5\(a\)](#)).

Eligible – A property is eligible for inclusion in the National Register of Historic Places if it meets the National Register Criteria (see Criteria for Evaluation).

Historic Preservation – Identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities relating to historic properties.

Historic Property – A property or cultural resource that is listed in or eligible for listing in the National Register of Historic Places, and, under SEPA, in state and local historic registers, including eligible properties that have not yet been discovered or evaluated (such as archaeological sites). Historic properties may be buildings or other structures, objects, sites, districts, archaeological resources, and traditional cultural properties (landscapes).

Historic Site (Section 4(f)) – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that are included in, or are eligible for inclusion in, the National Register.

Memorandum of Agreement (MOA) – A formalization of the means of resolving adverse effects agreed upon by the consulting parties, serving to specify mitigation, identify responsibility, render Advisory Council on Historic Preservation comment, and acknowledge effects of the undertaking on historic properties. See also Programmatic Agreement (PA).

Mitigation Measures – Actions required to mitigate adverse effects to historic properties. Usually stipulated in an MOA/PA.

National Register of Historic Places – The nation’s official listing of properties significant in national, state and/or local history, meeting one or more criteria for evaluation ([36 CFR 60.4](#)). Listing is commemorative but may require compliance by property owners with federal/state/local laws and regulations. May also provide private property owners with opportunities to take advantage of preservation incentives, such as easements and tax relief.

Nomination – Official request to have a property listed in the National Register. Documentation is placed on a National Register of Historic Places Registration Form (NPS 10-900) and submitted to the Certified Local Government (CLG) (if appropriate), the SHPO, and the Keeper of the National Register (see definitions). See National Register Bulletin 16A.

Object – A construction primarily artistic in nature or relatively small in scale.

Programmatic Agreement (PA) – A formal, legally binding agreement typically for a large or complex project or types of undertakings developed under Section 106 that would otherwise require several individual actions (i.e., when effects cannot be fully determined prior to project approval). The agreement is between WSDOT and other state and/or federal agencies. There are two basic kinds of programmatic agreements:

- A PA that describes the actions that will be taken by the parties in order to meet their Section 106 compliance responsibilities for a specific transportation project, called here a project-specific PA.
- A PA that establishes a process through which the parties will meet their Section 106 responsibilities for an agency program, a category of projects, or a particular type of resource, called here a procedural PA.

Site – The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure.

State Historic Preservation Officer (SHPO) – Coordinates cultural resource preservation activities in each state; one SHPO per state, usually appointed by the governor. SHPO is charged with reflecting the interests of the state and its citizens in preserving their cultural heritage, which involves a variety of responsibilities (36 CFR 61.4(b)). In Washington State, the SHPO is a governor appointed position housed in the Department of Archaeology and Historic Preservation (DAHP), which reviews projects for compliance with Section 106 of the National Historic Preservation Act.

Structure – Functional constructions made usually for purposes other than creating shelter.

Traditional Cultural Property – A place eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that are (a) rooted in that community's history, and (b) important in maintaining the cultural identity of the community. The concept is based upon the introductory section of the National Historic Preservation Act, which states that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people.”

Tribal Historic Preservation Officer (THPO) – Authorized by the 1992 Amendments to the National Historic Preservation Act. When approved by NPS, THPO replaces SHPO in compliance process on “tribal” lands (Section 101(d)(2)).

Undertaking – Any activity that can result in changes in the character or use of historic properties. The activity must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency (36 CFR 800.2(o)).

456.11 Exhibit

[Exhibit 456-1](#) WSDOT Curation Policy

Exhibit 456-1 WSDOT Curation Policy

I WSDOT POLICY ON THE CURATION OF ARCHAEOLOGICAL COLLECTIONS

This document outlines WSDOT's policy on the curation of artifacts and records recovered during investigations undertaken in compliance with either Section 106 of the National Historic Preservation Act (NHPA) as amended ("Section 106") or the Washington State Archaeological Sites and Resources Act ([Chapter 27.53 RCW](#)). Federal regulations establish standards for the preparation and curation of archaeological collections. An archaeological collection is defined as all artifacts, field notes, maps, photographs and other records generated or recovered during an archaeological investigation.

Nothing in this policy shall be construed as to preclude consultation with tribes per the Centennial Accord, or other agreements establishing the rights of tribes to government-to-government consultation.

A. Factors in Determining a Curation Facility

In Washington State, there are two main factors that must be considered in determining where archaeological collections will be curated. The first factor is land ownership, as under federal and state law recovered artifacts legally belong to the owner of the property at the time of excavation. The second factor is the regulation under which the archaeological collection was made.

Additional factors that can influence the selection of the curation facility include whether the collection contains artifacts from the historic era, whether there have been previous archaeological investigations at the same site, the volume of the collections, and the location of the curation facility relative to the location of the archaeological site. In some cases, the curation facility has been selected as part of negotiations for a large or complex project that may be subject to negotiated agreements such as a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA).

B. Federal and State Laws, Regulations and Guidance**1. 36 CFR 79 and the National Historic Preservation Act**

Federal regulations ([36 CFR 79](#), "Part 79" herein) establish standards for federal agencies to preserve archaeological collections recovered under the authority of Section 110 of the NHPA (16 U.S.C. 470h-2). The mandates under Section 110 are largely applicable to federally owned or controlled properties, however, [36 CFR 79.4\(a\)\(2\)\(v\)](#) states that records and documents relating to Section 106 compliance are subject to the [36 CFR 79](#) regulation. Under the implementing regulations for Section 106 of the NHPA ([36 CFR 800](#)), the Advisory Council on Historic Preservation (ACHP) has issued guidance* regarding the treatment of archaeological sites and artifacts. When data recovery is undertaken as a resolution of adverse effects, the ACHP guidance specifies that "appropriate arrangements for curation of archaeological materials and records should be made." A MOA or PA should include a provision for curation of archaeological artifacts and records at an appropriate facility, if archaeological investigations are undertaken. Curation must be in accordance with the

* *Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites, effective June 17, 1999*

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, which defines proper curation standards as including the following four criteria:

- Curation facilities have adequate space, facilities and professional personnel.
- Archaeological specimens are maintained so that their information values are not lost through deterioration and records are maintained to a professional archival standard.
- Curated collections are accessible to qualified researchers within a reasonable time of having been requested.
- Collections are available for interpretive purposes, subject to reasonable security precautions.

2. Native American Graves Protection and Repatriation Act (NAGPRA)

The Native American Graves Protection and Repatriation Act (NAGPRA 1990) protects Native American graves and sacred objects on Federal and tribal lands. Subpart B of NAGPRA applies to the discovery of human remains, funerary objects, sacred object or objects of cultural patrimony on federal or tribal land after November 16, 1990. The law regulates discoveries made during intentional archaeological investigations as well as inadvertent discoveries. If human remains are identified, §10.6 outlines the preferred custody of the human remains and associated objects; tribal custody is preferred, however it is possible that a tribe may request a third-party repository temporarily house NAGPRA items. Consultation is required throughout the process; §10.5 outlines the consultation requirements.

If burials or sacred objects are found on federal land during an archaeological survey conducted under Section 106, the federal agency landowner is required to consult with the tribe concerning treatment of the remains or sacred objects.

3. Archaeological Sites and Resources Act (Chapter 27.53 RCW)

The Washington State Archaeological Sites and Resources Act ([Chapter 27.53 RCW](#)) requires an archaeological excavation and removal permit, pursuant to [Chapter 25-48 WAC](#) in order to excavate within the boundaries of an archaeological site on public and private lands in Washington State, unless there is a federal nexus for the project which would require compliance with Section 106. If the project is on public lands, permit applicants must identify the curation facility that will receive the collections from the project. This facility must meet Part 79 standards. If the project is conducted on private land, the records must be stored at a curation facility even if the private landowner wishes to retain custody of the artifacts. Excavation permit applicants may temporarily store collections in a repository that meets Part 79 standards until the appropriate tribe establishes facilities that meet Part 79 standards.

4. Indian Graves and Records Act (Chapter 27.44 RCW) and Historic Cemeteries and Graves (Chapter 68.60 RCW)

The Washington State Indian Graves and Records Act ([Chapter 27.44 RCW](#)) allows “examination” of Native American graves or cairns on non-federal or non-tribal lands within the State of Washington as long as the collected material is “destined for reburial or perpetual preservation in a duly recognized archaeological repository” ([RCW 27.44.020](#)).

If human remains are identified on non-federal or non-tribal lands within the state of Washington, several laws outline the process that must be followed ([RCWs 68.50.645](#), [27.44.055](#), and [68.60.055](#)). There is no expectation that these human remains will be curated.

C. Expectations for Collecting Artifacts during Archaeological Investigations

There are generally three types of archaeological investigations conducted for WSDOT projects: survey (during which a site would be identified); testing (during which a site would be evaluated); and data recovery (during which unavoidable impacts to a site would be mitigated).

Normally, WSDOT will not have purchased right-of-way (ROW) when survey and testing studies are conducted for proposed projects. It is more likely that WSDOT would have purchased the required ROW before undertaking data recovery (excavation), although this is not always the case. Therefore, it is important that the status of property ownership during each phase of archaeological investigation be known. Recovered artifacts legally belong to the owner of the property at the time of excavation. A private landowner's consent will be required to curate artifacts at the selected repository.

1. Survey

Generally, no artifacts are collected during survey. Exceptions would include unique or rare artifacts (such as a pre-contact fluted projectile point) or artifacts that would be in danger of being destroyed if not collected from the site.

If investigations at a site identified during survey continue and change into testing, the associated field records generated by WSDOT or its consultants during the survey (maps, photographs, field notes) are expected to be curated with the subsequent testing collections.

2. Testing

Testing of an archaeological site is usually carried out under a site-specific testing plan which will be approved by WSDOT in advance of the fieldwork. The testing plan should outline the research design including artifact analysis. It is generally expected that artifacts and samples will be collected during testing efforts. The resulting collections would be curated at a repository that would be identified prior to fieldwork.

If testing will be conducted prior to WSDOT purchasing the required ROW, WSDOT will attempt to determine before testing is initiated whether the property owner intends to donate the collection to a repository that meets Part 79 Standards. The property owner may be asked to sign a letter of intent to donate the collections prior to the start of testing. A deed of gift would be signed by the landowner at the time of transfer of custody.

If investigations at a site will continue from testing into a data recovery phase, WSDOT will typically retain the artifacts recovered during testing until the data recovery report is completed. The repository should be consulted at this point to discuss whether the materials from the testing phase and data recovery phase should be treated as separate collections or one large, multi-phase collection; particularly if there is a significant amount of time between phases of archaeological investigation.

If no further investigation will be conducted or if another consultant will conduct the next investigation, WSDOT shall direct the transfer of the testing collection to the selected repository.

3. Data Recovery

Archaeological sites determined to be eligible for the National Register of Historic Places are usually eligible under Criterion D for their ability to yield information important in history or prehistory. Archaeological data recovery excavations involve the recovery of that important information, which is contained in the artifacts, identified features, and associated records. The purpose of curation is to retain and preserve this information for future researchers. Archaeological data recovery generally involves a large expenditure of public funds, and it is important that these collections be preserved for the public benefit.

When data recovery excavations will be conducted prior to WSDOT purchasing the required ROW, WSDOT will attempt to determine before excavations are initiated whether the property owner intends to donate the collection to a repository that meets Part 79 Standards. The property owner may be asked to sign a letter of intent to donate the collections prior to the start of excavation. A deed of gift would be signed at the time of transfer of custody.

4. Monitoring

Archaeological monitoring during active construction projects is another type of activity WSDOT conducts. Typically, a monitoring plan outlines the types of artifacts that would be considered significant if discovered and identified during the project, and designates a curation facility. If an archaeological site is identified during monitoring but it is not considered a significant site, the artifacts will not be collected.

In rare cases a unique isolated artifact may be identified during monitoring and selected for collection. Disposition of these artifacts would be on a case-by-case basis.

D. Disposition of Archaeological Artifacts and Records from State Land, Federal Land, or Tribal Land

When archaeological sites are identified during cultural resource studies for Federal-aid or State funded projects, WSDOT is responsible for the disposition of the artifacts and records at the conclusion of the project. The status of property ownership at the time of the archaeological excavations will determine whether artifacts are curated in a repository or returned to a private property owner. Archaeological collections are not to be permanently stored at a consultant's office. It is the responsibility of the WSDOT Project Engineer with assistance from the Cultural Resources Specialist to ensure that archaeological collections are curated at a facility that meets the standards of Part 79 at the conclusion of the project. WSDOT is responsible for including language regarding curation in contracts with cultural resource consultants.

1. Collections from State Property

When WSDOT owns fee title to a property at the time archaeological testing is conducted, or when artifacts are recovered from property owned by another state agency, WSDOT will curate the collections at the University of Washington's Burke Museum (per the terms of Participation Agreement GCA-6616), unless otherwise negotiated as a specific mitigation measure.

2. Collections from Federal Land

When artifacts are recovered from federally owned land the collection is the property and responsibility of that federal agency. Unless there is an existing programmatic agreement with the federal agency specifying curation requirements[†], WSDOT will submit the collection to the federal agency or their designated repository at the conclusion of the project.

3. Collections from Tribal Land

When artifacts are recovered from tribal land, the decision on where to curate the collection is made by the tribe. Over a dozen tribes in Washington and in neighboring states have curation facilities. Some tribes without curation facilities have built relationships with third party curation facilities such as the Burke Museum.

E. Disposition of Collections from Private Property

When WSDOT will conduct an archaeological investigation on private property, the [WSDOT Cultural Resources Specialist](#) (CRS) must discuss the issue of archaeological collections and their disposition with the landowner in advance of the fieldwork. This includes temporary easements.

When artifacts could be recovered from privately owned land, the WSDOT CRS will suggest that the landowner donate the artifacts to a facility that complies with the Part 79 standards. If the landowner agrees to donate the artifacts, the WSDOT CRS should ask the owner to sign a letter of intent to donate (if the collections have not been excavated yet) or the selected museum's deed of gift agreement (if the collections have been excavated). The deed of gift agreement allows the museum to acquire legal title to the artifacts.

When a property owner expresses a desire to have artifacts returned, the WSDOT CRS should determine whether the owner wishes to retain the entire artifact assemblage or is only interested in certain artifacts. If the owner is only interested in keeping a selection of artifacts, the WSDOT CRS should ask the owner to donate the remainder to a museum that meets Part 79 standards. If the property owner declines to sign a letter of intent to donate or a deed of gift agreement, then the artifacts must be returned to the landowner.

If possible, the artifacts should not be returned until all consultation is completed, the requested analyses are completed, and a final report is accepted by WSDOT. It is important to note that records and documentation from the archaeological studies do not belong to the property owner and must be submitted to a curation facility that meets Part 79 Standards. WSDOT will submit the records to the Burke Museum unless a tribal museum meeting Part 79 Standards requests to curate the documentation.

F. Disposition of Collections Collected under an MOA or PA

For large or complex projects, WSDOT will typically enter into a MOA or PA to address cultural resources. Because the consultation process to develop an agreement document must weigh numerous factors, and because addressing curation issues could be a mitigation measure, development of the MOA will be negotiated among consulting parties in order to address specific concerns. Curation should be addressed within the MOA including designating the repository, or creating one, to house the archaeological collections.

[†] As of July 2012, the only programmatic agreement WSDOT has entered into with a land-owning federal agency is the US Forest Service.

G. Submitting Collections to the Selected Curation Facility

Collections should be submitted to the selected repository as soon as is practical after approval of the final report by WSDOT, unless otherwise stated in an MOA or other formal agreement. It is not acceptable for collections to remain in the care of consultants or WSDOT indefinitely.

1. Facility-Specific Curation Guidelines

Once the curation facility is selected and before data recovery is undertaken, WSDOT will request the facility's curation guidelines for the preparation of an incoming collection. WSDOT or its consultant will prepare the collection to meet these guidelines prior to delivering the collection to the facility.

If the selected facility does not have any specific guidelines for the preparation of incoming collections, WSDOT or its consultant will follow minimum curation guidelines developed by WSDOT that are consistent with Part 79.

2. Documentation Accompanying the Collection

WSDOT or its consultant should prepare a packing inventory listing the contents of each box and a collections transmittal form (which will be provided by the repository). The selected repository will also likely have a deed of gift or similar document to transfer title of the collection to the museum.

3. Payment of Curation Fees

Curation fees are to be considered part of the project compliance or mitigation cost and must be included in project budgets.

H. Curation of Legacy Collections

Legacy collections are those archaeological collections made prior to the passage of Part 79 in 1990. WSDOT's legacy collections date to the 1950s.

The WSDOT will consider the appropriateness of integrating the study of legacy collections in cases where WSDOT will be investigating or otherwise impacting a site that has been previously excavated. If feasible, the WSDOT CRS will identify the location of the legacy collections (including records). If the legacy collections are not stored at a facility that meets Part 79 standards, then WSDOT will determine if the collection should be transferred to another repository.

If data recovery will be conducted at a site with legacy collections, WSDOT shall consider the feasibility of incorporating review and/or analysis of the legacy collections as part of the data recovery effort. The review/analysis should be conducted prior to data recovery to provide context for current investigation and to potentially reduce the sampling that will be required. It is anticipated that this approach will reduce the overall cost of data recovery efforts to WSDOT.

II WSDOT POLICY ON THE USE OF MUSEUMS AND INFORMATION CENTERS AS POTENTIAL MITIGATION

Because Section 106 of the NHPA and NEPA do not provide limits on potential mitigation measures, and because both Section 106 and the Centennial Accord require WSDOT to conduct good-faith consultation and implement effective government-to-government relations with tribes with lands or resources affected by WSDOT's projects, WSDOT must evaluate the appropriateness of mitigation measures on a case-by-case basis.

WSDOT will carefully consider the issues and concerns raised during consultation and develop mitigation measures to address the specific adverse effects of a particular project.

Consistent with Section 106, WSDOT will take into account "the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking" (§800.6(a)(4)) when considering appropriate resolution of adverse effects.

A. Exhibits/Displays

WSDOT has prepared exhibits, displays and other types of public information such as books and documentaries, on cultural resources, as mitigation for impacts to those cultural resources. In addition, WSDOT will encourage the repositories that hold collections generated during WSDOT projects to exhibit or display those collections as the repository deems appropriate; decisions on whether to exhibit or display are made by the repository.

B. Stand-Alone Facilities

In cases where a WSDOT project may have long-term adverse effects on a community or neighborhood, WSDOT will consider development of stand-alone facilities such as information centers as a mitigation measure. The time that a stand-alone facility is needed will be determined through consultation for each project.

457.01	Introduction
457.02	Applicable statutes, regulations, executive orders, and agreements
457.03	Considerations during project development
457.04	Analysis and documentation requirements
457.05	External engagement
457.06	Internal roles and responsibilities
457.07	Applicable permits and approval process
457.08	Mitigation
457.09	Abbreviations and acronyms
457.10	Glossary

457.01 Introduction

Section 4(f) of the Department of Transportation Act of 1966 declares a national policy to “preserve the natural beauty of the countryside, public park and recreation land, wildlife and waterfowl refuges, and historic sites.” It is one of the most stringent and complex environmental laws related to transportation. As a result, Section 4(f) is also one of the most frequently litigated environmental statutes and the most common cause of court injunctions delaying projects (FHWA *Success in Stewardship* Newsletter, March 2008).

Section 4(f) is a federal requirement and must be considered in any National Environmental Policy Act (NEPA) document involving a USDOT agency (FHWA, FTA, FRA, and FAA). This work may be:

- Included in the NEPA document and supported by appropriate documentation.
- Evaluated separately and documented in an Individual Section 4(f) Evaluation.

Section 4(f) prohibits the incorporation of land from a Section 4(f) resource into a transportation facility unless there is no feasible and prudent alternative to the use of that land. The law also protects Section 4(f) properties from proximity impacts that substantially diminish the use or value of the resource. Substantial proximity impacts are considered to be a “Constructive Use” even though the project does not actually use land from the resource. FHWA requires a Section 4(f) Evaluation be completed for proximity impacts when they substantially impair the activities and attributes that qualified the Section 4(f) property for protection. Such impacts may include:

- Noise
- Vibrations
- Aesthetics
- Access

See the [FHWA Section 4\(f\)](#) webpage and WSDOT [Land use](#) webpage for additional guidance, templates and resources.

User Note: Section 4(f) is sometimes confused with Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF). WSDOT’s compliance with Section 6(f) of LWCF is defined in [Chapter 455](#), Land Use.

457.01(1) Identifying a Section 4(f) Property

Section 4(f) applies to historic sites of significance, significant publicly owned parks and recreation areas, wildlife and waterfowl refuges.

Historic sites of national, state, or local significance qualify as Section 4(f) properties regardless of ownership or public access. Historic sites must be in or eligible for inclusion in the National Register of Historic Places (NRHP) to be protected.

Parks and recreation areas must be open to the public to qualify, but wildlife and waterfowl refuges may restrict access to preserve quality habitat and protected species. Privately owned recreational properties may qualify for consideration under Section 4(f) if a government agency has a permanent interest in the land (such as an easement).

Publicly owned facilities such as parks, recreation areas and wildlife and waterfowl refuges are assumed to be significant unless the public Official with Jurisdiction (OWJ) concludes that the entire site is not significant. FHWA must conduct an independent evaluation of the property and concur with the OWJ's decision.

If the publicly owned facility is primarily used for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply since it is not solely serving a transportation purpose and not solely a recreational purpose. See [FHWA's Section 4\(f\) Policy Paper for more detailed guidance](#).

The Wild and Scenic Rivers Act (WSRA) designates certain rivers (or river segments) for special protection to preserve them in a free-flowing condition for the benefit and enjoyment of present and future generations. The act also identifies various "study rivers" for possible inclusion in the Wild and Scenic Rivers System. Currently, there are no rivers or river systems under "authorized" study in Washington State. All designated Wild and Scenic Rivers in Washington State are administered by the United States Forest Service (USFS) in accordance with [36 CFR 297](#). See the WSDOT [Land use](#) webpage for additional guidance and resources.

A comprehensive management plan is in place for all WSRA-designated rivers. The plan describes the use and type of construction allowed in each segment of the river. River segments designated for recreational use, segments in publicly owned public parks, recreation areas, or wildlife and waterfowl refuges, and segments with historic or archeological sites, are subject to Section 4(f). Segments that are privately owned (except for historic and archeological sites on private land) and segments on publicly owned lands closed to the general public (e.g., military bases, Indian Reservations, etc.) and whose primary purpose is not a Section 4(f) use, are not subject to Section 4(f). If the management plan does not identify a specific function for the river segment, then Section 4(f) does not apply.

For projects led by FRA, see their [Additional Information on Section 4\(f\) and Programmatic Evaluations](#).

For projects led by FTA, see their [standard operating procedure](#) for guidance on the recommended timing of the Section 4(f) processes to improve understanding in the transit context.

457.02 Applicable statutes, regulations, executive orders, and agreements

457.02(1) *Federal*

- 42 U.S.C. 4321 [[National Environmental Policy Act of 1969](#) (NEPA)]
- 49 U.S.C. 303 [[Policy on lands, wildlife and waterfowl refuges, and historic sites](#)]
- 23 CFR 774 [[Parks, recreation areas, wildlife and waterfowl refuges, and historic sites](#)]
- 23 U.S.C 138 [[Preservation of Parkland](#)]
- 36 CFR 800 [Section 106 of the [National Historic Preservation Act 1966](#)]
- 36 CFR 59 [Section 6(f) of the [Land and Water Conservation Fund Act 1965](#)]

457.02(2) *State*

- Not applicable

457.02(3) *Local*

- Not applicable

457.03 Considerations during project development

457.03(1) *Planning*

Identify Section 4(f) properties in and near the proposed project area.

457.03(2) *Scoping*

Identify Section 4(f) properties in and near the proposed project area.

457.03(3) *Design*

Document Section 4(f) properties in and near the project area consistent with the types of use. Document the research and explain where the resources are and why we made the call. Include surrounding properties to ensure they aren't impacted.

457.03(4) *Construction*

Ensure that staging areas and the project activities do not affect surrounding Section 4(f) properties that were identified near the project area.

457.03(5) *Maintenance and Operations*

There are no requirements for Section 4(f).

457.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements for USDOT agencies (FHWA, FTA, FRA, and FAA). Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

457.04(1) Analysis and documentation for NEPA

WSDOT policy requires Section 4(f) consideration in any NEPA document. However, not all NEPA actions require a full Section 4(f) evaluation. The NEPA document needs to identify if any Section 4(f) properties exist in the project area. If the project will involve more than minor ROW acquisition or involve any relocations, the NEPA document should include information about what research was done to determine if any Section 4(f) properties were present. If there are Section 4(f) properties, there should be documentation attached to address use of those properties (e.g. De minimis or Individual Evaluation), or information about why such documentation is not necessary (e.g. the property is not acquired, or an exemption applies such as Temporary Occupancy).

Right size your document to fit your project. There are four possible approaches to meeting Section 4(f) requirements. They include exceptions and exemptions, *de minimis* impact determination, Programmatic Section 4(f) evaluations, and individual Section 4(f) evaluations. The four approaches are described below.

Exceptions

Refer to [23 CFR 774](#), [FHWA Section 4\(f\) Tutorial](#) and [Section 4\(f\) Policy Paper](#) for background, fundamental definitions and requirements of Section 4(f). Review the list of [Other Considerations](#) to identify properties that do not fit neatly into the Section 4(f) definition.

[23 CFR 774.13](#) lists seven exceptions to the requirements for Section 4(f) approval. The most common exceptions that WSDOT uses are for (a) certain types of common post-1945 historic bridges and (b) temporary occupancy.

Railroads and rail transit line exemption

Section 11502 of the FAST Act [[23 U.S.C. 138\(f\)](#) and [49 U.S.C. 303\(h\)](#)] exempts rail road and rail transit lines that are in use or that were historically used for transportation of goods or passengers from Section 4(f) review. The exemption applies regardless of whether the railroad or rail transit line is listed on or is eligible for listing on the NRHP. However, the exemption does not apply to:

- Rail stations or transit stations.
- Bridges or tunnels located on a rail line that has been abandoned, lines that have been rail banked, and lines that have been reserved for future transportation of goods or passengers.

Interstate Exemption from Section 106 and Section 4(f)

Federal agencies no longer need to consider the vast majority of the Interstate Highway System as historic property under Section 106 and Section 4(f) requirements. However, under Section II of the [ACHP's Section 106 exemption](#), certain elements of the Interstate System, such as bridges, tunnels, and rest stops, shall be excluded from the exemption's provisions if they have national and/or exceptional historic significance. Find the list of significant Interstate Highways elements on FHWA's List of [Nationally Exceptionally Significant Features of the Federal Interstate Highway System](#) webpage.

De minimis impacts

A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), results in either:

- A Section 106 finding of no adverse effect or no historic properties affected on a historic property; or
- A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).

Programmatic Section 4(f) Evaluation

FHWA developed five Programmatic Section 4(f) Evaluations that can be used to streamline the evaluation process. Using a programmatic saves time by eliminating circulation of the draft, legal sufficiency review, and coordination with other federal agencies (DOI, USDA, and HUD). Coordination with the OWJ is still required. FHWA provides more detailed explanation of each of the [Nationwide Section 4\(f\) Programmatic Evaluation](#) categories on their webpage. If the project impacts a Section 4(f) property and it does not qualify for an exception, *de minimis*, or programmatic evaluation, then an individual Section 4(f) Evaluation must be completed.

The description and criteria for the five Programmatic Section 4(f) Evaluations are:

1. **Independent Walkway and Bikeways** – Only applies to independent bikeway or walkway projects that impact recreation and park areas for active recreation and open space. The OWJ over the Section 4(f) property must give his/her approval in writing that the project is acceptable and consistent with the designated use and that all possible planning to minimize harm has been done.

This programmatic cannot be used if the project would require the use of:

- Critical habitat of endangered species.
 - Land from a publicly owned wildlife or waterfowl refuge.
 - Land from a historical site of local, state or national significance.
 - Unusual circumstances such as major impacts, adverse effects or controversy.
2. **Historic Bridges** – Applies to bridges to be replaced or rehabilitated with federal funds. The bridge must be listed in, or eligible for listing in, the National Register of Historic Places (NRHP). The FHWA Division Administrator concurs with the facts presented in the alternatives, findings and mitigation.

The FAST Act (Pub. L. 114-94) exempts common post-1945 bridges from Section 106 and Section 4(f) requirements.

3. **Minor Involvement with Historic Sites** – Applies when the project improves the operational characteristics, safety, and/or physical condition of the highway on the existing alignment. The historic site must be located adjacent to the existing highway to qualify for the programmatic. Such projects include:
- “4 R” work (resurfacing, restoration, rehabilitation and reconstruction).
 - Safety improvements (shoulder widening and correction of substandard curves or intersections).
 - Traffic operation improvements (signalization, channelization, turning and climbing lanes).
 - Bicycle and pedestrian facilities as part of a larger project.
 - Bridge replacements on the same alignment.

Construction of additional lanes. This programmatic cannot be used:

- For a project including removal or alteration of historic buildings, structures, or objects on the historic site.
- For a project requiring an EIS, unless the Section 4(f) impact is discovered after approval of the EIS.
- For a project that requires disturbance or removal of archaeological resources that are important to preserve in place. The State Historic Preservation Officer (SHPO) and/or the Advisory Council on Historic Preservation (ACHP) must concur in the determination.
- If the impacts on the historic attributes of the property are not minor. Minor is narrowly defined as “no effect” or “no adverse effect” under Section 106 of the National Historic Preservation Act and [36 CFR 800](#). The ACHP must not object to the “no effect” or “no adverse effect” determination.

The SHPO must agree, in writing, with the impact assessment and the proposed mitigation.

4. **Minor Involvement with Parks, Recreation Areas, and Waterfowl and Wildlife Refuges** – Applies when the project improves the operational characteristics, safety, and/or physical condition of the highway on the existing alignment. The public park, recreation lands, or wildlife and waterfowl refuge must be located adjacent to the state highway. Such projects include:
- “4 R” work (resurfacing, restoration, rehabilitation, and reconstruction).
 - Safety improvements (shoulder widening and correction of substandard curves or intersections).
 - Traffic operation improvements (signalization, channelization, turning and climbing lanes).
 - Bicycle and pedestrian facilities as part of a larger project.
 - Bridge replacements on the same alignment.
 - Construction of additional lanes.

The total amount of land to be acquired from any site shall not exceed:

Total Size of Section 4(f) Site	Maximum to be Acquired
< 10 acres	10 percent of site
10–100 acres	1 acre
>100 acres	1 percent of site

This programmatic **cannot** be used:

- For construction of a highway in a new location.
- For a project that requires an EIS.
- For projects that impair the intended use of the remaining Section 4(f) land. The determination includes proximity impacts and is made by FHWA in concurrence with the OWJ over the Section 4(f) property.

Impairment shall be documented. Show the size, use, and nature of the impairment.

Document noise, air and water pollution, wildlife and habitat effect, aesthetic values, and other impacts deemed relevant.

Coordinate with the appropriate Federal Agency if the Section 4(f) property is encumbered by a Federal Interest. Ascertain the agency's position on the land conversion or transfer. The programmatic does not apply if the agency objects. Federal Interest includes:

- Purchase or improvement with federal funds through the Land and Water Conservation Funds Act, Federal Aid in Fish Restoration Act (Dingle-Johnson Act), the Federal Aid in Wildlife Act (Pittman-Robertson Act).
- Former designation as federal surplus property.

The OWJ over the Section 4(f) lands must agree, in writing, with the impact assessment and the proposed mitigation.

5. **Transportation Projects That Have a Net Benefit to a Section 4(f) Property** – Applies to federally assisted transportation improvement projects on existing or new alignments. The Administration and OWJ will make the determination.

Individual Section 4(f) evaluation

An individual Section 4(f) evaluation identifies and evaluates avoidance alternatives and identifies and evaluates measures to minimize harm to the Section 4(f) property.

An avoidance alternative must avoid using any Section 4(f) property. An alternative that avoids one Section 4(f) property but uses a different Section 4(f) property instead, is not an avoidance alternative. If the Section 4(f) evaluation concludes that there is no avoidance alternative that is feasible and prudent, and more than one reasonable alternative uses a Section 4(f) property, then the project sponsor must evaluate which alternative would cause the least overall harm.

An individual Section 4(f) evaluation is processed in two phases – a draft and a final – both of which must be submitted to the FHWA Division Office or Federal Lands Division Office for review and approval. The Section 4(f) evaluation is subject to a legal sufficiency review by FHWA's Office of Chief Counsel. The review is intended to ensure that Section 4(f) requirements have been met.

A Section 4(f) individual evaluation can be submitted as part of an EA or EIS or documented as a separate document. For projects eligible as a CE, the Section 4(f) evaluation should be a separate document.

If the proposed project has multiple Section 4(f) resources in the vicinity, with varying types of use, document each resource accordingly. If an individual Section 4(f) Evaluation is required, it should include information on all the Section 4(f) resources in the vicinity. If there are no uses that require an Individual Section 4(f) Evaluation, then each resource can be documented separately using the appropriate template (exception, *de minimis*, etc.).

Analysis and documentation for State Environmental Policy Act (SEPA) only (no federal nexus)

There are no state Section 4(f) requirements as it is a federal requirement and only considered for projects involving a USDOT agency.

Analysis and documentation for Section 6(f)

Find more detailed guidance for the Section 6(f) process and a comparison between Section 4(f) and Section 6(f) in [Chapter 455](#).

Analysis and documentation for Section 106

A property containing significant cultural resources is considered a Section 4(f) property. Section 106 of the National Historic Preservation Act defines the process for determining the significance of a cultural resource. Therefore, completion of a Section 106 evaluation is an integral part of the Section 4(f) evaluation. Both laws mandate consideration of cultural resources, but have some key differences:

- Section 4(f) requires a special effort be made to avoid the use of cultural resources by documenting that all possible planning was used to avoid the resources and minimize harm. Section 106 requires consideration of the project effects on cultural resources.
- Section 4(f) applies only to USDOT agencies. Section 106 applies to any federal agency.
- Section 4(f) applies to actual use or occupancy of the site. Section 106 involves assessment of adverse effect on the property. A direct correlation cannot be made between “use” and “effect.”
- The Section 106 process is integral to the Section 4(f) process when cultural resources are involved. The Section 4(f) process is not integral to the Section 106 process.
- The Section 4(f) process applies a more stringent analysis with respect to totally avoiding cultural resources than the Section 106 process.
- Archeological resources not considered important for preservation in place are covered by exception [23 CFR 774.13 \(b\)](#) and do not require a Section 4(f) evaluation.

457.05 External engagement

457.05(1) *De Minimis*

The public must be informed of the *de minimis* determination and given an opportunity to comment on the decision. This may be done as part of the NEPA public notice process for an EA or EIS. If the project is a CE, it can be accomplished in a newsletter, city council meeting, or project open house. The notice should fully describe the impacts to the Section 4(f) resource.

457.05(2) *Individual Evaluation*

An Individual Section 4(f) Evaluation must be circulated to the Department of Interior for a 30-day comment period, and if applicable to the Department of Housing and Urban Development, and it should also be incorporated into and circulated with the NEPA document if an EA or EIS is prepared.

457.05(3) Section 106 and 4(f)

The OWJ must be informed of the intent to make a *de minimis* impact determination and must concur in a finding of no adverse effect or no historic properties affected in accordance with [36 CFR Part 800](#). Compliance with [36 CFR Part 800](#) satisfies the public involvement and agency coordination requirement for *de minimis* impact findings for historic sites.

WSDOT shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations [36 CFR 800](#), as amended. Consistent with the intent of [36 CFR Part 800.3\(c-f\)](#), public involvement in the Section 106 process is based on a demonstrated interest, including any landowner whose land may be affected by an undertaking. Public comment and the release of information pertaining to cultural resources hereunder shall be consistent with [36 CFR 800.2\(d\)](#), [800.3\(e\)](#), and [800.1 l\(c\) \(l and 3\)](#).

457.06 Internal roles and responsibilities**457.06(1) Region/Modal Environmental Manager**

Signs *de minimis* and Individual Section 4(f) documents.

457.06(2) Region Environmental Coordinator

Works with HQ ESO and FHWA to determine how to document any Section 4(f) uses. FHWA is the decision-maker.

457.06(3) WSDOT HQ ESO

Supports project offices when identifying and documenting activities that may impact a Section 4(f) property.

457.07 Applicable permits and approval process

To secure federal approval and funding for transportation projects that use Section 4(f) properties, WSDOT must demonstrate that:

- There are unique problems or unusual factors that prohibit use of alternatives that avoid these properties.
- The cost of alternatives that avoid these properties is extraordinary.
- The social, economic and environmental impacts or community disruption resulting from an alternative that avoids Section 4(f) properties reach an extraordinary magnitude.

FHWA and other USDOT agencies may not approve a transportation program or project that uses such properties unless:

- The use will have no more than *de minimis* impact.
- There is no feasible and prudent alternative and all possible planning has been done to minimize harm.

The FHWA Engineer signs and approves all Section 4(f) use documentation. You must also obtain concurrence with the property's OWJ on all uses and most activities that meet the exceptions listed in [23 CFR 774](#).

Individual Section 4(f) evaluations are processed in two distinct stages: draft and final. Draft evaluations must be circulated to the U.S. DOI and shared with the OWJ. The public may review and comment on a draft evaluation during the NEPA process. When a project is processed as a CE the Section 4(f) evaluation must be circulated independently to the U.S. DOI. In all cases, final Section 4(f) evaluations are subject to FHWA legal sufficiency review prior to approval ([23 CFR 774.5\(d\)](#)).

There are no permits associated with Section 4(f).

457.08 Mitigation

Measures to avoid, minimize, or mitigate impacts or enhance the resource should be considered before the *de minimis* determination is made. FHWA makes the *de minimis* determination based on a review of the project documentation. Detail the work that was done, including any mitigation, required to support the *de minimis* determination in the NEPA document. Written concurrence from the OWJ must be included in the document.

If an individual Section 4(f) analysis of avoidance alternatives concludes that there is no feasible and prudent avoidance alternative, then the FHWA may only approve the alternative that causes the least overall harm to the Section 4(f) property. [23 CFR 774.3\(c\)](#) includes a list of factors to consider in making this determination of least overall harm. These factors include the ability to mitigate adverse impacts to Section 4(f) property; the relative severity of remaining harm, after mitigation, to Section 4(f) property; and the relative significance of each Section 4(f) property.

[Chapter 490](#) provides guidance on how to incorporate environmental commitments into project contracts. This is important for NEPA/SEPA commitments as well as regulatory permit commitments.

457.09 Abbreviations and acronyms

4(f)	Section 4(f) of the Department of Transportation Act of 1966
6(f)	Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF)
FAA	Federal Aviation Administration
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
LWCF	Federal Land and Water Conservation Fund Act
NRHP	National Register of Historic Places
OWJ	Official(s) With Jurisdiction
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users
SHPO	State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer
USDOT	United States Department of Transportation

457.10 Glossary

All Possible Planning – All reasonable measures identified in the Section 4(f) evaluation to minimize harm or mitigate for adverse impacts and effects.

Constructive Use – A constructive use occurs when the transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.

De minimis Impact – For historic sites, *de minimis* impact means that the appropriate administering agency has determined, in accordance with [36 CFR 800](#), that no historic property is affected by the project or that the project will have “no adverse effect” on the historic property in question. For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that will not adversely affect the features, attributes or activities qualifying the property for protection under Section 4(f).

Feasible and Prudent Avoidance Alternative – A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property.

Historic Site – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization that are included in, or are eligible for inclusion in, the National Register.

Official(s) With Jurisdiction (OWJ) – As defined in [23 CFR 774.17](#), officials of the agency that owns or administers the property in question. For historic sites, the SHPO or THPO may serve as the OWJ.

Programmatic Section 4(f) Evaluations – Can be used in place of individual evaluations for highway projects where uses are considered minor. To date there are five programmatic evaluations that have been approved for use nationwide. See [Section 447.03](#) of this chapter for criteria and [FHWA Nationwide Section 4\(f\) Programmatic Evaluation](#) webpage.

Section 4(f) Property – A publicly owned park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance. Also includes historic sites of national, state or local significance.

Use – “Use” of a Section 4(f) property occurs:

- When land is permanently incorporated into a transportation facility.
- When a temporary occupancy of land has an adverse impact on the resource that the park, recreation area, refuge or historic site was created to protect.
- When there is a constructive use of the property.

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458.01	Introduction
458.02	Applicable statutes, regulations, and executive orders
458.03	Social and community considerations during project development
458.04	Analysis and documentation requirements
458.05	External engagement
458.06	Internal Roles and responsibilities
458.07	Applicable permits and approval process
458.08	Mitigation
458.09	Abbreviations and acronyms
458.10	Glossary

458.01 Introduction

[Section 109\(h\) of the Federal Aid Highway Act](#) requires an assessment of the “adverse economic, social, and environmental effects relating to any proposed project on any Federal-Aid system” under the National Environmental Policy Act (NEPA). The Social and Community Effects Analysis is prepared for projects that require a NEPA, Environmental Assessment (EA), or Environmental Impact Statement (EIS) to examine how the proposed transportation improvement affects the people who live, work, and play in the vicinity of the project. Projects classified as a NEPA Categorical Exclusion (CE) are not required to conduct a Social and Community Effects Analysis.

Generally, those working on the Social and Community Effects Analysis should examine other discipline reports or sections of EAs/EISs to understand the project’s direct and indirect effects. This information is also used to inform the project’s environmental justice (EJ) analysis to determine whether adverse impacts to a community are disproportionate. Refer to [Chapter 460](#) and WSDOT’s [Environmental justice](#) webpage for information on complying with EJ, including compliance with the State’s Healthy Environment for All (HEAL) Act ([Chapter 70A.02 RCW](#)).

The purpose of the Social and Community Effects Analysis is to:

- Gather community input, summarize the community’s existing conditions, and
- Disclose the proposed project’s impact on residential and commercial properties, public services, and community connectivity.

Displacement of people and businesses to make room for a transportation project affects both the social network and the economy of a community. WSDOT follows a standard, systematic process for relocation in compliance with the [Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970](#) as amended. The legal requirements and relocation process are described in our *Right of Way Manual* [Chapter 12](#).

Public services include schools, churches, community centers, day care facilities, hospitals, nursing homes, medical and dental clinics, fire stations, police stations, cemeteries, and social service providers. Utilities include publicly and privately owned electric, power, gas, oil and petroleum products, steam, chemicals, communication, cable television, water, sewage, drainage (other than those used for highway drainage), irrigation, fire or police signal systems, and similar lines.

Transportation projects have both negative and positive effects on public services. Often there are short-term impacts on public services and utilities during construction. In some

cases, a project may temporarily impact a community's access to essential services, which may result in equity impacts. Public services and utilities often benefit from transportation projects through improved access or travel time.

In 2024, CEQ revised its NEPA implementing regulations ([40 CFR 1500-1508](#)). Prior to this update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses, and mitigation strategies sections of the documentation.

For incorporation of climate change into the [Social Effects Discipline Report](#), see the Social Effects Discipline Report Checklist. Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support

458.02 Applicable statutes, regulations, and executive orders

458.02(1) *Federal*

- National Environmental Policy Act (NEPA), [42 U.S.C. 4321](#) and federal implementing regulations [23 CFR 771](#) (FHWA) and [40 CFR 1500-1508](#) (CEQ).
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). See [49 CFR 24](#) for USDOT implementing regulations. WSDOT *Right of Way Manual Chapter 12* includes additional Relocation Assistance information.
- Environmental Justice Presidential Executive Orders (see [Chapter 460](#) of this manual).

458.02(2) *State*

- State Environmental Policy Act (SEPA), [Chapter 43.21C RCW](#). State SEPA Rules are codified in [Chapter 197-11 WAC](#). WSDOT's agency SEPA Procedures are in [Chapter 468-12 WAC](#).
- Healthy Environment for All (HEAL) Act, [Chapter 70A.02 RCW](#)
- [Chapter 8.26 RCW](#) *Relocation assistance – real property acquisition policy* and [Chapter 468-100 WAC](#)
- *Uniform relocation assistance and real property acquisition*. WSDOT *Right of Way Manual Chapter 12* includes additional Relocation Assistance information.
- [RCW 47.04.280](#) Transportation system policy goals
- WSDOT's Community Engagement Plan

458.03 Social and community considerations during project development

458.03(1) *Planning*

For planning studies, refer to WSDOT's [Statewide plans](#) and [Planning study guidance](#) webpages, and the [Land use and transportation](#) webpage for HQ Multimodal Planning and Data Division contact information. For Planning and Environmental Linkages (PEL) studies, see WSDOT's [Planning and Environmental Linkages](#) webpage.

458.03(2) Scoping

If a project requires a NEPA EA or EIS, determine the potential impacts to the community through community engagement activities conducted during project scoping. More information about scoping social and community effects and community engagement can be found on WSDOT's [Social and community](#) webpage.

458.03(3) Design

Document your outreach and analysis by following the requirements in [Section 458.04](#) below and our agency [Community Engagement Plan](#). Develop a project specific Community Engagement Plan for EA and EIS level projects. Refer to WSDOT's [Social and community](#) webpage or the [NEPA/SEPA](#) webpage for additional information about the EA and EIS processes. Social and community commitments made during the design phase must be tracked to determine how and when they are fulfilled. See [Chapter 490](#) for additional information about commitment tracking.

The design team shall also consider the effects climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

458.03(4) Construction

Commitments made to the community during the design and construction phases must be tracked during construction to ensure they are fulfilled. See [Chapter 490](#) for additional information about commitment tracking.

458.03(5) Maintenance and Operations

Commitments made to the community during the design and construction phases that are not closed before the maintenance phase must be tracked during the maintenance phase to ensure they are fulfilled. See [Chapter 490](#) for additional information about commitment tracking.

458.04 Analysis and documentation requirements

458.04(1) Right size to classification (CE, EA, EIS)

WSDOT's policy is to follow FHWA guidance relative to Title VI, EJ, and FHWA's Technical Advisory [T 6640.8A](#). The Social and Community Effects Analysis described in this manual summarizes the Technical Advisory's guidance and examines the effect of transportation improvements on four areas:

- The distribution of benefits and burdens of the project.
- Impacts to the social network.
- Impacts to the local and/or regional economy.
- The effect of residential and commercial relocations.

The Social and Community Effects Analysis is prepared for projects that require a NEPA EA or EIS to examine how the proposed transportation improvement affects the people who live, work, and play in the vicinity of the project. Projects classified as a NEPA Categorical Exclusions (CEs) are not required to conduct a Social and Community Effects Analysis. However, impacts such as relocations of residential or non-residential properties affecting EJ communities may require FHWA review. These impacts may lead to EA or EIS level

documentation, even if a project would otherwise only require CE level documentation. Contact the [NEPA/SEPA Program](#) for more information on relocations in relation to NEPA class of action.

The level of environmental documentation required for a Social and Community Effects Analysis for an EA or EIS can vary greatly depending on the scale of the project, the severity of the potential impacts, and the level of public controversy. In addition, the name used for the analysis should be tailored to your project. For example, some project teams elect to combine socioeconomic or Social and Community effects with EJ, while others feel the public will prefer to see a separate EJ report. While there is flexibility in the format and titles, the methods of analysis and the documentation of conclusions must follow the direction of the federal lead agency and WSDOT policy.

For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and [WSDOT's Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#).

458.04(2) Analysis and Methodology

The Social and Community Effects Analysis in a NEPA EA or EIS evaluates the transportation project's impact on the ability of the community to function. It describes both positive and negative effects. The level of discussion should reflect the severity and extent of the impact. If an analysis is required, focus the analysis on issues of greatest interest to the local community. Use information from the public scoping meetings, interviews with local officials and leaders, and the public involvement process to identify focus areas. At a minimum, the analysis should include a discussion of the following issues for each alternative including the no-build alternative:

- Changes in community cohesion (splitting or isolating areas, generating new development, and separation from services).
- Changes in travel patterns, travel time and accessibility for all modes.
- Direct and indirect impacts to social services caused by displacing households (school districts, churches, law enforcement, fire protection, and recreation areas).
- Highway, traffic, bicyclist, and pedestrian safety, and changes in overall public safety.
- Impacts to human health.
- Project benefits to the community.
- Project effects on elderly, disabled, and transit dependent populations within the study area.

Although some of these elements are measurable and can be drawn directly from analysis of other disciplines (air, noise, transportation, public service and utilities), the analysis requires consideration of the affected community's perception of the severity of the impacts and proposed mitigation measures. Therefore, the analysis will, by nature, be qualitative and require early, continuous, and meaningful engagement with the community. A robust system for recording and tracking issues is essential for project success.

Health

Use the [Environmental Health Disparities Map](#) (EHD Map) to determine the 'Environmental Health Disparities' ranking value for your project area's Census tract. See WSDOT's [Social and community](#) webpage to learn more about using the map. Use the data in the EHD Map to inform your description of the community's context and help inform community engagement strategies to assess potential impacts from the project. Summarize the negative environmental impacts that are already burdening the community and potential benefits to help inform the EJ analysis (see [Chapter 460](#)). Summarize the potential community health benefits associated with the transportation project. Benefits can include improved transit, safer bicycle and pedestrian connections, improved air quality, or anything perceived by the community to improve their quality of life.

Economic effects

If economic development is listed as a primary goal in the project purpose and need, the EA or EIS should include the following elements in addition to those listed above.

- Overall effect of the project on the regional economy and compatibility with regional economic development and transportation plans.
- Agreements reached for using the transportation investment to support both public and private economic development plans.
- Opportunities to minimize or reduce impacts on established business districts by private or public means.

The environmental document should discuss economic effects if the transportation project is likely to have a substantial adverse effect on a large segment of the economy or creates land use changes that are not part of an approved local or regional plan. Clearly explain the compatibility of the project with adopted comprehensive plans and coordination with local officials and any impacted business owners.

Economic benefits and impacts can include:

- Changes in the type of development and its effect on government revenues and expenditures.
- Changes in employment opportunities.
- Changes in business vitality due to retail sales, changes in access, visibility, or competition from new business development resulting from the project (e.g., development of a new shopping mall at a new interchange location).
- Impacts to existing highway related and drive-by businesses in the study area (such as motels, gas stations and convenience stores).

Consult FHWA's Technical Advisory ([T 6640.8A](#)) and the [NCHRP Report 456 – Guidebook for Assessing the Social and Economic Effects of Transportation Projects \(Part A\)](#) ([trb.org](#)).

Relocations

To evaluate relocation impacts, use the process described in our [Right of Way Manual](#). WSDOT Real Estate Services can develop generalized relocation data for use during the environmental documentation phase of a project. The information is developed by visual inspection of the study area and from readily available secondary and community sources. Generalized data may include:

- An estimate of the number of households to be displaced and family characteristics (minorities, income levels, age, family size and owner/tenant status).
- An estimate of the divisive or disruptive effect of relocations on the community, such as separation of residences from community facilities or separation of neighborhoods.
- An estimate of the impact on the families likely to be displaced.
- An estimate of the number of businesses to be displaced and the general effect of the dislocation on the community's economy.
- A general description of the housing available for sale in the area and the ability of WSDOT to provide replacement housing for the type of families likely to be displaced.
- A general description of special relocation advisory services that will be necessary for identified unusual conditions.
- A description of the actions proposed to remedy insufficient replacement housing, including housing of last resort.
- A description of the types of all modes of transportation used by those being relocated to reduce a decrease in their mobility.
- Results of consultation with local officials, social agencies, and community groups regarding the impacts on the affected community.

Parcel specific information, such as the names and addresses of potential displacements, is not available at this stage of the process and should not be included in the environmental document. However, the Social and Community Effects Analysis must give the number and type of businesses that are impacted and in addition to the race/ethnicity of the business owner and employees. The relocation information should be summarized in sufficient detail to adequately explain the relocation situation, anticipated problems, and proposed solutions. Aerial exhibits showing the relationship of the proposed alignments and proposed right of way boundaries to parcel boundaries clearly identifies possible impacts. A table identifying parcels, value, and generated tax revenue may assist in identifying the magnitude of the impacts. The environmental document must include a statement that:

- The acquisition and relocation program will be conducted in accordance with the Uniform Act.
- Relocation resources are available to all people being relocated without discrimination in compliance with WSDOT's Limited English Proficiency Plan.

Coordination with local governments, organizations, and affected parties to reduce relocation impacts is encouraged by FHWA for large projects with a substantial number of displacements. The environmental document should explain the process used and how affected parties helped develop options to minimize adverse effects in the environmental document.

Public services and utilities

Under FHWA's NEPA implementing regulations, impacts to public services and utilities are considered in the Social and Community Effects Analysis. At a minimum the analysis should identify public services and utilities within one-half mile of the project center line and:

- Document direct impacts due to right of way acquisition.
- Describe anticipated changes in emergency service response times based on changes in travel time or access. Discuss positive and negative effects based on the project's traffic analysis.

- Determine if the anticipated changes in service demand are consistent with adopted comprehensive plans (for public services and utilities) based on the project's anticipated residential and/or commercial relocations.
- Describe potential utility relocations (temporary and permanent) for each alternative and their anticipated short-term and long-term impacts.
- Describe how short-term (construction) impacts will be addressed (public outreach, notification of power cuts, detours, delay of emergency response etc.).

Both long- and short-term impacts should be considered for all the alternatives including the no-build alternative. These impacts may include relocation or in place accommodation of utility lines, service outages, or delayed response time of emergency services due to detours. If an EJ population has been identified in the study area, access to public services and utilities should be included in the determination of “disproportionate and adverse impacts.”

WSDOT project environmental documentation and permitting may include an analysis and discussion of utility impacts. Inclusion of the utility in the project permitting documentation avoids delays to the project schedule by eliminating difficulties the utility may encounter when acquiring separate environmental permitting. [Utilities Manual Section 600.09\(4\)](#) provides for guidance, procedure, and a discussion of the advantages and disadvantages of including utility relocation impacts in the project's environmental documentation and permits.

State (No federal nexus)

There are no state requirements to conduct a Social and Community Effects Analysis. Under SEPA, impacts to public services and utilities are considered as part of the analysis of a project's effect on the built environment.

[RCW 47.04.280\(e\)](#) defines economic vitality as a transportation system goal to “promote and develop transportation systems that stimulate, support, and enhance the movement of people and goods to ensure a prosperous economy”. State multimodal transportation projects often support planned developments and regional economic strategies.

HEAL Act

New state EJ requirements took effect July 1, 2023 by the passing of the Healthy Environment for All (HEAL) Act ([Chapter 70A.02 RCW](#)). WSDOT has developed procedures to comply with the HEAL Act, including conducting EJ Assessments (EJAs) for significant agency actions. An EJA can include information from a Social and Community Effects Analysis. Refer to [Chapter 460](#) for information on the HEAL Act.

458.05 External engagement

Public involvement is a critical element of the Social and Community Effects Analysis that is completed for an EA or EIS. It is used to define the scope of the Social and Community Effects Analysis, evaluate the effect of alternatives on the community, and develop mitigation. WSDOT's commitment to inclusive community engagement should be carefully considered during project development. [WSDOT's strategic plan](#) contains policy direction on developing and maintaining relationships, both traditional and with under-represented, under-served communities. The goal is to engage interested parties before, during and after projects, and in general outreach.

More than any other discipline, the Social and Community Effects Analysis relies on interaction with the affected communities. The analysis should focus on issues of the most concern to the people who live, work, and play in the vicinity of the project. Public outreach can be used to:

- Collect descriptive information about the community.
- Identify key issues for analysis to support scope and budget decisions.
- Communicate WSDOT proposed efforts to avoid and minimize adverse effects and collect public perception of a project's impact (or lack of impact) to the social network.
- Collect public input on project design and mitigation and demonstrate WSDOT response to community concerns.
- Demonstrate and document compliance with federal requirements for public input into the decision-making process.

WSDOT policy requires staff to follow the [Model Comprehensive Tribal Consultation Process](#) when working with tribal governments. See Chapters 400 and 530 for more information on Tribal Coordination. Contact the [WSDOT Tribal Liaison Office](#) for assistance.

Refer to our Community Engagement Plan for engagement best practices. Also, consult with [Promising Practices for Meaningful Public Involvement in Transportation Decision-Making](#).

458.06 Internal Roles and responsibilities

Roles and responsibilities in this subject area overlap with those in several other subject areas (e.g. environmental justice) depending on the specifics of the proposed project.

458.06(1) *Project Engineer*

Identify local leaders and interested parties to engage in the project development process and work with project Communicator to identify additional interested or affected parties.

The [WSDOT LEP Accessibility Plan](#) is found on WSDOT's [Title VI/Limited English Proficiency](#) webpage. Also, refer to the [Chapter 465](#)– Title VI for LEP information and resources. The Plan requires project managers to:

- Prior to scheduled public events like public hearings or meetings, make every effort to provide appropriate interpretive services, either through translation or interpreter.
- Pay for the translation of vital documents and interpreter services including summary newsletters, brochures, public notices for meetings and summary documents for open houses or environmental hearings. Interpreter services should be provided upon request for open houses and hearings.

458.06(2) *Environmental Coordinator/Consultant*

Conduct the Social and Community Effects Analysis.

458.06(3) *Communicator*

Work with the Project Engineer to develop community engagement strategies and a project-specific community engagement plan, if needed.

458.06(4) WSDOT HQ Environmental Services Office

Review the Social and Community Effects Analysis.

The Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

458.07 Applicable permits and approval process

There are no associated permits or approvals associated with Social and community effects. However, impacts such as relocations of residential or non-residential properties affecting EJ communities require FHWA review. These impacts may lead to EA or EIS documentation, even if a project would otherwise only require CE level documentation. Contact the [NEPA/SEPA Program](#) for more information on relocations in relation to NEPA class of action.

458.08 Mitigation

WSDOT uses community input when considering appropriate mitigation measures to address the transportation impacts as required by federal and state laws. The project team then pursues and negotiates reasonable project related mitigation in good faith with the community.

Federal and state law, including NEPA, SEPA and the HEAL Act, provide policy direction that support mitigating project impacts – this includes mitigating impacts to the human environment (community mitigation) in addition to the natural environment. Additional information about community-identified mitigation may be found in the *Design Manual Chapter 950*.

458.09 Abbreviations and acronyms

ADA	Americans with Disabilities Act
CEP	Community Engagement Plan
CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
HEAL	Healthy Environment for All Act
NEPA	National Environmental Policy Act
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
Title VI	Title VI of the Civil Rights Act of 1964
WAC	Washington Administrative Code

458.10 Glossary

Community Cohesion – The ability of people to communicate and interact with each other in ways that lead to a sense of community, as reflected in the neighborhood’s ability to function and be recognized as a singular unit.

Public Service – Public services include, schools, churches, community centers, day care facilities, hospitals, nursing homes, medical and dental clinics, fire stations, police stations, cemeteries, and social service providers.

Utility – Privately publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, cable television, electric power, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, and other similar commodities, including fire or police signal systems, street lighting systems, and traffic control systems which directly or indirectly serve the public. See *Utilities Manual Chapter 2*.

Relocation Assistance – When a program or project results in the displacement of any person, WSDOT must fully inform the displaced person of their rights and entitlements to relocation assistance and payments. WSDOT will pay the displaced person for actual, reasonable, and necessary moving expenses for individuals, families, businesses, farm operations, or other personal property. These payments are separate and distinct from the acquisition compensation. Projects that include displacements must follow a standard, systematic process for relocation in compliance with the Uniform Act. See *Right of Way Manual Chapter 12* for more information.

Utility Relocation – The adjustment or replacement of utility facilities required by a highway project, including removing and installing facilities, acquiring necessary property rights in the new location, moving or rearranging existing facilities, or changing the type of facility to provide any necessary safety and protective measures. See WSDOT *Utilities Accommodation Policy M 22-86*.

Chapter 459 Visual impacts

- 459.01 Introduction
- 459.02 Applicable statutes, regulations, executive orders, and agreements
- 459.03 Considerations during project development
- 459.04 Analysis and documentation requirements
- 459.05 External engagement
- 459.06 Internal roles and responsibilities
- 459.07 Applicable permits and approval process
- 459.08 Mitigation
- 459.09 Abbreviations and acronyms
- 459.10 Glossary

459.01 Introduction

Most people primarily experience their environment through visual cues, so visual perception is an important topic when analyzing environmental quality. Highway projects can impact visual quality through changes to the relationship between people and their surrounding physical environment. Public concern over adverse visual impacts could be a major source of project opposition, so evaluating and openly communicating changes with the affected population is very important to a project's success.

The location, design, and maintenance of highway, ferry, rail, and aviation facilities may adversely or positively affect the visual features of the landscape that are experienced by people. This chapter focuses on highway projects, but the same, or similar, requirements apply to other transportation modes and facilities (see [Section 459.02](#)).

Because of the public nature and visual importance of transportation projects, both negative and positive visual impacts must be adequately assessed and considered during project development. Understanding the sensitivity of viewer groups is as important as understanding the physical environment and the proposed project actions.

In discussing and reviewing the visual impacts of a highway project, the Landscape Architect should consider both the view *from* the road and the view *toward* the road. Research has shown that the view from the road is the basis for much of what people know about the everyday environment and their mental image of their surroundings. Visual cues can also contribute to traffic calming and stress reduction for motorists. However, the project should balance the desire for pleasing vistas for travelers with protecting views from surrounding homes or vantage points. The designer must carefully plan to ensure the facility blends into the community and its environment. (For related information on historic and cultural resources, (see [Chapter 456](#)).

459.02 Applicable statutes, regulations, executive orders, and agreements

459.02(1) Federal

- **National Environmental Policy Act** – The National Environmental Policy Act (NEPA), [42 U.S.C. 4321](#), Section 101(b)(2) states that it is the “ultimate responsibility” of the federal government to “use all practicable means” to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings.” For details on NEPA procedures (see Chapters [400](#) and [412](#)).

Federal implementing regulations are at [23 CFR 771](#) (FHWA) and [40 CFR 1500-1508](#). According to the Council on Environmental Quality implementing regulations, environmental analysis is to consider impacts on urban quality, historic and cultural resources, and the design of the built environment” ([Section 1502.6](#)). Agencies shall “identify methods and procedures . . . to insure that presently unquantified environmental amenities and values may be given appropriate consideration” ([Section 1507.2](#)).

- **Highway Beautification Act** – The Highway Beautification Act of 1965 was enacted to provide effective control of outdoor advertising and junkyards, protect public investment, promote the safety and recreational value of public travel, and preserve natural beauty, and provide landscapes and roadside development reasonably necessary to accommodate the traveling public. Implementing procedures are set forth in [23 CFR 750, 751, and 752](#).
- **National Historic Preservation Act** – Implementing regulations for Section 106 of the National Historic Preservation Act of 1966 (see [Section 456.02](#)), adopted in 1976, define criteria of adverse effect ([36 CFR 800.5](#)) to include the “introduction of visual, atmospheric, or audible elements that diminish the integrity of the property’s significant historic features.”
- **DOT Act, Section 4(f)** – This act declares a national policy to make a special effort to preserve the natural beauty of the countryside and public park and recreation sites, wildlife and waterfowl refuges, and historic sites.” For details on Section 4(f) see Chapters [400, 455, and 457](#).
- **Wild and Scenic Rivers Act** – This act, as amended, directs that “each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included, without, insofar as it is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration, primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeological, and scientific features.” For information on wild and scenic rivers in Washington (see [Chapter 455](#)).

459.02(2) State

- **State Environmental Policy Act** – The State Environmental Policy Act (SEPA), requires that all major actions sponsored, funded, permitted, or approved by state and/or local agencies undergo planning to ensure environmental considerations such as impacts related to aesthetics and visual quality are given due weight in decision making. State implementing regulations are in Chapters [197-11 WAC](#) and [468-12 WAC](#).
- **Highway Beautification Act** – Washington’s Highway Beautification Act ([RCW 47.40.010](#)), adopted in 1961, declared improvement and beautification of any state highway right of way to be a “proper highway purpose.” The act specifically mentions the following improvements: “planting and cultivating of any shrubs, trees, hedges or other domestic or native ornamental growth; the improvement of roadside facilities and viewpoints; and the correction of unsightly conditions.”

- **Open Space Land Preservation** – In Chapter [84.34 RCW](#), the legislature declared that “it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.” Open space was defined as including any land area that would preserve visual quality along highway, road, and street corridors or scenic vistas. One of the criteria to be used in determining open space classification for current use or conservation futures is whether granting this classification would preserve visual quality along highway, road, and street corridors or scenic vistas ([RCW 84.34.037](#)).

459.03 Considerations during project development

A Visual Impact Assessment (VIA) is intended to provide decision makers with information on both the positive and negative visual quality impacts that may result from a project. The assessment, along with mitigation recommendations, provides designers with information on minimizing negative impacts on visual quality, and concepts to enhance existing visual quality and community aesthetics within the scope of the project.

459.03(1) Planning

Complex or controversial projects that may trigger the need for a more thorough evaluation should consider the public involvement approach to help define visual quality within the area of visual effect. The public involvement approach is explained in Section 5.4 Visual Quality, [Guidelines for the Visual Impact Assessment of Highway Projects](#) (FHWA, 2015). Information about visual preferences gathered from public workshops will provide the VIA author important information to better understand what the public values visually within the project corridor.

459.03(2) Scoping

A project’s scoping document defines the geographic extent of the project. It also establishes the topics explored in the project’s environmental review process. Preparers should participate in the scoping process, both to inform the scope of the project and to better understand the scope of the anticipated VIA and use the findings of the scoping document and any public scoping comments for an initial understanding of anticipated impacts on visual resources or viewers. Public scoping comments may identify visual resources that neighbors consider essential to the visual identity of their community, or it may identify visual resources that travelers consider essential to their traveling experience.

459.03(3) Design

Conceptual design studies and preliminary design plans illustrate the proposed project and help to identify potential impacts to visual resources and viewers. The level of detail available during the early stages of the design will vary and can include the area of potential effect to alternative alignments, the number of lanes, the location of intersections and interchanges, and the potential for bridges, retaining walls, and other structures. In addition to providing a rough understanding of the visual character of the proposed project, early studies and plans often include features proposed for demolition, vegetation removal limits, existing and proposed grading, and other proposed project features. Authors should use these early studies and plans to understand the extent to which existing features would be removed and where new or modified landforms, pavement, structures, or utilities would occur. Sometimes

these early studies and plans even include proposed aesthetic design treatments, such as ornamental lighting or architectural enhancements, included in the project to mitigate adverse impacts.

459.03(4) Construction

Construction timing (time of year, duration, phasing, traffic detours and nighttime construction activities), methods of construction, equipment needed, erosion control, removal of vegetation or even re-vegetation measures, if known, may be useful background information for the VIA author.

After Design, Construction carries out the mitigation strategies that address visual impacts resulting from a project. It is important to ensure that the Project delivers these mitigation strategies and carefully manage any proposed changes that come via Design-Bid-Build or Design-Build Contracts. Design Build is a method of project delivery in which WSDOT executes a single contract with one entity (the Design-Builder) for design and construction services to provide a finished product. Design-Bid-Build is the traditional form of project delivery in which WSDOT provides the complete design documents and the Contractor builds the design after the bidding process. Changes during construction for Design-Bid-Build are in the form of change orders where modifications to the agreed upon work is documented. Design changes may occur during the design build process as well. It is important to communicate what these changes are and how these changes may affect what was originally assessed in the VIA. For example, when an Alternative Technical Concept is proposed, decision makers should consider the visual aspects of the change and understand how the visible change(s) would affect sensitive viewer groups or views toward sensitive resources.

459.03(5) Maintenance and Operations

During the preliminary design phase of a project, many design features that will affect visual resources, viewers, and visual quality are being determined. Mitigation measures and opportunities for enhancement are also likely to have been introduced. Visual impacts caused by operations and maintenance activities that will affect the project design, mitigation, or enhancement elements will need to be assessed to confirm that these design features, which may be critical to the public's acceptance of a project, remain effective indefinitely. Operational features that may affect visual quality include functional and ornamental lighting in the corridor, vehicular headlights, changeable message signs, vegetation removal, and glare from reflective materials. Maintenance issues typically are related to use of nighttime lights to perform roadwork on the facility.

459.04 Analysis and documentation requirements

Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

459.04(1) Analysis and documentation for NEPA

WSDOT uses Federal Highway Administration (FHWA) VIA guidance. For more information on VIA methodology and procedures, see the Environmental disciplines web page for [Visual & RCAs](#). Visual assessments must be sized appropriately to anticipated project impacts (see [Chapter 300](#) for project classifications). The following are guidelines for the level of analysis necessary:

- For projects that are **Categorically Excluded (CE)**, the visual analysis and minor documentation is done within the Environmental Classification Summary (ECS). It is assumed that, when projects follow WSDOT roadside policy and environmental permit conditions, visual impacts will be minimized and mitigated to an acceptable level.
- For projects with **Documented Categorical Exclusion (DCE)**, the visual analysis should be abbreviated but a discussion of the visual aspects should be adequately covered in a memo, to be attached to the Environmental Review Summary (ERS) or the Environmental Classification Summary (ECS).
- **Exceptions requiring a VIA that might not otherwise be indicated by lower level permitting** – Projects where sensitive viewers will experience noticeable changes but which only require low-level documentation, will benefit from a more in-depth review of visual impacts. Issues such as removing screening vegetation or providing more visibility to lighting or the highway fall into this category. Other aspects that may trigger the need for a more thorough evaluation include projects:
 - On a State or National Scenic Byway or an All-American Road
 - Along a designated Wild and Scenic River or within a National Scenic Area
 - On Tribal, U.S. Forest Service, or National Park land
 - Adjacent to a public park, recreation area, wildlife and waterfowl refuge, and public or private historical sites (Section 4(f) or 6(f) area – any visual analysis would be in coordination with the Section 4(f) or Section 6(f) technical study)
 - In a rural community that values its view of stars and the night sky if new or brighter lighting is being proposed

People viewing from these locations can be especially sensitive to visual changes.

Documentation must include an analysis of viewer sensitivity and potential impacts and may be in the form of a memo or short report depending on the degree of impacts found in the analysis.

For an **Environmental Impact Statement (EIS)**, a VIA must be completed. These are typically the projects where the project changes the roadside or facility character, potentially with large areas of cut or fill, new or larger structures, or new or greatly expanded alignments. Project examples include:

- Changes in road alignment
- Expansion of the roadway and/or addition of major structures
- New interchanges
- Changes to historic buildings or other structures
- Ferry terminal improvements
- Increased lighting
- Removal of screening or large areas of vegetation
- Substantial grade changes

The VIA shall follow the methodology as described in the [Guidelines for the Visual Impact Assessment of Highway Projects](#) (FHWA, 2015). The 2015 methodology emphasizes a collaborative approach to determine preferences and sensitivity of viewers. Authors shall apply technical guidance from the [Visual Impact Assessment for Highway Projects](#) (FHWA Office of Environmental Policy, 1988). The 1988 document and associated training manual provides clarity for the author on how to look at the visual impacts and describe them for user sensitivity into the assessment.

The emphasis on capturing what the community wants as an aesthetic environment provides additional support on statements that a project would have adverse, neutral or beneficial impacts.

- During project development, visual impacts, including aesthetics, light, glare, and night sky impacts, shall be considered for all project alternatives. The views from the road or facility and views toward the road or facility that will be in existence during the construction phase and the operational phase must be evaluated.
- The VIA is documented within the Environmental Review process, the EA, or the EIS after a detailed analysis of potential viewers, their sensitivities and the project area. A photographic log of the affected viewshed is part of that documentation. The documentation must include an analysis of all representative views from and toward the facility throughout the project length.
- The VIA engages the public to understand in depth the expected changes to the visual environment.

The number of views needed depends upon the geographic extent of the project; setting in the landscape; the extent of change or impact to resources expected in a particular location; the effects on the identified viewer groups; and the viewers' sensitivity to changes in the view. If there is more than one landscape unit within the project limits, analyze a minimum of one viewpoint per landscape unit as viewed from the project and as viewed towards the project.

Project alternatives will need to be sufficiently developed prior to completing the analysis in order to completely describe the changes each alternative will have on the visual environment. Describe and analyze any large cuts or fills, walls, bridges, changes to character due to extensive vegetation removal or addition of structures, and horizontal and vertical alignments with respect to their influence on views toward or from the project. When projects are completed by Design-Build methods, visual outcomes can be somewhat uncertain. The use of design guidelines can reduce uncertainty of the final project visual outcomes. The VIA should include a discussion of the flexibility in outcomes.

459.04(2) Non-Road Project Requirements

Environmental documentation for aviation, ferry, or rail projects must address aesthetics and visual issues during the environmental review process, including specific details about lighting; height, size, and location of structures; and alignment and use of the facility that might impact viewers.

Federal agencies follow different methodologies, but all include the requirement for a visual assessment. For example, the Federal Rail Administration, The Federal Aviation Administration, the U.S. Forest Service, and the Bureau of Land Management have their own methodologies, which vary slightly from the FHWA methodology. Projects must determine and follow the appropriate methodology for their project type.

Non-road projects often affect the visual environment differently than highway projects. Analyze the temporary or permanent nature of the visual impacts, such as the presence of flights overhead at intervals throughout the day, addition of beacon lights or ferries docked within a terminal periodically.

459.05 External engagement

Refer to Section 3.2.1 Public and Private Interests of [Guidelines for the Visual Impact Assessment of Highway Projects](#) (FHWA, 2015) to learn more about the importance of external engagement to capture both public and private interests during visual impact assessment.

459.06 Internal roles and responsibilities

All visual analyses are to be performed and written by, or coordinated through, the Region Landscape Architect, or through the Headquarters Roadside and Site Development Section for regions without a Landscape Architect.

459.07 Applicable permits and approval process

Although there are no permits or approvals associated with Visual Impacts, the VIA is part of a larger environmental review process, which in turn is part of a still larger highway project development process. As part of this process, the VIA is intended to provide decision makers with information on the adverse and beneficial impacts on visual quality that can influence the selection of a preferred project alternative. The VIA provides designers with the information they need to most effectively mitigate adverse impacts on visual quality while implementing concepts to enhance existing visual quality.

459.08 Mitigation

Provide mitigation measures and opportunities to avoid or minimize visual impacts in the report. Assume the baseline of [Context Sensitive Design](#) principles during design, and restoration according to the [Roadside Policy Manual](#) M 3110.

The WSDOT roadside policy is found in the [Roadside Policy Manual](#) M 3110. It covers the requirements for roadside restoration, which is the baseline that can be assumed for addressing a project's visual impacts within the roadside.

Mitigation for visual impacts may also be in the form of public art as identified in the NEPA/SEPA process and through good faith negotiations with the affected community. See [Chapter 950](#) of the [Design Manual](#) M 22-01 for guidance regarding public art and community identified mitigation on WSDOT facilities and within its rights of way.

459.09 Abbreviations and acronyms

Abbreviations and acronyms used in this chapter are listed below.

CE	Categorically Excluded
DCE	Documented Categorical Exclusion
EA	Environmental Assessment
ECS	Environmental Classification Summary
EIS	Environmental Impact Statement
ERS	Environmental Review Summary
FHWA	Federal Highway Administration
NEPA	National Environmental Policy Act
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
VIA	Visual Impact Assessment

459.10 Glossary

Landscape Unit – An area or volume of distinct landscape character that forms a spatially enclosed unit at ground level, differentiated from other areas by its slope and its pattern of land cover. A unique segment of the landscape. Not all projects will have multiple landscape units.

Scenic Byway – Public road having special scenic, historic, recreational, cultural, archaeological, and/or natural qualities that have been recognized as such through legislation or some other official declaration for its scenic, historic, recreational, cultural, archaeological, or natural qualities. Washington State Scenic Byways are designated in [RCW 47.39.020](#).

Viewer Group – Classes of viewers differentiated by their activity, awareness, and values.

Viewer Sensitivity – The viewer's variable receptivity to the elements within the environment they are viewing. Sensitivity is affected by viewer activity and awareness, exposure to the project, and cultural and community values. Indication of viewer sensitivity can be found in local zoning codes, planning documents, laws, and advocacy groups such as Scenic Byway organizations.

Viewshed – All the surface areas visible from an observer's viewpoint.

Visual Function – The component of a transportation project that is designed and experienced primarily from a visual perspective; includes positive guidance and navigation, distraction screening, corridor continuity, roadway and adjacent property buffering, and scenic view preservation.

Visual Quality – Character of the landscape, which generally gives visual value to a setting.

460.01	Introduction
460.02	Applicable statutes, regulations, executive orders, and agreements
460.03	Considerations during project development
460.04	Analysis and documentation requirements
460.05	External engagement
460.06	Internal roles and responsibilities
460.07	Applicable permits and approval process
460.08	Mitigation
460.09	Abbreviations and acronyms
460.10	Glossary

460.01 Introduction

This chapter provides direction necessary for project teams to meet federal and state environmental justice (EJ) requirements during the environmental review process for transportation improvement projects.

In 2021, this manual separated the EJ requirements and analysis from Social and community effects to clarify the role of each analysis. An EJ analysis can include the information from a Social and community effects analysis but should also rely on other analyses to make an effects determination for a project.

New state EJ requirements took effect July 1, 2023 for transportation projects over \$15 million, in addition to other activities. Procedures are in development to comply with the state EJ requirements set forth in the Healthy Environment for All (HEAL) Act, codified in [Chapter 70A.02 RCW](#).

In 2024, this manual separated the EJ requirements and analyses from Title VI requirements to clarify the role of each analysis. There may be some overlap between EJ and Title VI analyses; however, engaging in EJ analysis under federal transportation planning and National Environmental Policy Act (NEPA) provisions does not completely satisfy Title VI requirements. Similarly, a Title VI analysis does not completely satisfy EJ requirements. For example, Title VI does not include low-income populations ([FHWA Order 5610.2\(a\)](#)) whereas this is defined as a priority population for EJ considerations. However, EJ analysis can include information from a Title VI analysis but should also rely on other analyses to make an EJ effects determination for a project. Refer to [Chapter 465](#) – Title VI for more information regarding a Title VI analysis.

New federal requirements took effect including updates to the regulations ([40 CFR 1500-1508](#)) implementing the procedural provisions of NEPA (2024) and recent Presidential Executive Orders (EOs) (2023). The federal lead agencies are working on updating their guidance and tools. Future WSDOT updates will reflect these changes after they become available.

Prior to the 2024 update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses and mitigation strategies sections of the documentation.

For incorporation of climate change into the [EJ Discipline Report](#), see the EJ Discipline Report Checklist. Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

Federal Environmental Justice Requirements

The fundamental principles of EJ are to:

- Avoid, minimize, and mitigate disproportionate and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- Ensure full and fair participation by all potentially affected communities in the transportation decision making process.
- Prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income population.

Updated regulations ([40 CFR 1500-1508](#)) implementing the procedural provisions of NEPA (2024), Presidential EO 12898, and subsequent orders direct federal agencies to address EJ in the NEPA process. The agencies must seek to avoid and mitigate, as appropriate, disproportionate and adverse effects to low income and minorities, including Indian Tribes.

State Environmental Justice Requirements

Under the HEAL Act, WSDOT is responsible for assessing EJ impacts to overburdened communities and vulnerable populations for a wider range of agency actions and activities, including development and adoption of significant legislative rules; development and adoption of new grant or loan programs; transportation grants, loans, and projects \$15 million or more; certain actions funded through the Climate Commitment Act (CCA); submission of agency request legislation; and additional actions WSDOT will be identified by July 1, 2025.

460.02 Applicable statutes, regulations, executive orders, and agreements

The federal and state policies that guide the evaluation of EJ for transportation projects, include:

460.02(1) *Federal*

- National Environmental Policy Act of 1969 (NEPA), [42 United States Code \(U.S.C.\) 4321](#).
- CEQ implementing regulations, [40 Code of Federal Regulations \(CFR\) 1500-1508](#).
- [Title II of the Americans with Disabilities Act](#) (ADA) of 1990.
- Presidential Executive Orders (EO) related to EJ:
 - [EO 12898](#) issued February 11, 1994 - Federal Actions To Address EJ in Minority Populations and Low-Income Populations.
 - [EO 13985](#) issued January 20, 2021 - Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.
 - [EO 14008](#) issued January 27, 2021 - Tackling the Climate Crisis at Home and Abroad (also referred to as Justice40).
 - [EO 14096](#) issued dated April 21, 2023 - Revitalizing Our Nation's Commitment to EJ for All.

- Limited English Proficiency Presidential [EO 13166](#).
- Consultation and Coordination with Indian Tribal Governments [EO 13175](#).
- Department of Transportation (DOT) [Order 5610.2\(a\)](#), Final DOT EJ Order, issued May 2, 2012.
- Federal Highway Administration (FHWA) [Order 6640.23\(a\)](#), Actions to Address EJ in Minority Populations and Low-Income Populations, issued June 14, 2012.

460.02(2) State

- [Chapter 70A.02 RCW](#) EJ, also referred to as the Healthy Environment for All (HEAL) Act.
- [P 1018 Environmental Policy Statement](#)
- [Chapter 70A.65 RCW](#) Climate Commitment Act (CCA) – EJ Review and EJ Assessment.

460.03 Considerations during project development

460.03(1) Planning

Federal Requirements

Project teams should check to see if a planning study has been done in their project area, and if so, refer to any EJ information documented in that study.

Planning teams should contact the Multimodal Planning and Data Division for direction on how to address EJ in a planning study. If you are conducting a Planning and Environmental Linkages (PEL) study, consult with the [NEPA/SEPA program](#) in the Environmental Services Office. Refer to [Chapter 200](#) for more information on requirements for EJ in PEL studies.

State Requirements

In implementing the HEAL Act, it is important to understand that community engagement does not start when a project breaks ground. Engagement must begin at the earliest planning stage. WSDOT is developing procedures to comply with the state EJ requirements set forth in [Chapter 70A.02 RCW](#).

460.03(2) Scoping

Federal Requirements

Project teams should follow the procedures outlined on the [Environmental justice and Title VI](#) webpage for compliance with the federal law and policies. Demographic and Limited English Proficiency (LEP) information should also inform the project's communication strategies to reach those who may need interpretation and translation services. EJ and LEP information, including expected impacts and analysis for NEPA, should be documented in the Environmental Review Summary (ERS)/Environmental Classification Summary (ECS) system. Refer to [Chapter 465](#) for LEP information and resources.

State Requirements

Project teams should follow the procedures outlined on the [Environmental justice and Title VI](#) webpage for compliance with state law and policies. All projects are encouraged to have meaningful and inclusive project-specific community engagement with community members potentially affected to provide access to agency decision-making processes. Use the [Community Engagement Needs Assessment](#) located within the WSDOT Highway Scoping

Instructions to help determine the resources that will be needed and set the direction for community engagement.

If your action is subject to the HEAL Act, determine if there are any [overburdened communities](#) and vulnerable populations ([RCW 70A.02.010](#)) in the potential impact area; including using the [WA Environmental Health Disparities \(EHD\) Map](#). Demographic and LEP information should also inform the project's communication strategies to reach those who may need interpretation, translation services, or culturally-relevant engagement methods. Refer to [Chapter 465](#) for LEP information and resources.

460.03(3) Design

Federal and State Requirements

Follow the analysis and documentation direction in [Section 460.04](#) below. Conduct community engagement when appropriate for the project following the agency's Community Engagement Plan and the *Design Manual* [Section 210.04](#) Public Involvement. Revisit the analysis if the project elements change that could impact the community, including detour routes.

The design team shall also consider the effects climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

460.03(4) Construction

Federal and State Requirements

Track and implement commitments made to the community to ensure they are carried out. We are developing HEAL Act guidance for commitment tracking; this manual will be updated with this new information.

460.03(5) Maintenance and Operations

Federal and State Requirements

Track commitments made to the community to ensure they are carried out. We are developing HEAL Act guidance for commitment tracking; this manual will be updated with this new information.

460.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

460.04(1) Analysis and documentation for NEPA

Our agency policy is to consider EJ in project development and delivery. However, the level of analysis depends on the action and its potential impacts. Project teams must use demographic data and community outreach to inform their NEPA EJ analysis. Federal agencies have new requirements stemming from [EO 14008](#) (commonly referred to as Justice40) that have resulted in some changes to [EPA's EJScreen tool](#) and the introduction of a new geospatial [Climate and Economic Justice Screen Tool \(CEJST\)](#). New requirements

are expected because of new [40 CFR CEQ NEPA regulations](#), which broadened the federal definition of EJ. It is very important that project teams refer to the Environmental justice & Title VI webpage for most up-to-date guidance.

EJ Presidential EO 12898 requires consideration of the potential human health risks associated with the consumption of pollutant bearing fish or wildlife. Use the tribal consultation area maps available on the WSDOT Environmental GIS Workbench to evaluate a project's potential effect on natural resources within a tribe's consultation area.

Some Categorical Exclusion (CE) projects require a review for impacts to EJ communities, but do not require a detailed study because they:

- Do not have any significant environmental impacts.
- Do not change access control or affect traffic patterns.
- Do not require more than minor right of way acquisition that does not displace residential properties or businesses.
- Do not require temporary road closures or detours during construction.
- Do not involve extraordinary circumstances.

See [Chapter 400](#) to learn more about CEs and determining impact significance.

Determine the level of documentation for CE projects by using the following steps:

1. For a project that is exempt from detailed analysis. Check our list of 'Projects Exempt from Detailed EJ Analysis' on the [Environmental justice & Title VI](#) webpage and document the exemption status in the Environmental Classification Summary (ECS). Attach demographic data and note any LEP populations.
2. If the project is not exempt and no EJ populations are present in the project area, document this information in the ECS. Attach the EJ Decision Matrix and demographic data showing the absence of an EJ population and note any LEP populations. This information may be documented in an EJ memo or letter to the project file.
3. If an EJ population is present within the project area, but is not impacted by the project, document this information in the ECS. Attach the EJ Decision Matrix, demographic data and note any LEP populations, and include a written description of how the project will not affect the EJ population. This information may be documented in an EJ memo or letter to the project file.
4. If an EJ population is present and will be impacted, document this information in the ECS. Attach the EJ Decision Matrix, demographic data and note any LEP populations. Also include a written description to define project effects, identify the nature and extent of the impacts on the EJ population, and determine if the impacts are disproportionate and adverse. This information is documented in an EJ memo. Additional requirements and instructions to determine project effects on EJ populations can be found on our [Environmental justice & Title VI](#) webpage. Refer to [Section 460.05](#) for information on external engagement to help inform your determination.

Refer to Chapters [300](#) and [400](#) for more information on CEs.

For projects documenting NEPA with an EA or EIS, evaluate the project's impacts on disadvantaged communities. Examine other discipline reports or sections of EAs/EISs to understand the project's direct and indirect effects. The EJ analysis at the EA or EIS level should include an examination of the effects for each alternative, including the no-build. The environmental document must include a comparison of the distribution of a project's burdens

and benefits by the social groups identified in the demographic analysis. The effects on these groups should be described to the extent these effects can be reasonably predicted. There is no need to be exhaustive with this comparison. Discuss impacts to the groups in proportion to the severity of the related impacts. Refer to Chapters 300 and 400 for more information on EAs and EISs.

The project team must document what engagement activities took place, how they were made accessible to EJ populations and how the project outcomes were influenced by the people potentially being impacted. Refer to Chapter 465 for information on making documents accessible for LEP populations.

EAs and EISs should include a Title VI analysis. See Chapter 465 for guidance on how to conduct a Title VI analysis.

The EJ analysis compares the adverse impacts (burdens) to the EJ population to the adverse impact to the non-EJ population within the study area. The discussion should address:

- Whether minority or low-income populations bear a “disproportionate and adverse impact”.
- Possible mitigation measures to avoid or minimize any adverse impacts.
- Special relocation considerations for affected groups and the measures proposed to resolve these relocation concerns.
- Public response to the project and proposed mitigation. Include a discussion of how the project design was changed to address public concerns.

Note that federal agency requirements are rapidly evolving. Coordinate with the Environmental Services Office EJ and Public Health Senior Policy Specialist on each project's EJ compliance approach.

A “disproportionate and adverse” determination may be made if the:

- Severity of the adverse impact is appreciably greater for protected populations than for non-protected populations.
- Adverse environmental impacts occur more in areas with protected populations (regardless of severity) than in areas without protected populations.
- Proposed mitigation is needed to reduce either the level of severity or number of adverse effects for protected populations.
- Project benefits do not affect protected populations to the same degree as other populations.
- Project is controversial and public comment shows that protected populations: do not feel that the project benefits them or that the proposed mitigation is inadequate.

A determination of “disproportionate and adverse impacts” does not preclude the project proceeding. However, it will require additional community engagement to ensure that:

- Alternatives have been discussed and are clearly understood.
- Mitigation strategies have been explained and are understood.
- The effectiveness of mitigations will be monitored, if needed.
- The community has an opportunity for meaningful participation in the process to select the alternative and mitigation measures and their preferences are taken into consideration.

When a project has a federal nexus with FTA refer to the [FTA FAQ](#) for information on EJ analysis and requirements.

For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and WSDOT's Guidance for NEPA and SEPA Project-Level Climate Change Evaluations.

460.04(2) Analysis and documentation for SEPA (No federal nexus)

Our agency policy is to consider EJ in project development and delivery. The State Environmental Policy Act (SEPA) does not include requirements for conducting a federal EJ analysis. However, projects that are not excluded (exempt) from SEPA use the environmental checklist to determine environmental health and other impacts on communities. For example, communities may be impacted by toxic chemicals, noise, air and water quality, housing changes, light and glare, and other factors. SEPA can also help determine whether a proposal's impacts are likely to be significant. A NEPA EJ analysis that is directly related to the project proposal can be listed as relevant environmental information in the environmental checklist. Also, a HEAL Act EJ assessment that is directly related to the project proposal can be listed as relevant environmental information in the environmental checklist as well. See the Washington State Department of Ecology's [SEPA Checklist guidance webpage](#) and [Chapter 400](#) for more information.

460.04(3) Analysis and documentation for HEAL Act

Washington State's EJ requirements are codified as the HEAL Act. This applies to certain actions regardless of whether the action has a federal nexus – a transportation a project may have both federal and state requirements. WSDOT is implementing new state EJ policy requirements contained in [Chapter 70A.02 RCW](#). Many of the requirements took effect on July 1, 2023.

Our agency will conduct EJ Assessments (EJAs) on the following actions initiated after July 1, 2023, in accordance with [RCW 70A.02.060](#):

1. Individual state transportation projects of at least \$15 million.
2. Individual grants or loans of at least \$15 million.
3. New grant or loan programs.
4. Agency request legislation or agency rules.
5. Certain actions funded through the CCA.
6. Additional WSDOT actions to be identified by July 1, 2025.

The WSDOT Step by Step guidance and associated template must be followed when preparing an EJA. The EJA is an iterative process and consist of four phases. The phases are intended to be completed in order, with information learned in each phase informing the following phase. Methods and tasks used during the assessment are to be used in an iterative fashion, building off one another until the assessment is complete. Following this guidance will ensure compliance with the HEAL Act. This guidance may be posted on the [Environmental justice & Title VI](#) webpage.

Before practitioners can initiate an EJA on a proposed significant agency action (SAA), the SAA Team will need to make a recommendation on the proposed significant agency action to the WSDOT HEAL Act Co-Project Managers for approval and final determination. This determination will be communicated to the appropriate leads for the action.

460.05 External engagement

Project teams should develop outreach and engagement strategies to reach all of the populations affected by their project. Tailor outreach techniques to reach low income and minority and LEP populations in your study area. Document what you did and how public input affected the project design. Guidance for how to write a public involvement plan is available from the WSDOT Communications Office and is available to WSDOT employees. Refer to our [Community Engagement Plan](#) for engagement best practices. Also, consult with [Promising Practices for Meaningful Public Involvement in Transportation Decision-Making](#).

Refer to [Chapter 465](#) for guidance on how to conduct outreach with LEP populations.

WSDOT policy requires staff to follow the [Model Comprehensive Tribal Consultation Process](#) when working with tribal governments. Contact the [WSDOT Tribal Liaison Office](#) for assistance. Refer to Chapters [400](#), [456](#) and [530](#) for more direction on engaging with tribal communities.

460.06 Internal roles and responsibilities

460.06(1) *Project Engineer*

Scopes the appropriate level of community engagement by working with the Region Title VI Liaison and their Communications office to ensure potential impacts are identified early in project development. Government to government consultation with the affected tribes as well as EJ requirements must be incorporated into the project's delivery process. HEAL Act agency roles and responsibilities will need to be determined in order to comply with the state EJ requirements set forth in [Chapter 70A.02 RCW](#).

460.06(2) *Environmental Coordinator / Consultant*

Meets with technical leads for the related disciplines listed above and uses information gathered during community engagement to conduct the EJ analysis, as needed. HEAL Act agency roles and responsibilities will need to be determined in order to comply with the state EJ requirements set forth in [Chapter 70A.02 RCW](#).

460.06(3) *WSDOT HQ Environmental Services Office*

Reviews all EJ analyses, including methodologies and oversees the related guidance.

The Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the NEPA environmental review process.

Regarding the HEAL Act, agency roles and responsibilities will need to be determined in order to comply with the state EJ requirements set forth in [Chapter 70A.02 RCW](#).

460.06(4) *Office of Equity and Civil Rights*

As part of its responsibility for enforcing Title VI of the Civil Rights Act of 1964, the Office of Equity and Civil Rights (OECR) is responsible for providing policy, procedures, and technical assistance related to Title VI. Region Title VI Liaisons serve as a resource to project teams who can help make connections with the OECR.

460.06(5) Communicator

Help scope and support community engagement activities related to a project and help provide language services, interpretation or translation, based on the languages determined in the LEP analysis. HEAL Act agency roles and responsibilities will need to be determined in order to comply with the state EJ requirements set forth in [Chapter 70A.02 RCW](#).

460.07 Applicable permits and approval process

NEPA/SEPA

There are no permits or signatory approvals associated with compliance with federal Environmental Justice requirements. However, impacts such as relocations of residential or non-residential properties affecting EJ communities require FHWA review. These impacts may lead to EA or EIS documentation, even if a project would otherwise only require a CE. Contact the [NEPA/SEPA Program](#) for more information on relocations in relation to NEPA class of action. In addition, federal and state permits and approvals require satisfactory documentation of tribal coordination and compliance with cultural resources laws and federal EJ EO.

HEAL Act

The HEAL Act specifies types of significant agency actions that trigger an EJA. These actions include individual transportation projects, grants, or loans of at least \$15 million that start on or after July 1, 2023; new agency request legislation and rulemaking; certain actions funded through the CCA; the development of new grant or loan programs; and additional actions identified by July 1, 2025.

Before practitioners can initiate an EJA on a proposed significant agency action (SAA), the SAA Team will need to make a recommendation on the proposed significant agency action to the WSDOT HEAL Act Co-Project Managers for approval and final determination. This determination will be communicated to the appropriate leads for the action.

460.08 Mitigation

NEPA/SEPA

NEPA, SEPA, the federal EJ EOs, and the WSDOT [Environmental Policy Statement](#) contain clear policy direction regarding the mitigation of project impacts – this includes mitigating impacts to the human environment (community mitigation) in addition to the natural environment.

If you determine that the project's effects are disproportionate and adverse, disclose your finding in the environmental document. A finding of "disproportionate and adverse" will not stop a project if it can be shown that the project serves a significant regional need.

But such a determination requires additional analysis to demonstrate that further avoidance, minimization, mitigation, and enhancement measures are not practicable. Alternatives may be considered "not practicable" if they:

- Would not satisfy the project's purpose and need.
- Have more severe adverse effects on other areas of the environment (Wetlands, Section 4(f), and other disciplines).
- Have greater social, economic, environmental, or human health effects.

Support your determination with evidence and reference technical analysis. Include the results of public outreach efforts to EJ/low-income populations in the environmental document. Do this by considering the mitigation measures, including those suggested by the impacted community to address their specific needs. The proposed mitigation must match the type of impact the project has on the individuals to be considered appropriate. For example, an impact to community cohesion may not be mitigated by reducing noise levels.

WSDOT uses community input when considering appropriate mitigation measures to address the transportation impacts as required by federal and state laws. The project team then pursues and negotiates reasonable project related mitigation in good faith with the community.

HEAL Act

Significant agency actions subject to the EJA requirements of the HEAL Act must describe options for the agency to reduce, mitigate, or eliminate identified probable impacts on overburdened communities and vulnerable populations, or provide a justification for not reducing, mitigation, or eliminating identified probable impacts ([RCW 70A.02.060\(6\)](#)).

The project team must solicit feedback from members of the overburdened communities and vulnerable populations to assist in the accurate assessment of the potential impact of the action and in developing the means to reduce or eliminate the impact on overburdened communities and vulnerable populations.

460.09 Abbreviations and acronyms

Abbreviations and acronyms used in this chapter are listed below.

ADA	Americans with Disabilities Act
CETA	Clean Energy Transformation Act
CCA	Climate Commitment Act
CEP	Community Engagement Plan
CFR	Code of Federal Regulations
DOJ	Department of Justice
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ	Environmental Justice
FHWA	Federal Highway Administration
HEAL	Healthy Environment for All Act
LEP	Limited English Proficiency
RCW	Revised Code of Washington
SAA	Significant Agency Action

460.10 Glossary

These definitions apply in the context of EJ analysis. Some terms may have other meanings in a different context.

Adverse Effects (EJ (FHWA Order 6640.23A)) – The totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to:

- Bodily impairment, infirmity, illness, or death caused by air, noise, water pollution, vibration, and soil contamination.
- Destruction or disruption of man-made or natural resources.
- Destruction or diminution of aesthetic values.
- Destruction or disruption of community cohesion or a community's economic vitality; access to public and private facilities and services.
- Adverse employment effects.
- Displacement of persons, businesses, farms, or nonprofit organizations.
- Increased traffic congestion.
- Isolation, exclusion or separation of minority or low-income individuals from the broader community.
- Denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities.

Adverse effects are determined by both the individuals affected and the judgment of the analyst.

Communities with EJ Concerns (NEPA, 40 CFR 1508.1) – Those communities that may not experience EJ as defined in the federal definition of EJ (Presidential EO 14096), see below. To assist in identifying communities with EJ concerns, agencies may use available screening tools, such as the Climate and Economic Justice Screening Tool and the EJScreen Tool, as appropriate to their activities and programs. Agencies also may develop procedures for the identification of such communities in their agency NEPA procedures.

Disproportionately High and Adverse Effect (FHWA Order 6640.23A) – An adverse effect that: (a) is predominantly borne by a minority population and/or a low-income population; or (b) is suffered by the minority population and/or low income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low income population.

See the federal Environmental Justice definition below for discussion of “disproportionate and adverse effects” as described in NEPA, 40 CFR 1508.1.

Effects or Impacts (NEPA, 40 CFR 1508.1) - Changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

- (i) Direct effects, which are caused by the action and occur at the same time and place;
- (ii) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth- inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems;

(iii) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from actions with individually minor but collectively significant actions effects taking place over a period of time; and

(iv) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Such as disproportionate and adverse effects on communities with EJ concerns, whether direct, indirect, or cumulative. Effects also include effects on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives. Effects may also include those resulting from actions which may have both beneficial and detrimental adverse effects, even if on balance the agency believes that the effects will be beneficial.

Environmental impacts (State Definition (HEAL Act (Chapter 70A.02 RCW)) – Environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

Environmental Justice (Federal Definition (Presidential EO 14096 and NEPA, 40 CFR 1508.1)) – The just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

Environmental Justice (State Definition (HEAL Act (Chapter 70A.02 RCW)) – The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. EJ includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

Extraordinary Circumstances (NEPA, 40 CFR 1508.1) – Factors or circumstances that indicate a normally categorically excluded action may have a significant effect. Examples of extraordinary circumstances include potential substantial effects on sensitive environmental resources, potential substantial disproportionate and adverse effects on communities with EJ concerns, potential substantial effects associated with climate change, and potential substantial effects on historic properties or cultural resources.

Limited English Proficient (DOJ LEP.gov) – Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Low Income (FHWA Order 6640.23A) – A household income that is at or below the federally designated poverty level for a household of four as defined the U.S. Health and Human Services.

Low-Income Population (FHWA Order 6640.23A) – Any readily identifiable group of low-income persons who live in a geographic area, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed DOT program, policy, or activity.

Minority (FHWA Order 6640.23A) – A person who is:

- Black (a person having origins in any of the black racial groups of Africa).
- Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or the Spanish culture or origin, regardless of race).
- Asian/Pacific Islander (a person having origins in the Far East, Southeast Asia, or the Indian subcontinent).
- Pacific Islander (a person having origins in any of the Pacific Islands).
- American Indian or Alaskan Native (any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition).

Minority Population (FHWA Order 6640.23A) – Any readily identifiable group of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy, or activity.

Overburdened community – A geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in the Clean Energy Transformation Act (CETA) ([RCW 19.405.020](#)). This definition was adopted by the HEAL Act by reference.

Vulnerable populations (HEAL Act ([Chapter 70A.02 RCW](#))) – Population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms and sensitivity factors, such as low birth weight and higher rates of hospitalization. “Vulnerable populations” includes, but is not limited to:

- Racial or ethnic minorities
- Low-income populations
- Populations disproportionately impacted by environmental harms
- Populations of workers experiencing environmental harms

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465.01	Introduction
465.02	Applicable statutes, regulations, executive orders and agreements
465.03	Considerations during project development
465.04	Analysis and documentation requirements
465.05	External engagement
465.06	Internal roles and responsibilities
465.07	Applicable permits and approval process
465.08	Mitigation
465.09	Abbreviations and acronyms
465.10	Glossary

465.01 Introduction

This chapter provides direction necessary for project teams to perform a Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) Equity Analysis (also known as Disparate Impact Analysis), and other federal and state related applicable civil rights statutes and requirements during the environmental review process for transportation improvement projects.

In 2024, this manual separated the environmental justice requirements and analysis from Title VI requirements to clarify the role of each analysis. There may be some overlap between EJ and Title VI analyses; however, engaging in EJ analysis under Federal transportation planning and National Environmental Policy Act (NEPA) provisions will not necessarily satisfy Title VI requirements. Title VI is a non-discriminatory action that, unlike environmental justice requirements, does not have a specific scope of protected populations. Instead, it focuses on the equal distribution of benefits and burdens in the transportation decision-making process. This is why a Title VI Equity Analysis would not necessarily satisfy EJ requirements since Title VI does not include low-income or minority populations (Federal Highway Administration (FHWA) [Order 5610.2\(a\)](#)). An EJ analysis can include information from a Title VI analysis but should also rely on other analyses to make an EJ effects determination for a project. Refer to [Chapter 460](#) for more information regarding an EJ analysis.

Title VI compliance is required in all transportation actions and operates independently from EJ compliance. Title VI must be enforced and applied to all transportation projects, regardless of whether an EJ analysis is required or whether the project is receiving federal financial assistance.

465.01(1) Title VI Requirements

Title VI of the Civil Rights Act of 1964, and its implementing regulations, prohibit discrimination based on race, color, and national origin. Specifically, Title VI states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 23 C.F.R. 200.5(f) provides that unequal treatment “solely because of race, color, religion, sex, or national origin” is unlawful discrimination. A successful Title VI program assures the public that an agency’s services and resources will be allocated fairly, and any adverse effects of transportation will be shared equally. Title VI and the associated Code of Federal Regulations for Transportation prohibits the following specific discriminatory actions:

A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. (49 CFR, Subtitle A, Part 21.5 (b)). National origin protections under Title VI have been interpreted by the courts to include discrimination based on Limited English Proficiency (LEP). Pursuant to [Executive Order 13166](#) (2002) the United States Department of Transportation has established a requirement that WSDOT provide LEP individuals with meaningful access to its programs and services. The [Civil Rights Restoration Act of 1987](#) mandates that recipients of federal funds comply with civil rights laws in all programs and activities they provide, not only within the particular program or activity that received federal funding. This legislation clarified that Title VI and other nondiscrimination requirements were meant to apply broadly to all programs and activities of a recipient, irrespective of the funding source of a particular program or activity. (42 U.S.C. 2000d-4).

WSDOT’s responsibilities under these laws include, but are not limited to:

- Identifying and addressing, as appropriate, disparate impacts and disproportionately high and adverse effects associated with our projects, programs, and activities.
- Ensuring that we make every effort to provide benefits, services, and access equally to all groups. Access considerations include multimodal options for all groups relative to their needs, practices, and culture.
- Avoiding, or if not possible, minimizing the hardships associated with displacement of residents and businesses.
- Providing equal access to information and meaningful involvement in the decision-making process regardless of race, color, religion, sex, or national origin.
- Ensuring meaningful access to programs and activities by persons with LEP.
- Documenting our decision-making processes.
- Promoting the full and fair participation of all affected populations in transportation decision-making populations.

465.02 Applicable statutes, regulations, executive orders and agreements

The federal and state policies that guide the evaluation of Title VI for transportation projects, include:

465.02(1) **Federal**

- Civil Rights Restoration Act of 1987 (Pub. L. 100-259)
- [Section 504](#) of the Rehabilitation Act of 1973 (Pub. L. 93-112)
- Section 162 (a) of the Federal-Aid Highway Act of 1973 (Pub. L. 93-87)
- Age Discrimination Act of 1975 (Pub. L. 94-135)
- National Environmental Policy Act of 1969 (Pub. L. 91-190)
- [Title 23 CFR Part 200](#) - Title VI Program and Related Statutes—Implementation and Review
- [Title 28 CFR Sec. 42.104\(b\)](#) - Implementation of Title VI- Discrimination Prohibited
- [Title 49 CFR Part 21.5\(b\)\(2\)](#) - Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964. Presidential Executive Orders (EO) related to Title VI:
 - [Executive Order 12898](#) issued February 11, 1994 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
 - [Executive Order 13985](#) issued January 20, 2021 - Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.
 - [Executive Order 14096](#) issued dated April 21, 2023 - Revitalizing Our Nation’s Commitment to Environmental Justice for All.
 - [Executive Order 13166](#) - Improving Access to Services for Persons with LEP
- Department of Transportation (DOT) [Order 5610.2\(a\)](#) issued May 2, 2012.

465.02(2) **State**

- Governor’s Executive Order [93-07](#) *Affirming Commitment to Diversity and Equity in the Service Delivery and the Communities of the State* (1993).
- Secretary’s Executive Order [E 1087](#) Title VI Policy. March 5, 2021.
- WSDOT’s Secretary Executive Order 1119.00, July 16, 2021.

465.03 Considerations during project development

465.03(1) **Planning**

Title VI compliance is integral to the transportation planning process, as it requires planners to ensure that no person is excluded from participation or subjected to discrimination based on race, color, or national origin. The transportation planning phase is closely related to a Title VI Equity Analysis, which involves examining how different population groups are affected by transportation plans and ensuring that all communities, benefit equally from transportation projects. This includes engaging with these communities early and throughout the planning process to gather input and address any potential disparities. Title VI federal regulations do not specifically dictate when to start performing a Title VI analysis during transportation improvement projects; however, Title VI enforcement and non-discriminatory practices are required to be followed at all stages of transportation actions, including planning.

Planning teams should contact their Region/Mode Title VI Liaison, WSDOT's Office of Equity and Civil Rights (OECR) Title VI Team, and/or FHWA's Civil Rights Program Manager for directions on how to address Title VI in a planning study phase. Additionally, planning teams should check to see if a planning study has been done in their project area, and if so, refer to any Title VI compliance information documented in that study from the project area. Title VI compliance information may include but are not limited to:

- What other planning projects have been conducted in the area in the last 10 years that may have had an associated demographic analysis?
- Have there been complaints about outreach related to past projects?
- Were Title VI and EJ considerations specifically incorporated in past efforts?
- Previous identified LEP populations or other languages within the area,
- Previous requested translations from the area,
- Previous data collected during community engagement activities,
- Any Title VI complaints received from the area,
- Any previous or current identified disparate impacts or adverse effects,
- Any previous displacement of residents and demographic data.

The demographic profiles during a Title VI Equity Analysis vary throughout the state and by the specific populations identified, for special considerations during a planning process, depending on the nature of the project and the size, location, and special characteristics of the study area. To ensure transportation improvement projects meet Title VI compliance, it is essential to consider several key elements that address equity and prevent discrimination throughout the process. Some of these key elements include but are not limited to:

- **Define population:** Identifying the demographic groups potentially affected by the action helps focus the analysis on the relevant populations and ensures that all relevant data are considered.
- **Data collection:** Collecting data on the demographic composition of the population affected by transportation projects, including race, color, national origin, income, age, and language proficiency.
- **Impact assessment:** Analyze how different population groups will be affected by the proposed transportation project and evaluate how disproportionate negative impacts affect populations based on their race, color, national origin, income, age, sex, and language proficiency.
- **Mitigation strategies:** Develop strategies to mitigate any identified adverse effects on these populations. This could include changes to the project design or additional supportive measures.
- **Public involvement:** Start community engagement early in the planning process to gather input from affected populations.
- **Outreach strategies:** Use diverse and inclusive outreach strategies to ensure participation from all community segments, including those who are traditionally underserved or hard to reach.
- **Collaboration:** Work with other agencies and offices, such as FHWA and WSDOT's OECR, to ensure alignment with federal and state Title VI requirements.

465.03(2) Scoping

Activities in this phase are centered on statistical data collection, informal information meetings, and discussions with local residents who know the area, are familiar with past planning efforts and outcomes, and who may work with potentially affected communities from the project, or transportation actions. Additionally, steps in this phase provide a preliminary picture of the potential impacts of proposed projects on different populations and their demographics.

Knowing the demographics of the communities that will potentially be impacted by the project or transportation actions is essential for effectively conducting a Title VI Equity Analysis and avoiding Title VI discrimination caused by disproportionate impacts. Therefore, in order to avoid potential Title VI discriminations, it is necessary to understand the specific types of discriminatory actions that are prohibited. For the purpose of this manual and to conduct a Title VI Equity Analysis during transportation improvement projects, this chapter will only focus on Title VI discriminations that fall under the following two legal categories, which are described in more detail below: disparate treatment and disparate impact.

Disparate Treatment

In the context of transportation improvement projects, disparate treatment can manifest in various forms, such as biased decision-making, exclusionary practices, or unequal application of policies and procedures. Organizations can better identify and address instances of disparate treatment, ensuring compliance with Title VI and promoting equitable transportation planning and implementation. by considering the following elements:

- Patterns or practices that suggest a discriminatory intent even if there is no direct proof.
- Reviewing past incidents and practices to identify patterns of discrimination.
- Statistics showing patterns of discriminatory effects.
- Comparing the treatment of individuals or groups with similar circumstances but different protected characteristics to identify disparities.
- Assessing whether policies and procedures are applied consistently across all groups.
- Evaluating whether the actions or policies have resulted in significantly different outcomes for same or different population groups.
- Identify if any single group is disproportionately impacted or analyze whether certain groups bear a disproportionate burden compared to others.
- A negative impact threshold is often set (e.g., a 15% increase in burden or reduction in benefits), beyond which measures must be taken to mitigate adverse impacts
- Sequence of events leading to the decision, compared to other decisions on comparable matters.

Disparate Impact

In the context of transportation improvement projects, disparate impact refers to policies or practices that, while seemingly neutral, cause an adverse effect or disproportionately affect a group more severely than other groups based on their race, color, national origin, and LEP populations. Unlike disparate treatment, which involves intentional discrimination, disparate impact focuses on the consequences of policies and practices that unintentionally lead to unequal outcomes. To avoid a disparate impact, a Title VI analysis needs to be performed, which involves pairing two key elements: demographics and the impact or benefit of the project. For example:

- Decennial Census (race, color, and national origin) and Noise Impacted Residences by race, color and national origin.
- American Community Survey (ACS) from U.S. Census Bureau to identify LEP communities and number of languages Vital Documents need to be translated.
- Relocation Demographic Surveys (race, color, national origin and LEP from displaced or relocated residents or business owners) and Relocation Financial Data (costs and economic impacts, household incomes from relocated owners, etc.).
- Public Meetings demographics (race, color, national origin and LEP) and Overall, Area Population (race, color, national origin and LEP).

Following the examination of disparate impact and disparate treatment, a Title VI Equity Analysis will ensure that services, benefits, and impacts are distributed fairly across all populations, proactively identifying, and mitigating any inequities affecting protected communities during transportation improvement projects.

This analysis helps identify and mitigate any unintentional negative effects that policies or practices may have on communities. The following questions are designed to guide project teams through this process, enabling them to uncover potential disparities and develop strategies to address them effectively. Project teams can better ensure that their projects do not disproportionately burden vulnerable populations and that benefits are equitably distributed by systematically addressing the following questions:

- To which populations (race, color, etc.) does this action apply or affect?
- Does it have a disproportionate or adverse impact (based on race, color, etc.)?
- How is the impact determined?
- Which population would you say is the most disproportionately affected?
- Is a historically overburdened community present?
- Was the challenged policy necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission?
- Does the justification bear a manifest demonstrable relationship to the challenged policy or practice?
- Could the same goals be achieved through different policies or practices that would have a less adverse impact on the affected communities?

- How will the benefits of the project be distributed among different population groups?
- Are the benefits of the transportation improvement project equitably distributed, or do they disproportionately favor certain groups?
- Have the affected communities been adequately consulted and involved in the decision-making process?
- Is there any history of controversial projects in the area? Examples include projects that involved residential or business displacement, mitigated environmental impacts, conflicts with property rights, and other disputed elements.
- Were efforts made to ensure meaningful participation from all affected communities, especially those that are typically underrepresented?
- What are the cumulative impacts of the project when combined with other existing or planned projects in the area?
- What are the short-term and long-term impacts of the project?
- How will the benefits of the project be distributed among different population groups?
- What feedback has been received from the community on potential mitigation strategies?
- Are there adjustments we can make to ensure all groups receive equal benefits from this project?
- How can we improve access for groups disproportionately impacted?
- Are there additional or alternative engagement methods that could improve participation and input from these groups?
- Are there alternative approaches or project modifications that could reduce negative impacts on affected communities?
- How will we track the effectiveness of mitigation measures for impacted communities?

For further information on Title VI, refer to the [Title VI/Limited English Proficiency](#) webpage or contact [WSDOT's Title VI team](#).

465.03(3) Design

Conduct community engagement when appropriate for the project following agency [Community Engagement Plan](#) and the *Design Manual* [Section 210.04](#) Public Involvement. Revisit the Title VI Equity Analysis if the project elements change that could impact the community including detour routes.

465.03(4) Construction

Track and implement commitments made per Title VI.

465.03(5) Maintenance and Operations

Track commitments made per Title VI.

465.04 Analysis and documentation requirements

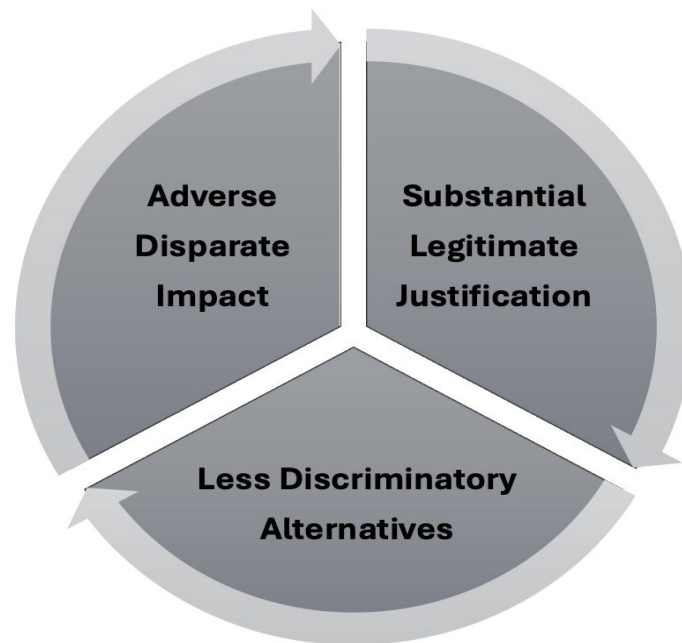
This section describes analysis and documentation requirements based on regulatory requirements. Determine the level of detail based on complexity/size of project, expected severity of impacts, and potential public controversy.

465.04(1) Analysis and documentation for NEPA

Project teams must utilize demographic data and conduct community outreach to conduct their Title VI analysis. It is essential that they refer to the [Title VI/Limited English Proficiency](#) webpage for relevant resources. The demographic profile should identify all populations by race, color, national origin, and include low-income populations. Additionally, the demographics should provide information on the percentage of the population with LEP.

Environmental Impact Statements should include a Title VI disparate impact analysis. This analysis assesses whether the project is likely to disproportionately affect certain groups by comparing the least impacted group to the most impacted group within the study area. If the project team, in consultation with the federal NEPA lead, determines there will be a “disparate impact,” they must either select a “less-discriminatory alternative” or provide a “substantial legitimate justification.” This process of analysis is depicted below in Exhibit 465-1.

Exhibit 465-1



465.04(2) Analysis and documentation for SEPA (No federal nexus)

Our agency policy is to consider Title VI in project development and delivery. The State Environmental Policy Act (SEPA) does not contain requirements for conducting a Title VI analysis, however, the SEPA checklist can be used to help determine whether a proposal’s impacts are likely to be significant.

465.05 External engagement

Title VI of the Civil Rights Act of 1964 requires WSDOT “to promote nondiscrimination” to the “greatest extent allowed by the law”. This includes equal access to information and an equal opportunity to participate in the decision-making process. WSDOT tracks its performance with this requirement and submits an annual report to FHWA documenting efforts to engage all persons, regardless of color, race, gender, age, income, disability, or national origin. See the WSDOT [Community Engagement Plan](#) webpage for considerations to make during your outreach.

Project teams should develop outreach and engagement strategies to reach all of the populations affected by their project. Tailor outreach techniques to reach a variety of populations based on demographic data (race, color, national origin and LEP) collected in your study area. Document what you did and how public input affected the project design. Guidance for how to write a public involvement plan is available from the WSDOT Communications Office and is available to WSDOT employees. Refer to our [Community Engagement Plan](#) for engagement best practices. Also, consult with [Promising Practices for Meaningful Public Involvement in Transportation Decision-Making](#).

WSDOT policy requires staff to follow the [Model Comprehensive Tribal Consultation Process](#) when working with tribal governments. Contact the [WSDOT Tribal Liaison Office](#) for assistance. Refer to Chapters [400](#), [456](#) and [530](#) for more direction on engaging with tribal communities.

465.06 Internal roles and responsibilities

465.06(1) *Project Engineer*

Scopes the appropriate level of community engagement by working with the Region/Mode Title VI Liaison and their Communications office to ensure potential impacts are identified early in project development. Government to government consultation with the affected tribes must be incorporated into the project’s delivery process.

The [WSDOT LEP Plan](#) requires project engineers to:

- Make every effort to provide services, either through translation or interpreter, prior to scheduled meetings, such as public hearings, or project meetings.
- Pay for the translation of vital documents and interpreter services including summary newsletters, brochures, public notices for meetings and summary documents for open houses or environmental hearings. Interpreter services should be provided upon request for open houses and hearings.

465.06(2) *Environmental Coordinator / Consultant*

Meets with technical leads and uses information gathered during community engagement to conduct the Title VI Equity Analysis, as needed.

465.06(3) *WSDOT HQ Environmental Services Office*

ESO serves as a connection between projects and OECR, see below.

465.06(4) Office of Equity and Civil Rights

As part of its responsibility for enforcing Title VI of the Civil Rights Act of 1964, OECR is responsible for providing policy, procedures, and technical assistance related to Title VI. Region/Mode Title VI Liaisons who serve as a resource to project teams can help make connections with communities.

465.06(5) Communicator

Help scope and support community engagement activities related to a project and help provide language services, interpretation or translation, based on the languages determined in the LEP analysis.

465.07 Applicable permits and approval process

There are no permits or signatory approvals associated with compliance with federal Title VI requirements. However, federal and state permits and approvals require satisfactory documentation of tribal coordination and compliance with civil rights laws.

465.08 Mitigation

The Secretary's Executive Order ([E 1087.01](#)) contains clear policy direction regarding Title VI compliance.

465.09 Abbreviations and acronyms

ACS	American Community Survey
CEP	Community Engagement Plan
CFR	Code of Federal Regulations
FHWA	Federal Highway Administration
LEP	Limited English Proficiency
NEPA	National Environmental Policy Act
OECR	Office of Equity and Civil Rights
SEPA	State Environmental Policy Act
Title VI	Title VI of the Civil Rights Act of 1964
WSDOT	Washington State Department of Transportation

465.10 Glossary

These definitions apply in the context of Title VI analysis. Some terms may have other meanings in a different context.

Disparate impact – Occurs when a neutral policy, practice or action disproportionately affects a protected group, regardless of intent.

Disparate treatment – Occurs when individuals or groups are intentionally treated differently based on their race, color, or national origin.

Limited English Proficient – Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000.

490.01	Commitments must be tracked
490.02	Identify environmental commitments during environmental review and design
490.03	Perform a constructability review
490.04	Reflect environmental commitments in project design
490.05	Track environmental commitments during design
490.06	Respond to non-compliance events during design
490.07	Applicable statutes and regulations
490.08	Abbreviations and acronyms
490.09	Glossary

490.01 Commitments must be tracked

The Revised Code of Washington (RCW) [47.85.040](#) states that the Washington State Department of Transportation (WSDOT) must develop, implement, and maintain an environmental compliance data system to track permit conditions and environmental commitments. WSDOT's [Environmental Policy Statement](#) expects all WSDOT employees to know and adhere to all environmental commitments applicable to their duties.

This invariably requires staff to track commitments because they apply to various phases of the project (design/construction/maintenance) and are performed by WSDOT, the contractor/Design-Builder, or both. The WSDOT [Commitment Tracking System](#) (CTS) web application is built specifically to help our agency implement these requirements. WSDOT is expected to clearly communicate all project commitments to supporting design offices, construction project staff, and to the contractor/Design-Builder as stated in the WSDOT [Plans Preparation Manual](#) M 22-31 [Division 4](#), WSDOT [Design-Build Manual](#) M 3126 [Chapter 4](#), and WSDOT [Construction Manual](#) M 41-01 [Chapter 1](#). For Design-Build projects, both WSDOT and Design-Builder staff are responsible for tracking commitments during project design. For Design-Build projects, the commitments are compiled in a commitments list and must be included in Appendix C of the request for proposal (RFP). The commitment list must be tracked and updated/modified by the DB throughout the life of the project until closeout. Refer to the [Design-Build Manual](#), section 2.79 Environmental, and the project's Request for Proposal (RFP) for more project-specific information regarding the Design-Builder's responsibilities.

[Title 23, Part 771.109](#) of the Code of Federal Regulations requires the Federal Highway Administration (FHWA) to ensure that WSDOT implements commitments as stated in the environmental documents. The FHWA assures this is accomplished as a part of their program management responsibilities, which includes reviews of design, plans, specifications, and estimates (PS&E). This also includes FHWA construction inspections.

490.02 Identify environmental commitments during environmental review and design

Identifying environmental commitments early in design ensures that the complete design package is developed with compliance in mind before it goes out for bid. The WSDOT [Plans Preparation Manual Division 4](#) requires WSDOT to identify all project environmental commitments. In most cases, commitments will be in writing, but note that some commitments may be delivered electronically or verbally. These commitments may result from:

- Planning activities.
- Federal review process via the National Environmental Policy Act (NEPA).
- Washington State review process via the State Environmental Policy Act (SEPA).
- Tribal participation and consultations.
- Design efforts, including field activities.
- Permit acquisition.

It is WSDOT policy (WSDOT *Design Manual* M 22-01 [Section 225.04](#)) that a project commitment file be established as the preparation of environmental documentation begins. The Region/Mode/Megaprograms Environmental Office is responsible for creating and maintaining the commitment file as a project progresses through its development process. This file serves as the repository for all final environmental commitments leading to development of the contract.

490.03 Perform a constructability review

The WSDOT [Master Deliverables List](#) (MDL) is a comprehensive list of project deliverables organized by project phases. Section PSE.50 of the MDL requires that constructability reviews be performed during design. WSDOT must ensure all environmental commitments are constructible. If WSDOT identifies a non-constructible commitment, then the Region/Mode/Megaprograms Environmental Office must resolve the issue prior to delivering the environmental commitment file to the Project Engineer; this may be accomplished through communication with the source of the commitment (e.g., the appropriate resource agency).

490.04 Reflect environmental commitments in project design

WSDOT's [Environmental Policy Statement](#) requires that WSDOT communicate compliance roles, responsibilities, environmental commitments, and expectations to contractors/consultants/Design-Builders. WSDOT staff will use [CTS](#) to consistently track all environmental commitments and generate a commitment file including all the environmental commitments that must be considered during the design phase of a project. The project design must reflect commitments from the environmental review process and the permits. Provide a copy of the commitment file to the Project Engineer responsible for design elements (such as structures, roadway, or stormwater), so they can ensure the project incorporates all design phase commitments into contract documents, and that those commitments get closed out.

See [Chapter 590](#) to incorporate environmental commitments into the contract, and [Chapter 600](#) for information on closing commitments upon completion. Refer to the help menu within [CTS](#) for instructions on how to use [CTS](#), manage commitments, and generate a list of all commitments. Contact WSDOTCTSAdministrator@wsdot.wa.gov for additional CTS support and training requests.

490.05 Track environmental commitments during design

Environmental commitments must be tracked to determine how and when they are fulfilled, including those for which the contractor/Design-Builder is responsible. For each commitment, include a commitment ID number, commitment description, source of the commitment, responsible party (e.g., WSDOT, contractor/Design-Builder, or both), and applicable project phase(s) (e.g., planning, design, construction, or maintenance).

As commitments are fulfilled, update the commitment file (e.g. [CTS](#)) to reflect their status as closed; if appropriate, also document how the commitment was fulfilled. Inquire with the Project Office Designers to discuss design commitments that are not incorporated or have a status of open. The Region/Mode/Megaprograms Environmental Office is responsible for clearly communicating to the Project Engineer the status of all commitments in the commitment file (e.g. [CTS](#)).

Project teams must use [CTS](#) to track and manage environmental commitments. Depending upon the RFP, Design-Builders may use [CTS](#) to track and manage environmental commitments via the [SecureAccess Washington \(SAW\)](#) Portal. For your convenience, [CTS](#) contains commitments for some common and general permits and approvals. Refer to the help menu within [CTS](#) for instructions on how to add and update commitments to a project and generate reports, including commitment close-out reports.

490.06 Respond to non-compliance events during design

WSDOT employees and consulting staff are obligated to report environmental non-compliance events ([RCW 47.85.030\(3\)\(a\)](#)). Section 225.05(1) of the WSDOT [Design Manual](#) states the purpose of the Environmental Compliance Assurance Policy (ECAP) for the design phase of a project, and provides instruction on how to recognize and rectify environmental non-compliance events.

490.07 Applicable statutes and regulations

- Applicability and responsibilities – [23 Code of Federal Regulations; 771.109](#)
- Transportation Project Delivery and Review – [47.85 RCW](#)

490.08 Abbreviations and acronyms

CTS	Commitment Tracking System
ECAP	Environmental Compliance Assurance Policy
FHWA	Federal Highway Administration
MDL	Master Deliverables List
NEPA	National Environmental Policy Act
PS&E	Plans, Specifications, and Estimates
RCW	Revised Code of Washington
RFP	Request for Proposal
SAW	Secure Access Washington (SAW)
SEPA	State Environmental Policy Act

490.09 Glossary

These definitions provide context for tracking commitments in design. Some terms may have other meanings in a different context.

Commitment – An obligation that WSDOT makes within an environmental document or agreement for the project; or an expectation imposed upon WSDOT by another agency through a permit or approval for the project. Commitments can be either the agency's or the contractor's/Design-Builder's responsibility to implement.

Commitment File – This file serves as the repository for all final environmental documents leading to development of the contract.

Commitment Tracking System – The [Commitment Tracking System \(CTS\)](#) is a WSDOT web application that allows you to store commitments in a secure computer network server, plus manage the responsibility (WSDOT, contractor/Design-Builder, or both) and implementation method (guidance document or contract) for the commitment. It also allows you to store compliance records, document the status, and report details about commitments from their inception through project delivery and on to maintenance.

500.01	Introduction
500.02	Scoping
500.03	Roles and responsibilities
500.04	Identify the Required Permits and Coordination
500.05	Submit a complete permit application and obtain permits
500.06	After permit issuance/permit modifications
500.07	Manage permits and conditions during construction
500.08	Links to permitting resources
500.09	Abbreviations and acronyms
500.10	Glossary

500.01 Introduction

Consistent with the intent of the Washington State Legislature ([RCW 47.85](#)), it is WSDOT's policy to expedite the delivery of transportation projects by implementing a Multi-Agency Permit (MAP) Program and a streamlined approach to environmental permitting that includes working cooperatively and proactively with regulatory agencies and tribes.

WSDOT's environmental policy framework includes tracking and fulfilling all environmental commitments that we make through compliance with laws, regulations, permits, and agreements.

This chapter addresses the commonly needed environmental permits and approvals for WSDOT projects and maintenance activities.

500.02 Scoping

The permit process begins during project scoping ([Chapter 300](#)) when the Environmental Review Summary (ERS) is completed. Project Environmental Coordinators identify which permits could be required based on the initial scope of the project and the regulatory requirements. Understanding project and location activities is important to successfully identify permits and approvals. Here are examples of some project activities and locations that may require permits:

- Work within shoreline jurisdiction, defined by the local Shoreline Master Program, requires a shoreline permit or approval.
- Projects with federal funding, federal permits, or on federal land (federal nexus).
- Impacts on sensitive resources such as cultural resources, wetlands, and waterbodies that may be Waters of the United States and/or Waters of the State.

We first seek to avoid impacting protected resources. When we cannot avoid impacts, we obtain environmental permits to comply with these laws. Resource agencies issue permits that include conditions so our work will have minimal impacts to the environment and, when needed, provide direction on mitigation to offset those impacts.

Use the list of common permits and approvals below to determine which permits may be required for your project. This list does not include approvals obtained as part of the early design stage of the project such as Endangered Species Act Compliance or the State

Environmental Policy Act. Most of these permits and approvals are obtained during the late design stage. See the discipline chapters of this *Environmental Manual* for policy that applies to a single permit or approval. This chapter includes information that applies to multiple permits. Consult the [Office of Regulatory Assistance and Innovation's \(ORIA\) Regulatory handbook](#) or resource agency staff to obtain information about permits and approvals not included in this chapter. Here is a list of the common environmental permits and approvals that are typically issued after the early design phase:

- Stormwater and water quality (*Environmental Manual Chapter 430*)
 - NPDES Municipal Stormwater General Permit ([Stormwater & water quality](#) webpage)
 - NPDES Construction Stormwater General Permit ([Stormwater & water quality](#) webpage)
 - NPDES Bridge and Ferry Terminal Washing General Permit ([Stormwater & water quality](#) webpage)
 - NPDES Industrial Stormwater General Permit (Washington State Ferries Eagle Harbor Repair Facility) ([Stormwater & water quality](#) webpage)
 - NPDES Aquatic Plant & Algae Management ([Stormwater & water quality](#) webpage)
 - NPDES Aquatic Mosquito Control General Permit ([Stormwater & water quality](#) webpage)
 - Section 401 Water Quality Certification ([Stormwater & water quality](#) webpage)
- Wetlands and other waters (*Environmental Manual Chapter 431*)
 - Clean Water Act Section 404 permit ([Wetlands and other waters](#) webpage)
 - Rivers and Harbors Act Section 10 permit ([Wetlands and other waters](#) webpage)
 - General Bridge Act (formerly Rivers and Harbors Act Section 9) Coast Guard bridge permit ([Wetlands and other waters](#) webpage)
 - Rivers and Harbors Act Section 408 approval ([Wetlands and other waters](#) webpage)
 - State Water Quality Standards administrative orders [WAC 173-201A](#)
 - Shoreline permits/approvals ([Wetlands and other waters](#) webpage)
 - Coastal Zone Management Act (CZMA) Consistency Certification ([Wetlands and other waters](#) webpage)
 - Water Rights ([Ecology Water Rights](#) webpage)
- Special Flood Area (*Environmental Manual Chapter 432*)
 - Floodplain Development Permits ([Floodplains](#) webpage)
- Fish, wildlife, and vegetation (*Environmental Manual Chapter 436*)
 - Hydraulic Project Approval ([Fish](#) webpage)
 - Incidental Take Authorization ([Marine Mammals](#) webpage)
- Noise (*Environmental Manual Chapter 446*)
 - Noise variances ([Noise](#) webpage)
- Land Use and Transportation (*Environmental Manual Chapter 455*)
 - Critical Areas ([Land Use](#) webpage)
 - Forest Practices ([Land Use](#) webpage)
 - Aquatic Use Authorization ([Land Use](#) webpage)
- Cultural Resources (*Environmental Manual Chapter 456*)
 - Archeological Resources Protection Act Permit ([Cultural resources & archeology](#) webpage)

Clearing and Grading permits have some unique aspects because of WSDOT's plenary authority. In general, you do not need a building, grading or clearing permit from the local agency for transportation-related work, such as state highway or bridge construction ([RCW 47.01.260](#)). This includes retaining walls, noise walls and activities required by a regulatory condition or requirement, such as stormwater facilities or compensatory mitigation sites. Some local agencies may use building, grading and clearing permit applications for their critical area or floodplain permits. Check with the city or county where the work will occur. See the Growth Management Act Critical Areas Ordinance and Floodplain Development Permit if the local government does use building, grading and clearing permits to meet other permit needs. Work on rest areas, ferry terminals and connections between state and local roadways may not be exempt.

500.03 Roles and responsibilities

Effective communication between the environmental staff, the design team, and the resource agencies is crucial to build trust and efficiently permit a project. This section provides general guidance for the major groups involved in the permitting process. Be sure to follow guidance on WSDOT's Environmental discipline webpages and region/ferries processes for permitting projects, if applicable.

500.03(1) Resource agencies

- Understand the project(s) they are being asked to permit.
- Help WSDOT determine permitting requirements (e.g., what is needed for a complete application, mitigation requirements) through verbal and written communication and conducting site visits.
- Review applications and make permit decisions.
- Provide technical and regulatory guidance.
- Conduct site visits during construction to verify compliance with permits.
- Provide close outs of permits whose compensatory mitigation sites meet the requirements.

500.03(2) Environmental Manager/Assistant Manager/Supervisors

- Track environmental scope, schedule, and budget.
- Oversee environmental staff.
- Help resolve environmental issues and disagreements.
- Ensure compliance with federal, state, local, and Tribal environmental requirements.
- Foster good relationships with the resource agencies.
- Review draft permit applications to ensure they are complete.
- Notify resource agencies when required by the permits.
- Record annual usage of general permits and report this annually to the Environmental Services Office (ESO).

500.03(3) Project Environmental Coordinator

- Coordinate with the Design Team to understand the project's scope, schedule, budget, and project footprint.
- Determine which permits a project may require.
- Coordinate with environmental technical experts to determine a project's impact to that resource and ensure completion of permit supporting documentation (e.g., wetland delineation, mitigation plan).
- Determine if design changes affect permitting requirements.
- Fill out the permitting section of the ERS and Environmental Classification Summary (ECS).
- Coordinate early and throughout the project with resource agencies to identify permit requirements and discuss opportunities to avoid and minimize impacts to natural and cultural resources.
- Ensure project coordination with appropriate Tribal contacts (when applicable) occurs during the permit application process.
- Gather information and fill out permit applications.
- Ensure consistency between project design, environmental documentation, and the permit application.
- Submit complete and accurate permit applications to the agencies.
- Track and assign permit conditions to ensure fulfillment.
- Ensure environmental commitments are reflected in the construction contract.

500.03(4) WSDOT Environmental Technical Experts (Headquarters, Regions, and Ferries)

- Identify project impacts on sensitive areas such as wetlands ([Chapter 431](#)), streams ([Chapter 430](#)), floodplains ([Chapter 432](#)), cultural resources ([Chapter 456](#)), fish and wildlife habitat ([Chapter 436](#)), and sites with hazardous waste ([Chapter 447](#)).
- Document the impacts in technical reports or memos.
- Develop compensatory mitigation options when resource impacts are unavoidable.
- Help Project Environmental Coordinators answer technical permitting questions.
- Provide assistance during construction as needed.

500.03(5) Design Team

- Provide project definition during scoping phase.
- Provide project design information to help the Project Environmental Coordinator determine permitting requirements and complete the permit application.
- Provide project drawings for the permit application package that meet the resource agency requirements.
- Design the project to avoid and minimize impacts to environmental resources.
- Communicate design changes to environmental staff.
- Review permit applications to ensure consistency with design.
- Incorporate environmental commitments into the construction contract.
- Ensure plan sheets show sensitive areas.

500.03(6) ESO Compliance Solutions Branch

- Communicate permitting policy and process changes to regions, modes, megaprograms, and HQ maintenance environmental offices.
- Create interagency agreements with resource agencies.
- Develop and maintain permitting guidance.
- Provide training to the regions, Ferries, and other project environmental offices.
- Provide policy and technical support for Hydraulic Project Approval (HPA), Clean Water Act Sections 404 and 401, Rivers and Harbors Act Sections 9, 10 and 408, Shoreline Management, Critical Areas Ordinance, Aquatic Land Use Authorization, Coastal Zone Management Consistency Certification, National Point Discharge Elimination System (NPDES) Bridge & Ferry Terminal General Permit, Water Rights, Clearing & Grading, and Floodplain permits and approvals (Multi-Agency Permit Program).
- Negotiate statewide and regional general permits (e.g., General Hydraulic Project Approvals (GHPAs), NPDES Bridge and Ferry Terminal Washing General Permit, and other permits as needed to meet WSDOT's business needs) and report annual usage to the resource agencies (Multi-Agency Permit Program).
- Review environmental permitting bills from the legislature to determine their potential impact on WSDOT.
- Organize statewide environmental coordinator roundtable meetings to discuss resource updates and lessons learned (Compliance Assurance Program).
- Lead the Multi-Agency Permit Program Steering committee and other groups to meet the requirements set in [RCW 47.85.020](#) (Multi-Agency Permit Program).

500.03(7) ESO Climate Mitigation and Adaptation Branch

- Provide policy and technical support for Noise Variances (Air and Noise Program).

500.03(8) ESO Policy Branch

- Provide policy and technical support for Archaeological Resource Protection Permit (Cultural Resource Program).

500.03(9) ESO Stormwater Branch

- Provide policy and technical support for Clean Water Act Section 402 permits, including NPDES Municipal and NPDES Construction Stormwater General Permits.

500.03(10) ESO Biology Branch

- Provide policy and technical support for Incidental Take Authorizations under the Marine Mammal Protection Act (Fish and Wildlife Program).
- Provide policy and technical support for wetland impacts under the Clean Water Act sections 401 and 404. (Wetlands Program)

500.03(11) Regional Maintenance Environmental Coordinator (RMEC)*/ Maintenance Staff

- Implement the Regional Road Maintenance Program to avoid and minimize impacts to fish and aquatic species.
- Use WSDOT general permits for maintenance activities where possible.
- Obtain project-specific environmental permits to ensure compliance with federal, state, local, and tribal environmental requirements.
- Review long-term commitments from construction projects to ensure they can be fulfilled by WSDOT maintenance.
- Communicate environmental requirements and provide training to maintenance staff.
- Enter general permits usage into the Highway Activity Tracking System (HATS) database and conduct quarterly quality control reviews.

500.04 Identify the Required Permits and Coordination

WSDOT conducts studies and gathers information during the environmental review phase ([Chapter 400](#)) to determine what permits are required for a project. It's important for the Project Environmental Coordinator to closely coordinate with the design team to know the area that the project will impact. This will help the Project Environmental Coordinator identify which permits and approvals a project needs to meet regulatory requirements. Having a clear understanding of permitting timelines and good communication with the design team about design changes will help WSDOT avoid project delays and surprises. WSDOT environmental staff should coordinate closely with the design team to ensure the project schedule accurately reflects the amount of time it will take to obtain environmental permits and approvals.

WSDOT often discusses permit requirements during coordination with the resource agencies. There are many benefits for early project coordination including but not limited to minimizing impacts through design based on understanding what permits and supporting information is required. Great communication with resource agencies and the design team throughout the design process can prevent schedule delays.

Resource agencies issue most permits after 60% design for design bid build projects. The timing may be different for Design-Build projects (or those using different contracting methods).

Refer to the [Design-Build Manual M 3126](#) for information regarding risks and strategy associated with environmental permitting of Design-Build projects. As the permits are issued, WSDOT reviews the conditions to ensure they can be implemented during construction.

During the plans, specifications, and estimates (PS&E) phase, commitments from the permits are incorporated into the contract before advertising the project for bids ([Chapter 590](#)).

In addition to the agency specific permit information, WSDOT must consider the agreements we have with resource agencies for some permits that may apply to various phases both before and after permit issuance.

* RMECs have similar permitting responsibilities for maintenance activities as Project Environmental Coordinators listed above.

WSDOT's Environmental Services Office (ESO) permitting subject matter experts and resource agency staff are great resources for answering WSDOT's permitting questions, including help with identifying permits or determining if a project is permittable. You can find the permitting subject matter expert on the appropriate WSDOT Environmental Guidance webpages under the contacts tab (see permitting webpage list in the scoping section above). Project Environmental Coordinators are encouraged to coordinate early with ESO permitting subject matter experts and resource agency staff to discuss project details and identify information the regulators need to process an application. Coordination with subject matter experts in WSDOT and the resource agencies is an opportunity to obtain technical feedback to avoid and minimize environmental impacts.

This coordination also provides an opportunity to ask how long the review process may take. The extent of early coordination should be proportionate to the level of environmental risk a project presents. For example, the level of early coordination for a project that expands the roadway, impacts wetlands, or requires in-water work should be more time intensive than a paving project.

Project Environmental Coordinators and designers can reduce the time it takes to obtain permits and approvals by finding ways to avoid and minimize environmental impacts. For example, designers can steepen a road embankment or use retaining walls to avoid direct wetland impacts. Avoiding aquatic resource impacts may prevent WSDOT from having to obtain a permit from some agencies. Federal and state policies and directives require WSDOT to first avoid and then minimize aquatic resource impacts. Contact your region Biologist or visit the WSDOT's [Wetlands & other waters](#) webpage for additional information.

Project Environmental Coordinators can also check the WSDOT [Fish](#) and [Stormwater & water quality](#) webpages to see if the project activities are covered by existing general permits. One of the most commonly used general permits for preservation projects is the Bridge Maintenance and Preservation GHPA for bridge washing, painting, general maintenance and repair, and deck replacement.

Once a Project Environmental Coordinator has determined which permits are needed, the time frame to obtain each permit should be reflected in the project schedule along with any predecessors. Sometimes permits can be predecessors for other permits. This will allow the project team to determine the critical path. The project schedule should allow adequate time for environmental permits to be obtained and permit requirements (environmental commitments) to be incorporated into the PS&E (or Request for Proposal for a Design Build project).

500.05 Submit a complete permit application and obtain permits

WSDOT uses the [Joint Aquatic Resource Permit Application](#) (JARPA) to obtain the aquatic permits from federal, state, and local resource agencies. The JARPA is a single permit application for activities in or along aquatic environments that allows applicants to apply for more than one permit at a time. However, some agencies require or allow use of different application forms. For example, WSDOT has custom Pre-Construction Notifications (PCNs) for fish passage projects and small maintenance projects that are accepted by the Corps and Ecology. WSDOT requires the use of the fish passage PCN for standalone fish passage projects. Be sure to consult the appropriate WSDOT webpage (under "final design" tab), regulatory agency webpage, or regulatory staff to ensure you are using the correct application for the permit.

A complete permit application package submittal is typically comprised of three main parts:

- A completed permit application
- Permit drawings
- Supporting documents

WSDOT can greatly reduce permitting schedule delays by submitting a complete permit application package to the resource agencies and by addressing comments from the reviewing agency promptly. To reduce these delays, WSDOT collaborated with the Corps Seattle District, Ecology, and the Washington Department of Fish and Wildlife (WDFW) to develop and maintain complete permit application guidance ([RCW 47.85.020\(3\)](#)). This guidance identifies the information WSDOT is required to provide for the agencies to determine our application is complete. Be sure to understand the supporting documentation that the resource agency needs for a complete permit application and to issue your permit without unnecessary delays. You may access complete permit application guidance on WSDOT's Environmental guidance webpage or contact MAPP for a comprehensive permitting guidance document (mapp@wsdot.wa.gov).

Project teams must perform internal reviews to ensure quality and consistency before submitting permit application materials to the resource agencies ([RCW 47.85.020\(4\)](#)).

Once the agencies notify you that your permit submittal is complete, a “regulatory review clock” starts for some of the resource agencies. This term refers to the time an agency has to issue a permit decision to WSDOT. Some agencies have statutory requirements that set a maximum number of days they have to issue a permit decision. For example, WDFW has 45 days to issue Hydraulic Project Approval permits ([RCW 77.55.021\(7\)b](#)). Ecology has 180 days for CZMA counties and 120 days for non-CZMA. The ORIA [Environmental Regulatory Handbook](#) provides permit information, including how long it takes agencies to issue certain permits.

Local agencies (city, town, code city, or county) must make a final determination on all permits required for a project on a state highway no later than 90 days after we submit a complete permit application to the greatest extent practicable for WSDOT projects that cost less than five hundred million dollars ([RCW 47.01.485](#)).

500.06 After permit issuance/permit modifications

Once a resource agency issues a permit, WSDOT should immediately review the conditions to ensure its requirements are feasible and constructible. Engineers responsible for the project design and construction should review the environmental commitments ([Chapter 490](#)). If WSDOT identifies a permit condition that is unclear or is not feasible, staff should first work with the resource agency permit writer. If there are unresolvable issues with the resource agency, the permit decision may need to be appealed. Appeal times vary depending on the agency issuing the permit. Follow appeal processes as outlined in the permit or within existing interagency agreements.

WSDOT's construction contracts must reflect the environmental commitments for which the contractor is responsible ([Chapter 590](#)).

Sometimes the scope of a project changes after the permit issuance.

Environmental staff evaluates the impacts of the change to determine whether WSDOT needs to adapt environmental approvals or obtain new permits, seek permit reverifications or permit modifications. Design and Construction engineering staff need to notify the Project Environmental Coordinator immediately when a project modification is proposed. The Project Environmental Coordinator will evaluate the scope change(s) to determine if a permit modification, reverification, or additional permits are necessary. The Project Environmental Coordinator will coordinate with the appropriate resource agencies as needed to make this determination. If the change requires a permit modification, it must be secured before the contractor is allowed to do the work within the area that requires permit coverage. Some Design-Build projects obtain permits during the early design phase prior to RFP issuance. Permit modifications may be needed after the Design Builder determines the final design.

500.07 Manage permits and conditions during construction

WSDOT is ultimately responsible for ensuring compliance with environmental permits and approvals during construction ([Chapter 600](#)). WSDOT employees have a role in ensuring that the contractor's work is compliant with the environmental permits and agreements. Staff conduct field inspections to ensure that project activities comply with permit conditions and environmental commitments ([RCW 47.85.030\(3\)](#)). Visit the Environmental during construction webpage to access discipline-specific compliance guidance and other *Environmental Manual* chapters for discipline-specific compliance policy.

500.08 Links to permitting resources

- WSDOT Environmental [Discipline Guidance](#) webpages
- [JARPA](#)
- ORIA [Environmental Regulatory Handbook](#)

500.09 Abbreviations and acronyms

Corps	US Army Corps of Engineers
ECS	Environmental Classification Summary
EPA	Environmental Protection Agency
ERS	Environmental Review Summary
ESO	Environmental Services Office
GHPA	General Hydraulic Project Approval
HPA	Hydraulic Project Approval
JARPA	Joint Aquatic Resource Permit Application
NPDES	National Pollutant Discharge Elimination System
NOI	Notice of Intent
ORIA	Office of Regulatory Innovation and Assistance
PCN	Pre-Construction Notification
PS&E	Plans, Specifications, & Estimates
RMEC	Regional Maintenance Environmental Coordinator
WDFW	Washington Department of Fish and Wildlife

500.10 Glossary

Approval – General term referring to any document other than a permit that needs a signature by someone in authority at the agency having statutory jurisdiction over that activity. The document may be called an approval, certification, concurrence, easement, or license, all of which represent an agency signifying, “Yes we authorize you to conduct this activity as long as you do it in this manner.” An approval may specify conditions under which the activity is performed.

General Permit – A general permit is issued by a federal or state agency to cover a specific type of activity in a certain geographic area (national, statewide, or regional). For certain NPDES general permits, WSDOT must submit a “Notice of Intent” (NOI) to request coverage under the permit for a particular activity; the agency may approve or disapprove coverage. General permits also include WDFW GHPA, which allows WSDOT complete critical roadway safety and maintenance needs such as bridge washing, culvert cleaning and bridge debris removal.

Individual Permit – A permit issued to WSDOT by a resource agency for a particular activity or project that is not covered by a General Permit; usually needed for more complex or extensive projects.

JARPA – JARPA is a single permit application for activities within or near aquatic environments. Multiple resource agencies (federal, state, and local) developed application that applicants can use to apply for multiple aquatic permits. However, some state and local agencies may require separate permit applications.

Permit – A document required by law and issued by a regulatory agency or a tribe that authorizes a specific type of activity under certain conditions.

- 530.01 WSDOT Policy for Working with Tribes
- 530.02 Treaty Rights
- 530.03 Section 401 Water Quality Certification by Tribes
- 530.04 Section 106 Consultation
- 530.05 Archaeological Resources Protection Act Permit
- 530.06 Hydraulic Project Approval
- 530.07 Tribal Law
- 530.08 Permit Assistance

530.01 WSDOT Policy for Working with Tribes

WSDOT has a unique relationship with tribes due to their legal status, rights reserved through treaties, and cultural interests throughout the state. Tribes retain many sovereign rights that are guaranteed under treaties and federal laws. WSDOT maintains government-to-government relationship with 35 federally recognized Tribes. We recognize that each federally recognized Tribe is a distinctly sovereign nation. WSDOT employees will consult with Tribes on all decisions that affect their rights and interests. Consultation is independent from the public involvement process. Our goal is to create durable intergovernmental relationships with 35 federally recognized Tribes. Twenty-nine federally recognized tribes with reservations in Washington; six tribes have reservations located outside of the state but have traditional homelands, treaty rights or other interests in Washington State. We recognize that each federally recognized Tribe is a distinctly sovereign nation. WSDOT will consult with Tribes on all decisions that affect their rights and interests and consultation is independent from the public involvement process. Our goal is to create durable intergovernmental relationships that promote coordinated transportation partnerships in service to all of our citizens. Each reservation in the state constitutes a bordering jurisdiction for state agencies and projects may be subject to various Tribal permits or approvals.

530.02 Treaty Rights

Between 1853 and 1856, treaties were negotiated with tribes in the Washington Territory. In these treaties, tribes reserved a number of rights, including the “right of taking fish, at all usual and accustomed grounds and stations,” which was “further secured to said Indians, in common with all citizens of the Territory.” This phrase is at the heart of the tribal treaty fishing rights, and has given rise to the important concept of “usual and accustomed areas” of the treaty tribes, or “U&A areas.” These areas may extend beyond a tribe’s reservation land and also apply to landless tribes. Supreme Court decisions and federal law have affirmed the continued validity of treaties. Federal agencies are bound by their trust responsibility and may require a project to address impacts to tribal treaty rights before issuing a permit. Early consultation with affected tribes is recommended to identify and resolve issues and thereby avoid delays in permitting.

It is important to note, however that tribal areas of interest for consultation are not limited U&A areas. Tribal Consultation Area maps are available on the GIS Workbench. A summary of court adjudicated tribal fishing areas is available in the [WSDOT Model Comprehensive Tribal Consultation Process for the National Environmental Policy Act](#).

530.03 Section 401 Water Quality Certification by Tribes

In Washington State, two agencies (EPA and Ecology) and twelve tribes have Section 401 certification authority. The EPA has Section 401 certification authority in Indian country on behalf of Tribes who do not have “treatment in a similar manner” as a state and on Federal lands with exclusive jurisdiction within the state of Washington. Indian country includes lands within reservation boundaries, trust lands exterior to reservation boundaries, Indian allotment lands, and dependent Indian communities (see [18 U.S.C. 1151](#) for a full definition of Indian country). Find tribes with Section 401 certification authority and Water Quality Certification (WQC) determinations on the Governor’s Office of Regulatory Innovation and Assistance (ORIA) [Section 401 Water Quality Certification webpage](#). Ecology is authorized to make Section 401 certification decisions for activities on all other federal, public (non-federal) and private lands in the state. See [Chapter 430](#) for background on surface water quality standards and documentation and the WSDOT [Stormwater and water quality](#) webpage for Section 401 certification. [Stormwater and water quality](#) webpage for Section 401 certification.

Similar to the Department of Ecology, tribes may provide “granted,” “waived” or “denied” determinations for activities covered by all, none or certain Nationwide permits (NWP) within their jurisdiction. See the tribal directory on the Governor’s Office of Indian Affairs (GOIA) [Federally Recognized Indian Tribes in Washington State](#) webpage and contact the tribe for more information on Water Quality Certifications. Contact MAPP team for more information on WQC determinations and the rule in effect.

530.04 Section 106 Consultation

Tribes have a consultation role under Section 101 and 106 of the National Historic Preservation Act (NHPA). A Tribal Historic Preservation Office (THPO) can be established by the tribe pursuant to the NHPA and assert jurisdiction otherwise exercised by the SHPO on Indian lands. The following tribes have certified THPOs: Confederated Tribes of Colville, Confederated Tribes of Chehalis, Cowlitz Indian Tribe, Hoh Indian Tribe, Jamestown S’Klallam Tribe, Lummi Nation, Makah Nation, Nisqually Indian Tribe, Nooksack Tribe, Port Gamble S’Klallam Tribe, Quinault Indian Nation, Samish Indian Nation, Sauk Suiattle Indian Tribe, Skokomish Indian Tribe, Spokane Tribe of Indians, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Suquamish Tribe, Swinomish Indian Tribal Community, and Confederated Tribes and Bands of Yakama Nation.

WSDOT and the Federal Lead Agency must consult with tribes on projects located within a tribe’s Consultation Area. Section 106 consultation usually occurs during the design/ environmental review phase of a project; see [Chapter 456](#) for background on Section 106.

530.05 Archaeological Resources Protection Act Permit

Under federal statute, tribal governments approve this permit when the project or activity is on tribal trust land. The Bureau of Indian Affairs issues the permit. See [Chapter 456](#) for background on cultural resources and the WSDOT Federal, State, and Local Permits webpage for details on this permit and statutory authority. Contact Bureau of Indian Affairs, Portland Office, and the affected tribe(s) for details on how to apply.

530.06 Hydraulic Project Approval

The Washington State Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) for all non-tribal entities performing HPA activities on tribal trust lands and reservations. Several Tribes, such as the Yakama Nation, also issue approvals similar to an HPA. If you have a project on tribal trust lands or reservation, contact the Tribe's natural resources office and WDFW's biologist assigned to the project to determine whether an HPA and/or similar tribal approval applies. We recommend you coordinate with WDFW and the Tribe to ensure that any permit conditions are not in conflict with one another. Because of the complicated nuances of state, tribal, and federal law and jurisdiction, we recommend you discuss any questions of jurisdiction with ESO's Assistant Attorney General.

530.07 Tribal Law

On reservation land, tribal laws may require permits and approvals similar to those required by counties and cities. These permits and approval are required when WSDOT works outside of the highway right of way on the adjacent reservation land. In cases where WSDOT has an easement rather than ownership, the tribe may retain jurisdiction to issue permits and approvals. Examples of permits that may apply include Tribal Environmental Policy Act (TEPA) determinations; critical areas approvals; clearing, grading, and building permits; land use approvals; noise variances; and utility permits. Contact the WSDOT Tribal Liaison for assistance in coordinating tribal permits on reservation land.

530.08 Permit Assistance

WSDOT's Tribal Liaison is a central resource for tribal access and problem solving on natural or cultural resource issues relating to tribes for regions and offices that do not have a dedicated Tribal Liaison position. Consultation area maps for tribes are available on the GIS Environmental Workbench.

See the WSDOT [Tribal contacts](#) webpage for tribal contacts, links to tribal treaties, relevant statutes, and [Centennial Accord Plan](#) and [Communication and Consultation Protocols](#) and includes WSDOT's Executive Order Protocols. The WSDOT Centennial Accord Plan includes WSDOT's Executive Order [E 1025.01](#) on Tribal Consultation. Contact tribal government for assistance with permits or approvals on projects that may affect tribal lands.

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590.01	Reflect the environmental commitments in WSDOT's contracts
590.02	Incorporate environmental commitments into contracts
590.03	Environmental Commitments Meeting
590.04	Abbreviations and acronyms
590.05	Glossary

590.01 Reflect the environmental commitments in WSDOT's contracts

WSDOT tracks and identifies commitments during the design process (see [Chapter 490](#)), as well as through construction and sometimes into maintenance (see [Chapter 600](#)). WSDOT [Plans Preparation Manual](#) M 22-31 [Division 4](#) and WSDOT [Design-Build Manual](#) M 3126 [Chapter 4](#) require that contract-relevant environmental commitments be communicated to the contractor/Design-Builder, respectively (see WSDOT [Plans Preparation Manual](#) M 22-31 Section 600.01). If they are not incorporated into the contract, the contractor/Design-Builder is not obligated to implement the commitments WSDOT makes. Constructing the project is conditioned upon environmental commitments from, for example, National Environmental Policy Act (NEPA) documents, Washington State Environmental Policy Act (SEPA) documents, Endangered Species Act (ESA) documents, interagency agreements, permits, and other environmental approvals.

In addition, [P 1018 Environmental Policy Statement](#) directs WSDOT employees to communicate compliance roles, responsibilities, environmental commitments, and expectations to contractors/consultants/Design-Builders.

WSDOT has prepared a set of crosswalk documents for programmatic environmental commitments to show who is responsible and how they will be implemented; that is, the crosswalk documents identify the [Standard Specifications](#), [General Special Provisions](#) (GSPs), or [Standard Plans](#) for contract-relevant commitments. These crosswalk documents allow project teams to focus on contract-relevant commitments that are not covered by an existing specification, leading to the development of Special Provisions. The following crosswalk documents may be accessed through WSDOT's [Environmental guidance](#) webpage, under the Tools, templates & links tab of the respective discipline's webpage:

- Hydraulic Project Approval Provisions for Water Crossings, accessible on WSDOT's [Fish](#) webpage.
- Hydraulic Project Approval Provisions for Fish Passage Projects, accessible on WSDOT's [Fish](#) webpage.
- General Hydraulic Project Approval – WSDOT Bridge Maintenance and Preservation, accessible on WSDOT's [Fish](#) webpage.
- Nationwide Permits – Standard commitments, accessible on WSDOT's [Wetlands & other waters](#) webpage.
- Programmatic Biological Assessment Minimization Measures for U.S. Fish and Wildlife Service and the National Marine Fisheries Service, accessible on WSDOT's [Endangered Species Act & Essential Fish Habitat](#) webpage.
- National Pollution Discharge Elimination System (NPDES) Construction Stormwater General Permit (Transfer of Coverage), accessible on WSDOT's [Stormwater & water quality](#) webpage.

For your convenience, the WSDOT [Commitment Tracking System \(CTS\)](#) web application contains these crosswalk documents and associated programmatic commitments; refer to the help menu within [CTS](#) for instructions on how to copy programmatic documents and their commitments into your project. Contact WSDOTCTSAdministrator@wsdot.wa.gov for support or additional CTS training requests.

590.02 Incorporate environmental commitments into contracts

The Region/Mode/Megaprograms Environmental Office is responsible for creating and maintaining the commitment file (WSDOT [Design Manual](#) M 22-01 Section 225.04).

Commitments assigned to the contractor/Design-Builder must be incorporated into contracts. For Design-Bid-Build projects, commitments for which the contractor is responsible are added into contracts during the Plans, Specifications and Estimates (PS&E) phase (WSDOT [Plans Preparation Manual](#) M 22-31 [Division 4](#)). For Design-Build projects, commitments for which the Design-Builder is responsible are added into the Request for Proposal (RFP); refer to the WSDOT [Design-Build Manual](#) M 3126 [Chapter 4](#), as well as the instruction boxes within [RFP Template](#), Section 2.08 Environmental, for more information about incorporating commitments into the RFP. The level of detail incorporated into commitments differs by project delivery method (e.g., Design-Bid-Build or Design-Build). For example, commitments incorporated into Design-Bid-Build contracts are typically fairly precise because the contracting occurs further along in design. Alternatively, commitments incorporated into Design-Build RFPs may be more conceptual because they are described early in the design phase.

For each commitment, identify which contract document will address the requirement. Per [Section 590.01](#), refer to crosswalk documents or [CTS](#) to find contract coverage information for common commitments. Note, both delivery methods (i.e., Design-Bid-Build and Design-Build) may reference [Standard Specifications](#) and [General Special Provisions](#) in contracting documents. If it is determined that an environmental Project-Specific Special Provision is needed for the project, or if an existing Standard Specification needs to be changed, the Region/Mode/ Megaprograms Environmental Office should coordinate with the Project Office, appropriate headquarters (HQ) Subject Matter Expert(s) (SME), and HQ Environmental Compliance Lead (see WSDOT [Plans Preparation Manual](#) M 22-31 Section 600.01). For Design-Build projects, you should also coordinate with the [RFP Template Technical Requirement SME](#) for the given section (e.g., 2.08 *Environmental*, 2.30 *Water Crossings*).

590.03 Environmental Commitments Meeting

590.03(1) Objective

The objective of the Environmental Commitments Meeting is to ensure contracts accurately reflect all environmental commitments from permits and project-specific environmental documents. Legal obligations are established for the Contractor/Design-Builder, ensuring adherence to environmental regulations throughout the project's lifecycle by incorporating environmental commitments into the contract.

590.03(2) Meeting Deadlines and Scalability

The Environmental Commitments Meeting must be conducted during the design phase of the project before the PS&E meeting (WSDOT [Plans Preparation Manual](#) M 22-31 [Division 4](#)). The meeting's timing allows for a comprehensive review and integration of environmental commitments into the project's contract documents at the appropriate stage of project development.

Additionally, the meeting may be scalable to accommodate the complexity and scale of each individual project. For larger and more intricate projects, a stand-alone meeting involving all relevant attendees may be necessary to ensure thorough evaluation and integration of commitments. Smaller and simpler projects may benefit from incorporating this meeting into other scheduled meetings within the design phase, optimizing efficiency while maintaining the necessary focus on environmental considerations.

590.03(3) Responsibility and Attendees

The WSDOT Project Office is responsible for scheduling and facilitating the Environmental Commitments Meeting (see WSDOT [Plans Preparation Manual](#) M 22-31 Section 400.02). Attendees for this critical gathering should include the Region/Mode/Megaprograms Environmental Office, the Design and Construction Project Engineers (or designees), Plans Review Offices, and any other support groups deemed necessary.

590.04 Abbreviations and acronyms

CTS	Commitment Tracking System
ESA	Endangered Species Act
GSP	General Special Provisions
HQ	Headquarters
NEPA	National Environmental Policy Act
NPDES	National Pollution Discharge Elimination System
PS&E	Plans, Specifications, and Estimates
RFP	Request for Proposal
SEPA	State Environmental Policy Act
SME	Subject matter expert(s)

590.05 Glossary

These definitions provided context for incorporating commitments into contracts. Some terms may have other meanings in a different context.

Commitment – An obligation that WSDOT makes within an environmental document or agreement for the project; or an expectation imposed upon WSDOT by another agency through a permit or approval for the project. Commitments can be either the agency’s or the contractor’s/Design-Builder’s responsibility to implement.

Commitment File – This file serves as the repository for all final environmental documents leading to development of the contract.

Commitment Tracking System – The [Commitment Tracking System \(CTS\)](#) is a WSDOT web application that stores commitments in a secure computer network server, plus manage the responsibility (WSDOT, contractor/Design-Builder, or both) and implementation method (guidance document or contract) for the commitment. It also stores compliance records, document the status, and report details about commitments from their inception through project delivery and on to maintenance.

Environmental Commitments Meeting – A project-level meeting facilitated by the Project Office between the Environmental Offices, Design, Construction, Plans, and other supporting groups used to incorporate commitments into contract.

600.01	Overview
600.02	Roles and responsibilities
600.03	Environmental commitments by discipline
600.04	Preparation for construction
600.05	Compliance during construction
600.06	Construction close out for environmental
600.07	Applicable statutes and regulations
600.08	Abbreviations and acronyms
600.09	Glossary

600.01 Overview

WSDOT's [P 1018 Environmental Policy Statement](#) directs all employees to be familiar with and adhere to all environmental commitments, policies, and procedures applicable to their work. Further, WSDOT employees are expected to communicate compliance roles, responsibilities, environmental commitments, and expectations to contractors/consultants/Design-Builders (DB).

For Design-Bid-Build projects, a project should have a complete set of environmental documents, permits, and approvals after the design phase. In addition, a project will have a final set of plans, specifications, and estimates (PS&E). At this time, the project is publicly advertised and WSDOT accepts bids for completion of the work. The contract is then awarded. The contractor and WSDOT review and discuss environmental commitments at a preconstruction meeting (WSDOT [Construction Manual](#) M 41-01 Section SS 1-05.1). Construction, including work plan submittals, begins soon thereafter. As construction is completed, the contract is closed out and maintenance and operations phase begins.

Design-Build projects will also have a complete set of environmental documents, permits, and approvals prior to construction. In addition, a project will have a final set of plans, specifications, and estimates (PS&E). The bid and award process timeline is different in Design-Build projects and depends on which method of Design-Build is utilized. However, Design-Build projects have the same environmental commitments as a traditional Design-Bid-Build job. Please see the Design-Build SharePoint site or the WSDOT [Design-Build Manual](#) M 3126 for phasing and responsibilities during design and construction.

Because the contractor/Design-Builder is responsible for implementing a substantial number of environmental commitments that WSDOT made during project development, it is crucial to review all environmental documents, permits, and approvals to ensure contractor/Design-Builder relevant permit requirements make it into the contract (see [Chapter 590](#)).

Chapters [490](#) and [590](#) explain how environmental commitments are tracked and incorporated into contract documents. Consistent implementation of commitments is necessary to achieve accountability during construction that leads to good relationships with Tribes, resource agencies, and the public. The following sections of this chapter identify policies to ensure environmental compliance throughout construction. See WSDOT's [Environmental during construction](#) webpage for discipline-specific procedures on ensuring environmental compliance.

600.02 Roles and responsibilities

WSDOT builds trust and fosters positive relationships with the tribes, resource agencies, and the public by implementing the following roles and responsibilities during construction. Some of the tasks may be done by staff other than those identified below depending on how each Region/Mode/Megaprograms is structured.

600.02(1) **WSDOT Region/Mode/Megaprograms Environmental Manager**

- Ensure environmental staff are adequately trained to effectively support environmental compliance.
- Establish clear expectations for environmental staff.
- Foster good communication with resource agencies and the construction team.
- Communicate WSDOT-owned commitments, especially all from the environmental review, permitting, and consultation processes, to the Project Engineer (PE) to ensure they are fulfilled.
- Implement the Design and Construction Environmental Compliance Assurance Policy (ECAP) (the Design ECAP is located in the WSDOT [Design Manual](#) M 22-01 Section 225.05(1) and Construction ECAP is located in the WSDOT [Construction Manual](#) M 41-01 Section 1-07.5).
- Work closely with the PE to resolve issues as they arise.
- Ensure non-compliance events are documented in the [Commitment Tracking System \(CTS\)](#) web application (per the Revised Code of Washington ([RCW 47.85.040\(3\)](#))).
- Document and share lessons learned to prevent recurring issues ([RCW 47.85.040\(4\)](#)).

600.02(2) **WSDOT Project Engineer**

- Manage the contract in accordance with the WSDOT [Construction Manual](#) M 41-01.
- Ensure project office staff have the necessary training and equipment to ensure compliance with permit requirements.
- Discuss environmental topics at the preconstruction meeting and review the environmental contract provisions ([RCW 47.01.300\(8\)](#) and [RCW 47.85.030\(2\)](#)).
- Establish submittals, schedule, and compliance expectations for the contractor/Design-Builder and their subcontractors.
- Ensure the contractor's/Design-Builder's submitted plans (such as, but not limited to, the Temporary Erosion and Sediment Control (TESC) Plan, Spill Control and Countermeasures (SPCC) Plan, and Temporary Stream Diversion (TSD) Plan) meet WSDOT's technical and timing requirements before accepting them.
- Establish compliance expectations of the contractor/Design-Builder related to permit required discharge sampling, monthly data reporting, and Best Management Practices (BMPs) adaptive management.
- Implement ECAP. Stop work being performed by the contractor/Design-Builder that does not comply with environmental commitments and collaborate with the Region/ Mode/ Megaprograms Environmental Manager or designee ([RCW 47.85.030\(4\)](#)).
- Communicate with the Region/Mode/Megaprograms Environmental Manager or designee as needed.

- Consult with environmental staff and subject matter experts (SMEs) (i.e., HQ SMEs, Landscape Architects, and RMECs) about proposed design changes and change orders to ensure they are permitted.
- For fish passage and chronic environmental deficiencies (CED) projects, consult with Environmental Services Office's (ESO) Stream Restoration Program Manager to make sure proposed design changes comply with culvert injunction and fish passage standards and CED projects are consistent with Washington Department of Fish and Wildlife (WDFW) concurrence.

600.02(3) WSDOT Environmental Coordinator and/or Project Office Inspector

- Review all environmental commitments for the project.
- Determine water quality monitoring requirements for the project, if in-water work will occur, and develop a strategy or plan to ensure compliance.
- Ensure the project has been entered into the [CTS](#) web application and environmental commitments are tracked and managed.
- Coordinate with the PE to provide advance notifications to resource agencies to ensure compliance with environmental requirements.
- Attend the preconstruction meeting and participate in discussing environmental requirements.
- Ensure the contractor/Design-Builder follows the conditions of the nighttime noise variance.
- Review the contractor's/Design-Builder's environmental compliance plans (such as, but not limited to, TESC Plan, SPCC Plan, and TSD Plan) and forward any concerns to the PE.
- Ensure the contractor/Design-Builder creates and maintains a Site Log Book (see sections S4. and S5 of the Construction Stormwater General Permit) and maintains a tracking table of identified TESC compliance issues ([Standard Specifications](#) Section 8-01.3(1)B) to comply with the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (CSWGP).
- Ensure the contractor/Design-Builder installs high visibility fencing (HVF) to protect sensitive areas as a first order of work in accordance with the Plans and [Standard Specifications](#) Section 1-08.4.
- Ensure the contractor/Design-Builder installs and maintains all BMPs in accordance with their TESC Plan, the CSWGP, WSDOT's [Standard Plans](#) (Section I), [Standard Specifications](#) (Division 8 and Division 9), and that BMPs meet WSDOT's materials requirements ([Standard Specifications](#) Sections 1-06.1(1) and 9.14).
- Ensure the contractor's/Design-Builder's Erosion and Sediment Control (ESC) Lead submits erosion control inspection reports by the end of next working day following their inspection ([Standard Specifications](#) Section 8-01.3(1)B).
- Ensure the contractor/Design-Builder performs adequate adaptive management in accordance with the CSWGP and [Standard Specifications](#) Section 8-01.3(1).
- Conduct site visits to verify that the contractor's/Design-Builder's ESC Lead's inspections are adequate and to ensure issues are resolved.
- Review design modifications and change orders to ensure they comply with environmental requirements.

- Meet with resource agency staff when they visit the project site to document their concerns or recommendations.
- Notify the PE when the project is, or suspected to be, not in compliance with environmental commitments – initiate ECAP, as necessary.
- Ensure the contractor/Design-Builder samples site discharges as required per the CSWGP (see section S4.C) and [Standard Specification](#) Section 8-01.3(1)B, and performs compliance verification sampling, if necessary. Coordinators may request to receive automatic email notifications via Washington State Department of Ecology (Ecology) [WQWebPortal](#) whenever the contractor/Design-Builder submits data.
- Sample or verify sampling of water quality as required per in-water work related permits, and ensure results from any in-water work sampling are sent to the Ecology federal permit lead.
- If the project footprint increases, impacts to environmental resources change, or work means and methods are inconsistent with environmental requirements, permit modifications will likely be necessary; refer to [Chapter 500](#) and the relevant discipline chapters' *Applicable permits & approval process* sections in this manual.
- For Design-Bid-Build projects, close out commitments within the [CTS](#) web application once they are fulfilled (close-out reports are the responsibility of the Design-Builder for Design-Build projects).
- For fish passage projects, contact ESO's Stream Restoration Program's Fish Passage Monitoring and Performance Coordinator (see the Contacts tab of the WSDOT [Fish Environmental guidance page](#)) for fish passage monitoring compliance inspection once in-water work is complete and prior to TSD removal, to ensure the project meets fish passage and culvert injunction standards.
- Perform final site walk-throughs with appropriate SMEs to ensure WSDOT contract and CSWGP termination requirements have been satisfied prior to project completion.

600.02(4) WSDOT Environmental Technical Experts (Region/Modes/Megaprograms Headquarters)

- Verify environmentally sensitive areas in the field that need to be protected.
- Review plans as requested and provide comments to the PE and the environmental coordinator/project inspector.
- Review preliminary TESC Plans to ensure site-specific risks and mitigation measures to sufficiently identified manage risks have been incorporated in accordance with the WSDOT [Temporary Erosion and Sediment Control Manual](#) M 3109.
- Install fish exclusion BMPs, and relocate fish per the [Fish exclusion protocols & standards](#) (see the [Tools, templates & links](#) tab of the WSDOT [Fish Environmental guidance page](#)) and permit requirements.
- For Design-Build projects, verify that the Design-Builder's Directing Biologist has appropriate fish exclusion BMPs, and relocates fish per the [Fish exclusion protocols & standards](#) (see the [Tools, templates & links](#) tab of the WSDOT [Fish Environmental guidance page](#)) and permit requirements.
- Monitor for cultural and archaeological resources as required by project environmental commitments, and support the PE in managing discovery of unanticipated cultural resources.

- Monitor for identified protected fish, birds, and other species, and their habitats.
- Assess and support the PE in managing discovery of unknown suspect hazardous or regulated materials.
- Coordinate with ESO Stormwater & Water Quality Program in the event a NPDES permitting issue warrants escalation beyond the Ecology Region Permit Administrator (see the [Contacts](#) tab of the WSDOT [Stormwater & water quality](#) page).

600.02(5) Resource agencies

- Provide technical and regulatory guidance.
- Review project changes and issue new or modifications to permits or approvals if necessary.
- Conduct site visits during construction to verify compliance.
- Communicate concerns if compliance is not achieved and corrections are needed.

600.02(6) WSDOT Environmental Services Office (Headquarters)

- Assess and collaborate with Headquarters (HQ) Construction Office to update environmental [Standard Specifications](#), [General Special Provisions](#), and [Standard Plans](#).
- Communicate regulatory changes and lessons learned to the Region/Mode/Megaprograms ([RCW 47.85.040\(4\)](#)).
- Support Region/Mode/Megaprograms by developing, maintaining, and communicating guidance, and coordinate with regulatory agencies as appropriate.
- Develop and maintain ECAP.
- Provide environmental compliance training.
- Track non-compliance events to look for trends and to identify and communicate lessons learned.
- Ensure the Region/Mode/Megaprograms record environmental non-compliance events in the [CTS](#) web application.
- Submit annual violation report ([RCW 47.85.040\(5\)](#)) to the Washington State Legislature and Ecology.
- Conduct fish passage monitoring as per federal culvert injunction monitoring guidelines.

600.03 Environmental commitments by discipline

Specific policies, practices, and requirements exist to protect the environment throughout the life of the project, including prior to, during and post construction. WSDOT and the contractor/Design-Builder must implement a variety of BMPs to protect the resources outlined in the following sections. The implementation of BMPs should be incorporated into applicable commitments, be part of the Environmental Compliance Notebook (see [Section 600.04\(1\)](#)), and closed out upon completion (see [Section 600.06\(1\)](#)). See WSDOT's [Environmental during construction](#) webpage for discipline-specific procedures on ensuring environmental compliance.

600.03(1) **Geology and soils**

WSDOT minimizes impacts to the environment by limiting vegetation and soil disturbance ([Chapter 420](#)). WSDOT provides clearing limits to the contractor/Design-Builder in the contract plans. [Standard Specifications](#) Section 1-08.4 requires the contractor/Design-Builder to install high visibility fence (HVF) to designate the clearing limits in the field. HVF must be installed as a first order of work. [Standard Specifications](#) Section 1-07.16(2) defines additional requirements for the contractor/Design-Builder to protect vegetation.

WSDOT restricts the amount of soil the contractor/Design-Builder can disturb within the clearing limits. Within the clearing limits, the contractor/Design-Builder is required to install BMPs to prevent disturbed soil from eroding. Refer to [Standard Specifications](#) Section 8-01.3 for contractor/Design-Builder requirements. WSDOT's expectations for controlling erosion are covered in the WSDOT [Construction Manual](#) Sections 8-01 and 9-14, and in the WSDOT [Temporary Erosion and Sediment Control Manual](#) M 3109.

Many areas of Washington are prone to geologic hazards. Two hazards that are frequently addressed along transportation corridors are landslide prone areas and areas that are subject to earthquake caused instability. Projects in these areas often require ground improvements to mitigate the risks caused by these geologic hazards. Typical ground improvement techniques that could cause impacts to adjacent water bodies include the following:

- Stone columns are a ground improvement technique that combines soil densification and partial replacement of unstable material with crushed rock. The operation includes injection of compressed air or water into the ground as a probe is vibrated to funnel aggregate to the end of the probe. The injection of air or water into the ground may cause surface turbidity at or near the injection location. Ecology expects WSDOT to implement BMPs to prevent impacts to water bodies when projects include stone column ground improvement work. Ecology also expects WSDOT to visually monitor adjacent water bodies for air percolation and perform water quality sampling if a sheen or turbidity is observed.
- Grout injection techniques and replacement of soil with grout such as compaction grouting, jet grouting, and deep soil mixing – These techniques consist of mixing cement grout with site soils typically below the ground water elevation. This injection technique may cause surface turbidity at or near the injection location. Ecology expects WSDOT to implement BMPs to prevent impacts to water bodies when projects include performing grout injection techniques.

Additional subsurface construction such as directional drilling for utilities and drilled columns for bridge abutments can impact adjacent water bodies when drilling muds escape from the bore/shaft and into the environment.

WSDOT has policies to address soil and other geotechnical issues in WSDOT [Geotechnical Design Manual](#) M 46-03, during construction for Design-Bid-Build and Design-Build projects.

Please see well decommissioning requirements for the removal of piezometers and the decommissioning of wells (see WSDOT [Geotechnical Design Manual Chapter 3](#)).

600.03(2) Air

WSDOT's policy is to use BMPs to reduce pollutants that impact air quality during construction. Local air pollution authorities are primarily concerned with fugitive dust, which is particulate matter suspended by wind or human activities. [Standard Specifications](#) Section 1-07.5(4) requires the contractor/Design-Builder to follow the rules of the local air pollution authority. A list of BMPs to prevent fugitive dust is available from the Associated General Contractors of Washington in the publication, [Guide to Handling Fugitive Dust From Construction Projects](#). In the counties under the Puget Sound Clean Air Agency's jurisdiction (King, Kitsap, Pierce, and Snohomish), WSDOT projects must follow the [Memorandum of Agreement with Puget Sound Clean Air Agency – Fugitive Dust](#).

WSDOT has a [no idle policy](#) that directs employees to turn off engines when their vehicles are not in motion.

Refer to [Chapter 425](#) for additional guidance, including a list of standard BMPs.

600.03(3) Stormwater and water quality

Refer to [Chapter 430](#) and WSDOT's [Stormwater & water quality](#) and [Environmental during construction](#) webpages for policy and procedures on ensuring compliance related to stormwater, water quality and groundwater.

600.03(4) Wetlands and other waters

WSDOT's Wetlands Protection and Preservation policy E 1102 directs employees to protect wetlands during construction. The contractor/Design-Builder is required to restore any HVF damaged or removed throughout the life of the project (see [Standard Specifications](#) Section 8-01.3(1)). Wetlands that are not permitted for impact must be protected by HVF (See [Section 600.04\(5\)](#)). Maintaining the fence will ensure that contractor/Design-Builder does not cause impacts to areas that have not been permitted.

Changes to the limits of work require re-evaluation of wetlands. If the impacts to wetlands change, the project permits and mitigation requirements may also need to change. These changes must be coordinated through the project environmental coordinator and provided to the wetland mitigation design team, so that WSDOT can apply for permit amendments.

The PE and Construction Inspectors should seek assistance from the Region/Mode/Megaprograms or HQ Wetland Biologist supporting the project as needed to evaluate wetland issues that arise during construction. The Environmental Coordinator should secure approval from resource agencies before deviating from mitigation plans and permits. If a deviation occurs before you receive approval, the PE should work with the Region/Mode/Megaprograms Environmental Coordinator to report the deviation to resource agencies.

Compacted soils can decrease the success of wetland compensatory mitigation sites by changing surface hydrology and increasing competition pressure on native plants. When constructing wetland compensatory mitigation sites, use the following measures to minimize soil compaction:

- Use low ground pressure equipment
- Restrict access points on the compensation site
- Limit paths or roadways within the site
- Rip or till compacted soils
- Use mats such as steel or plastic plates or hog fuel to reduce compaction caused by equipment

600.03(5) Fish, wildlife and vegetation

See [Chapter 436](#) and WSDOT's [Environmental during construction](#) webpage for policy and procedures on ensuring compliance related to fish, wildlife and vegetation.

600.03(6) Noise

Noise generated during construction affects both people and wildlife. [Chapter 446](#) states that WSDOT's policy is to comply with the local jurisdiction's noise ordinance. If night work is planned, the project may have a noise variance with specific conditions. WSDOT and the contractor/Design-Builder must follow all conditions pertaining to the noise variance.

[Chapter 436](#) states that conditions that protect wildlife from noise originate from consultations for ESA, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Gold and Bald Eagle Protection Act. The contract provisions will contain specific noise requirements that must be followed by the contractor/Design-Builder. These typically take the form of timing restrictions, use of noise attenuation BMPs and in-water work windows. In some cases, the trained biologists are required to be on site during pile driving in-water and acoustic specialists may be required to be on site for monitoring of underwater noise levels for a subset of piles driven.

600.03(7) Hazardous materials and solid waste

See [Chapter 447](#) and WSDOT's [Environmental during construction](#) webpage for policy and procedures on ensuring compliance related to hazardous materials (HazMat) and solid waste management.

600.03(8) Transportation

WSDOT's policy is to protect pedestrians and the traveling public as they travel through construction projects. WSDOT [Construction Manual](#) Section SS 1-07.23(1) clarifies the responsibilities for the PE to oversee contractor/Design-Builder compliance for protecting pedestrians during construction and mitigation for any impacts. WSDOT must also ensure minimal disruption to existing modes of transportation. Refer to WSDOT [Construction Manual](#) Section SS 1-07.17 for policy related to railroad traffic. See [Chapter 455](#) and WSDOT's [Environmental during construction](#) webpage for more information on land use and transportation.

600.03(9) Cultural resources

It is WSDOT policy to avoid impacts to archaeological and historic resources that may be encountered during construction ([Chapter 456](#)). [Standard Specifications](#) Section 1-07.16(4) provides an overview of compliance procedures and policies pertaining to historic and archaeological resources during construction, including the inadvertent discovery of human skeletal remains.

A project specific Inadvertent Discovery Plan (IDP) or Unanticipated Discovery Plan (UDP), developed by a Region/Mode/Megaprograms Cultural Resources Specialist, is required to address the unanticipated discovery and treatment of cultural resources that may be encountered during construction. Should archaeological materials or (suspected) human remains be discovered during project activities, refer to the IDP/UDP and notify the appropriate federal, state, and Tribal partners. The Contractor/Design-Builder must (1) notify the PE of any such finds, and (2) cease all work adjacent to the discovery in an area adequate to provide for the total security and protection of remains.

600.03(10) Public services and utilities

The WSDOT [Construction Manual](#) Section SS 1-07.23(1) describes how WSDOT ensures the contractor/Design-Builder minimizes impacts to public services, including but not limited to, public works departments, schools and buses, or police and fire services. [Standard Specifications](#) Section 1-07.23(1) requires the contractor/Design-Builder to conduct all operations with the least possible inconvenience to the public and to provide adequate safeguards to protect the life, health, safety, and property of the public. The contractor/Design-Builder must also protect the rights of property owners and businesses adjacent to WSDOT projects.

Impacts to public services vary from project to project, making it difficult to develop standard specifications to address these issues. WSDOT may include special provisions in their contracts to meet the commitments made to local jurisdictions during the environmental review and permitting processes.

WSDOT is committed to a successful partnership with public and private utility companies. WSDOT [Construction Manual](#) Section SS 1-07.17 addresses responsibilities for both the PE and the contractor/Design-Builder to coordinate project work with utility companies when necessary. The WSDOT [Utilities Manual](#) M 22-87 explains that utility companies are required to obtain their own permits and are responsible for compliance when working within WSDOT Right of Way (See [Chapter 458](#)).

600.04 Preparation for construction

600.04(1) Prepare an Environmental Compliance Notebook for the project

The WSDOT [Construction Manual](#) Section 1-05.1 states that it is WSDOT policy to incorporate all environmental commitments into the contract. Compiling all the environmental requirements, reference materials, and contact information into one place is a useful tool for PEs and their staff. The project can prepare an Environmental Compliance Notebook (or Binder) in order to accomplish this task. WSDOT's [Construction Manual](#) Section 1-05.1 recommends that the PE use relevant information from the Environmental Compliance Notebook during the preconstruction meeting (See [Section 600.04\(2\)](#)) and throughout the project. The environmental coordinator should communicate with the Project Office to determine who is responsible for preparing and maintaining the Environmental Compliance Notebook. A list of commitments, or the commitment file, is an important component of the Environmental Compliance Notebook. See [Chapter 490](#) for information on establishing a commitment file, and [Chapter 590](#) for incorporating commitments into contracts. WSDOT staff must use [CTS](#) to generate and maintain a commitment file (including all environmental commitments that must be considered during the life of the project) for inclusion in the Environmental Compliance Notebook. Refer to the help menu within [CTS](#) for instructions on how to use [CTS](#) to manage commitments and generate a list of all commitments.

An Environmental Compliance Notebook includes, but is not limited to, the following information:

- Contacts (e.g., WSDOT Region/Mode/Megaprograms Environmental, Design and Construction Offices; contractor/Design-Builder; resource agencies; emergency spill reporting)
- Commitment file
- Environmental notification requirements

- Permits and approvals
- Site Inspection Forms (as required)
- Inspection forms/checklists
- UDP or IDP
- TESC Plan (Narrative and Plan Sheets)
- SPCC Plan
- Any other project-specific plans and associated necessary forms (e.g., TSD Plan, Wetland/Stream Mitigation Plan; Fish and Aquatic Species Exclusion Plan)
- Good Faith Inspection (GFI) mandatory form and report(s)
- A copy of the Design and Construction ECAPs

It is recommended that an electronic copy of the Environmental Compliance Notebook be saved to the project files and that a copy is always accessible at the project site.

For Design-Build projects, refer to the project-specific Request for Proposal (RFP) for submittal requirements and schedules (See WSDOT [Design-Build Manual M 3126 Chapter 4](#) for more information).

600.04(2) *Discuss environmental compliance at the preconstruction meeting*

Standard Specifications Section 1-07.9(1) states that the contractor/Design-Builder has responsibility for compliance requirements associated with all parts of the Work necessary to complete the contract. WSDOT's *Construction Manual* Section 1-05 requires the PE to discuss the project with the contractor/Design-Builder and exchange a variety of information, including compliance expectations.

In most cases, the PE and contractor/Design-Builder discuss the project and exchange information at a preconstruction meeting. A preconstruction meeting occurs after contract award and prior to construction activities. [RCW 47.85.030](#) requires WSDOT to conduct preconstruction meetings, as does the *Memorandum of Agreement concerning the Implementation of the Fish and Wildlife Hydraulic Code for Transportation Activities*. WSDOT uses this meeting to establish environmental expectations with the contractor/Design-Builder. An expectation will be that environmental commitments cannot be changed through innovative cost saving proposals or other similar contractor/Design-Builder suggested changes. Alternatively, for projects with complex environmental issues, it may be necessary to hold an additional environmental-specific preconstruction meeting.

Staff from the Region/Mode/Megaprograms Environmental Office should coordinate with the PE to determine if and how to support the PE at preconstruction meetings. Consider discussing the following topics at the preconstruction meeting:

- Locations and protection of environmentally sensitive areas
- Risky elements of the construction project
- Schedule for earth work and implementation of BMPs
- Inspections and documentation (e.g., GFI reports)
- Expected content and schedule of submittals from the contractor/Design-Builder, such as the TESC, SPCC, and TSD Plans
- Verification that credentials exist and are current for the environmental work, for example: CESCL certification and 40-hour HazMat certification

600.04(3) Take environmental training

Although the contractor/Design-Builder is responsible for compliance when delivering a project, [RCW 47.85.040](#) instructs WSDOT to continue efforts to improve training and compliance. Specifically, WSDOT must provide training in environmental procedures and permit requirements for those responsible for project delivery. Note that some permits or approvals may have specific training requirements (e.g., the NPDES Municipal Stormwater Permit requires that all WSDOT staff responsible for designing and implementing TESC Plans take WSDOT's Construction Site Erosion & Sediment Control Training every 3 years). WSDOT staff can find instructor-led and online courses relevant to environmental compliance in the [Washington State Learning Center](#) course catalog in the environmental library. Any WSDOT staff or consultants who inspect construction projects are encouraged to complete the Environmental Compliance for Construction instructor-led or eLearning course. Staff may also contact the Region/Mode/Megaprograms Environmental Office or HQ Environmental Services Office for additional training opportunities.

600.04(4) Provide notifications and submittals to resource agencies

Environmental permits and approvals often require WSDOT to provide notifications or submittal to resource agencies prior to beginning or completing certain project activities. Failure to provide required notifications or submittal is a non-compliance event. The PE should work with staff and from the Region/Mode/Megaprograms Environmental Office to determine which and when activities require notifications and submittals for the project.

Examples of activities or situations that might trigger a notification and/or a submittal include:

- Geotechnical activities like pile driving and removal, and well installation and removal.
- Underground storage tank removal
- Demolitions
- Preconstruction meeting
- Request for Chemical Treatment
- In-water work
- Completion of project work
- Non-compliance with a permit condition or regulation
- Sampling that indicates an exceedance
- Stream restoration/reclamation
- Permitted work within wetlands
- Removal of contaminated soil
- Stream diversions
- Mining (including surface pits)
- Wetland or stream mitigations site construction, which requires Right of Way plan or Sundry Site plan submittal

600.04(5) Mark clearing limits and protect sensitive areas

All WSDOT projects have boundaries that must be marked to keep the contractor/Design-Builder from clearing land not permitted for impacts. WSDOT's [Construction Manual](#) Section SS 2-01.3(1) provides instructions on marking clearing limits. WSDOT's [Temporary Erosion and Sediment Control Manual](#) M 3109 and the [Standard Specifications](#) Section 1-08.4 requires these limits be marked prior to the start of clearing activities. Flagging, staking, and high visibility silt fence, for example, are some appropriate methods to define the project boundary. It is the responsibility of the Region/Mode/Megaprograms Environmental Office to compare the permit drawing to the contract plans and confirm the permitted area of impact is correctly shown in the plans with the HVF symbol.

WSDOT contracts require HVF to be installed as a first order of work. Use HVF to protect sensitive areas and their buffers where impacts are not permitted. The HVF shall be maintained throughout the life of the project. Sensitive areas include, but are not limited to:

- Wetlands and their buffers
- Surface water features and their buffers
- Mitigation areas
- Areas of vegetation to be preserved
- Archaeological and historical features
- Known Contaminated areas beyond clearing limits

600.05 Compliance during construction

600.05(1) Enforce the contract during construction

WSDOT's policy, as explained in [Chapter 590](#), is to fully supplement contracts with environmental commitments. As a result, enforcing the contract is the best way to obtain compliance with a majority of WSDOT's commitments and avoid additional impacts.

The contract is defined in [Standard Specifications](#) Section 1-04.2 and includes: Addenda, Proposal Form, Special Provisions, Contract Plans, Amendments to the [Standard Specifications](#), [Standard Specifications](#), and [Standard Plans](#). [Standard Specifications](#) Section 1-05 describes the authority of the engineer, assistant engineers, and inspectors, which is critical to enforcing the contract. Refer to the WSDOT [Construction Manual](#), Section 1-05 for more information about the PE's authority, and Section 8-01 and 9-14 for contract enforcement expectations (specifically with regard to erosion control practices and materials requirements).

WSDOT employees must make sure the contractor's/Design-Builder's work complies with the environmental documents, permits, and contract requirements. Tracking commitments using [CTS](#) assists the project in overseeing environmental compliance during construction, especially if the commitments have been accurately tied to specific contract documents (see [Chapter 590](#)). When a project is (or suspected to be) not complying with a permit or environmental regulation, the PE must immediately order the contractor/Design-Builder to stop all con-compliant work, collaborate with the Environmental Manager or designee, and implement measures necessary to achieve compliance, including reporting to resource agencies with jurisdiction ([RCW 47.85.030\(4\)](#)). Refer to ECAP to learn more about how to recognize and rectify environmental non-compliance and ensure prompt notification to WSDOT management and resource agencies (Design ECAP is located in the WSDOT [Design Manual](#) Section 225.05(1) and Construction ECAP is located in the WSDOT [Construction Manual](#) Section 1-07.5).

600.05(2) Respond to project modifications

Project modifications (i.e., scope changes) may occur to accommodate additional work, save money, shorten project timelines, minimize impacts to traveling public, or for safety reasons. Impacts of the change must be evaluated to determine corresponding changes to the environmental requirements and process. Depending on the timing of changes, projects may need to reevaluate environmental impacts, entire National or State Environmental Policy Act (NEPA or SEPA) documents, Biological Assessment/Opinion, or might need new or amended permits and approvals. In these cases, WSDOT must allow extra time to obtain additional permits or approvals. Make sure to coordinate with the Region/Mode/Megaprograms Environmental Office when a project modification is proposed. Also, ensure that updated or new commitments are entered into [CTS](#) (see [Chapter 490](#)).

For Design-Build projects, refer to the project-specific RFP for more information on how to respond to project modifications (see WSDOT [Design-Build Manual Chapter 4](#) for more information).

600.05(3) Respond to non-compliance

WSDOT employees are obligated to report non-compliance ([RCW 47.85.030\(3\)\(a\)](#) and [RCW 47.85.040\(4\)](#)). WSDOT's ECAP (as described in the WSDOT [Design Manual](#) Section 225.05(1) and the WSDOT [Construction Manual](#) Section 1-07.5), provides instructions on how to respond to a non-compliance event, including the requirement to record all non-compliance events into [CTS](#).

600.06 Construction close out for environmental

Policies associated with construction close out are described below. See WSDOT's [Environmental during construction](#) webpage for discipline-specific procedures associated with construction close out.

600.06(1) Close commitments upon completion

WSDOT is committed to tracking commitments ([RCW 47.85.040](#)), which includes closing them upon completion. All commitments need to be closed out to ensure no future liability and appropriateness for final payment. For Design-Bid-Build projects, the environmental coordinator is typically responsible for closing out commitments once they are fulfilled. Most construction commitments are performed by the contractor, so achieving contract physical completion should be cause for closing out the commitment. However, it is recommended that projects close out commitments as appropriate throughout the life of the project to avoid more work at the time of project completion. The environmental coordinator confirms with the PE (or designee) that the work associated with each commitment is complete, and updates the commitment file to reflect the status as closed; if appropriate, how the commitment was fulfilled should also be documented.

For Design-Build projects, the Design-Builder must prepare an Environmental Commitment Close Out Report per the RFP (see WSDOT [Design-Build Manual Chapter 4](#), as well as the instruction boxes within [RFP Template](#), Section 2.8 Environmental, for more information).

Closing out commitments is a difficult task considering the volume of commitments. However, the use of [CTS](#) to track and manage commitments can easily close commitments using the "Commitment Status" feature; refer to the help menu within [CTS](#) for instructions on how to close out commitments within [CTS](#).

600.06(2) Prepare Right of Way or Sundry Site plans and as-built reports for wetland and stream compensatory mitigation efforts

Environmental coordinators submit the Right of Way or Sundry Site plan as evidence of permanent compensatory mitigation site protection as required by the Corps 404 and Ecology 401 permits. See the permit conditions for the submittal due date for Right of Way/Sundry Site plans.

Meet with the PE (or designee) to discuss Right of Way/Sundry Site submittal requirements for the compensation site. Transmit the Right of Way/Sundry Site plan update request to the Region Right of Way Office (Ferries and Megaprograms projects work with the Region or HQ Right of Way Office, depending on the project). The Right of Way engineer will develop a draft Right of Way/Sundry Site plan update including text that shows the permit number. The area to be protected in perpetuity must be labeled as "Mitigation Site" with the compensatory mitigation site name. Review the Right of Way/Sundry Site plan draft for accuracy and submit to the GeoMetrix Office. The GeoMetrix Office will prepare the Right of Way/Sundry Site map in accordance with the permit conditions.

Go to the Manage compensatory mitigation sites section on WSDOT's [Environmental during construction](#) webpage to find instruction on how to prepare as-built reports.

600.06(3) Initiate post-construction monitoring Wetland compensatory mitigation monitoring

If a wetland compensatory mitigation site was constructed for the project, WSDOT is obligated to monitor compensatory mitigation sites for up to ten years (or more if performance standards are not achieved at Year 10). As construction nears completion, the PE must submit information to the HQ Wetlands Program so monitoring can commence. The wetland monitoring group needs the as-built plans to begin monitoring.

Include the as-built plan when you submit the monitoring start-up form. Go to the Manage compensatory mitigation sites section on WSDOT's [Environmental during construction](#) webpage to find the monitoring start-up form and instructions.

Fish passage

ESO's Stream Restoration Program takes the lead on monitoring and storing information on WSDOT fish passage projects.

WSDOT evaluates all fish passage projects immediately upon completion of construction to ensure they conform to construction permits and design plans. Sites are also evaluated for their ability to pass fish using [WDFW's barrier assessment methods](#).

In accordance with the U.S. v. WA Culvert Injunction, representatives from Tribal nations and state agencies subject to the injunction agreed upon and finalized the Monitoring

Implementation Guidelines in September 2015, which are the basis of WSDOT's Fish Passage Monitoring Plan.

The Monitoring Plan provides a protocol that can be broadly applied to ensure a consistent and efficient post-project monitoring process for all WSDOT fish passage projects, and satisfies all state and federal permit requirements. WSDOT's Fish Passage Monitoring Plan and Injunction Post-Project Monitoring Template are available for download from the "Fish Passage Program Delivery" tab of [WSDOT's Fish Passage Database](#). Fish Passage monitoring

results are available for barriers corrected since 2013, through [WSDOT's Fish Passage Database](#), and are available and accessible to all WSDOT staff. Monitoring reports can be generated through the database for each site monitored. Monitoring reports are also available publicly online through WSDOT's interactive [Fish Passage Webmap](#); click on a corrected barrier and select "more info" under the site attributes (reports available for barriers corrected since 2013).

600.06(4) Coordinate long-term maintenance

WSDOT regularly makes project-level commitments that require long-term care (e.g. wetland mitigation sites, fish passage barrier corrections, stormwater treatment, and roadside). Ensure that the commitment file includes long-term commitments, and coordinate with WSDOT's Maintenance and Operations personnel. It is vital that Maintenance and Operations personnel receive a copy of and understand these long-term compliance expectations. WSDOT is required to maintain most of these sites in perpetuity. ESO Wetlands Program will coordinate management responsibilities and required actions with the maintenance division for sites requiring long-term management.

Transition from post construction wetland monitoring to maintenance is specifically described in [Section 431.08\(6\)](#). When using [CTS](#) to track commitments, ensure that long-term commitments are assigned to the maintenance phase of the project; refer to the help menu within [CTS](#) for instructions on how to assign project phase to a commitment and how to produce a report that specifically lists maintenance phase commitments.

600.07 Applicable statutes and regulations

- Transportation Project Delivery and Review – [Chapter 47.85 RCW](#)
- Water Pollution Control – [Chapter 90.48 RCW](#)
- Water Quality Standards for Surface Waters of the State of Washington – [Chapter 173-201A WAC](#)

600.08 Abbreviations and acronyms

BMPs	Best Management Practices
CED	Chronic Environmental Deficiencies
CESCL	Certified Erosion and Sediment Control Lead
CSWGP	Construction Stormwater General Permit
CTS	Commitment Tracking System
ECAP	Environmental Compliance Assurance Policy
Ecology	Washington State Department of Ecology
ESA	Endangered Species Act
ESO	Environmental Services Office
GFI	Good Faith Inspection
HVF	High Visibility Fence
IDP	Inadvertent Discovery Plan
NEPA	National Environmental Policy Act
NPDES	National Pollutant Discharge Elimination System
PE	Project Engineer

PS&E	Plans, Specifications, and Estimates
RCW	Revised Code of Washington
RFP	Request for Proposal
SEPA	State Environmental Policy Act
SMEs	Subject Matter Experts
SPCC	Spill Prevention, Control and Countermeasures
TESC	Temporary Erosion and Sediment Control
TSD	Temporary Stream Diversion
UDP	Unanticipated Discovery Plan
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife

600.09 Glossary

These definitions provide context to achieve environmental compliance.

Commitment – An obligation that WSDOT makes within an environmental document or agreement for the project; or an expectation imposed upon WSDOT by another agency through a permit or approval for the project. Commitments can be either the agency's or the contractor's/Design-Builder's responsibility to implement.

Commitment File – This file serves as the repository for all final environmental documents leading to development of the contract.

Commitment Status – The status of commitments (opened, closed, cancelled, etc.) in the WSDOT Commitment Tracking System (CTS).

Commitment Tracking System – The [Commitment Tracking System \(CTS\)](#) is a WSDOT web application that allows you to store commitments in a secure computer network server, plus manage the responsibility (WSDOT or contractor/Design-Builder) and implementation method (guidance document or contract) for the commitment. It also allows you to store compliance records, document the status, and report details about commitments from their inception through project delivery and on to maintenance.

- 700.01 Environmental requirements for maintenance and operations
- 700.02 WSDOT maintenance and operation plans and policies
- 700.03 Interagency agreements for maintenance activities
- 700.04 Applicable permits and approval process
- 700.05 WSDOT manuals
- 700.06 Abbreviations and acronyms

700.01 Environmental requirements for maintenance and operations

The purpose of this chapter is to summarize environmental requirements and procedures that apply to the Washington State Department of Transportation (WSDOT) Maintenance and Operations Program.

At WSDOT, highway maintenance includes both maintenance and operations. The maintenance service objective, stated in the State Highway Systems Plan, is to “maintain and operate state highways on a daily basis to ensure safe, reliable, and pleasant movement of people and goods.”

Maintenance work is performed to care for and maintain the highway and associated features so it substantially retains its original intended use and function. Maintenance activities include patching pavement, cleaning ditches and culverts, repairing slopes and streambank stabilization structures, controlling vegetation, and painting stripes on the road surface.

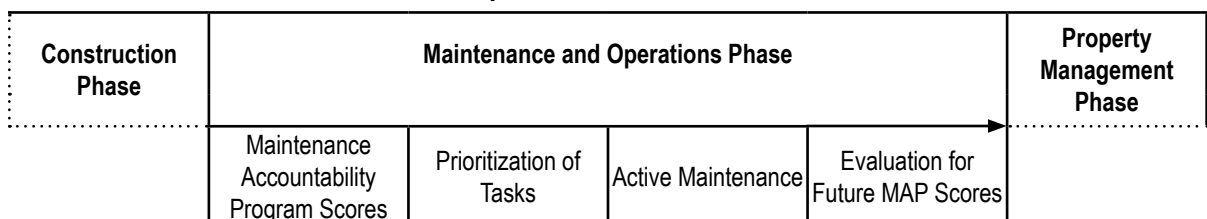
Operations activities provide a direct service to ensure reliable use of the highway system. Activities include operating rest areas, reversible lane gates, highway lighting, traffic signals, snow and ice control, and keeping the roads operational during a disaster.

700.01(1) Project management phases and maintenance

Often environmental commitments made years before, during design, environmental review, environmental permitting, and PS&E will require ongoing maintenance and attention. Exhibit 700-1 illustrates the relationship between maintenance and operations and preceding phases of WSDOT’s transportation decision making process.

Among the maintenance activities that may impact the environment are painting, sanding, anti-icing, applying herbicide, mowing and brush control, restoring native plants, and maintaining drainage facilities. Materials stored and used at maintenance facilities also have the potential to adversely impact the environment. The Maintenance and Operations Office provides environmental support at WSDOT facilities by assessing for the presence of hazardous or contaminated materials; managing disposal of hazardous or problematic waste; and providing basic regulatory awareness to Maintenance and Operations personnel.

Exhibit 700-1 Maintenance and Operations Phase



700.02 WSDOT maintenance and operation plans and policies

[P 1018 Environmental Policy Statement](#) directs that WSDOT will comply with environmental requirements and that it is each individual employee's responsibility to ensure that happens.

In 2003, WSDOT received coverage under the [Regional Road Maintenance Program \(RRMP\)](#) approved by NOAA along with the *Regional Road Maintenance Endangered Species Act Program Guidelines* that include various general practices and specific practices (such as BMPs) that WSDOT will use to avoid and minimize adverse impacts to fish and aquatic habitat. In areas where none of the referenced documents apply, and there is potential for a maintenance activity to harm a fish or aquatic habitat protected under the ESA, BMPs will still be utilized to avoid and minimize adverse impacts.

The organizational structure of the program includes Regional Maintenance Environmental Coordinator (RMEC) positions that are dedicated to support environmental compliance in each of the regions. WSDOT uses statewide Regional Maintenance Environmental Coordinator Meetings to identify and announce any modifications or changes to the RRMP. New technologies are also discussed at these meetings. Modifications are shared with NOAA Fisheries for concurrence to maintain the status of "ESA compliant." Additional forums are utilized or created if needed to adequately include key interested parties (i.e., federal and state regulatory agencies and additional WSDOT personnel) in changes of applicable environmental protection practices.

The Environmental Compliance Assurance Policy for the maintenance program was updated in 2015. The purpose is to provide notification information and procedures to prevent non-compliance events or violations. These procedures cover notification for spills, planned in-water work, emergency in-water work, BMP performance, and violations.

Training is an important part of implementing the RRMP. All new maintenance staff are trained on how to apply the program during the annual maintenance academy. Training includes both classroom and field courses to understand how to apply BMPs to achieve environmental outcomes. Training is also provided at the regional level on an as needed basis to ensure field operations are up to date on current compliance expectations.

WSDOT ESO also provides training on *Guidance for the Protection of Terrestrial Species* protected under ESA. Guidance documents are in place for each of the region maintenance areas. They identify special management areas and BMPs to avoid and minimize impacts to terrestrial species including birds, plants and animals.

WSDOT has developed [plans for maintaining vegetation along our highways](#) to provide a "how to" guide for managing roadsides at the maintenance area level throughout the state. These plans determine the right tool or combination of tools, for the right plant at the right place and time. Vegetation management plans cover mowing and trimming, selective use of herbicides, improving soils, planting native plants, and the care of compensatory mitigation sites. The Secretary's Executive Order [E 1102 Wetlands Protection and Preservation](#) directs WSDOT employees to protect and preserve wetlands and manage environmental mitigation sites for long-term stewardship.

700.02(1) Deteriorating Culverts and Preservation

The culvert injunction requires the State to correct fish barrier culverts at the end of the culvert's useful life. Prior to programming a deteriorating culvert for replacement using I-4 Funding, a Level 2 inspection must be completed documenting a poor or critical culvert condition.

WSDOT maintenance staff conduct routine culvert inspections, twice a year, once before the fall/winter storms and once after the rainy season has ended to ensure they are clean and in good operating condition. Culverts may be inspected more or less frequently based on the past history of the particular culvert. When conducting a Level 1 inspection, if maintenance staff observe a problem exists with the culvert, they will describe the condition in the Highway Asset Tracking System (HATS), and the region hydraulic engineer will be alerted.

If the Level 1 inspection results in a poor or critical rating, then it is assigned to a Hydraulic Engineer for a Level 2 inspection. Level 2 inspection is conducted by a Hydraulic engineer and is a more extensive evaluation of the culvert including hydraulic capacity, ability of the culvert to pass wood and sediment, and an evaluation of the potential risks to the highway and will result in recommendations and timeline to correct deficiencies.

700.02(2) Fish Passage Project Adaptive Management

When a Stream Restoration Monitoring Biologist monitors a site and observes a project at risk of losing fish passage or stream function, they shall notify Fish Passage Delivery, Hydraulics, and Region Environmental. The Region Environmental Manager and Fish Passage Tribal Liaison will notify and coordinate with WDFW and the tribes. Hydraulics staff evaluate problematic sites and write memos with recommendations for repair or retrofit. Hydraulics memos are sent to the Fish Passage Delivery Program Manager who will forward to the Region Engineering Manager, Region Environmental Manager, and CPDM, with a request for scoping and cost estimating for the repair or retrofit. The region is responsible for scoping, designing, permitting, and constructing the fish passage repair or retrofit. Once the repairs are made, a Stream Restoration Program Biologist will inspect the project for compliance and report findings in WSDOT's Fish Passage Database.

The culvert injunction requires WSDOT to monitor barrier corrections and evaluate whether their efforts to provide fish passage are effective in meeting the standards of the injunction. The injunction requires WSDOT to take reasonable steps to maintain their culverts in such a manner as to provide fish passage and to protect salmon habitat. Furthermore, WSDOT must correct problems within a reasonable amount of time, when any culvert corrected under the injunction remains a barrier culvert after attempted correction, or again becomes a barrier culvert following an initially successful correction.

The [WDFW MOA](#) also outlines WSDOT requirements for work related to emergency culvert work and fish passage barrier replacement.

700.03 Interagency agreements for maintenance activities

The following interagency agreements apply to the maintenance program activities. [Appendix B](#) includes an index to all of WSDOT's environmental interagency agreements. Interagency agreements also exist at the regional level. For example, some regions may have agreements with their district USFS office, district WDFW, or local agency environmental departments.

700.03(1) **MOA Between WDFW and WSDOT**

The MOA describes how WSDOT and WDFW will cooperate to ensure that state transportation projects protect fish life and habitats, and ensure consistent and uniform application of [RCW 77.55](#) (construction in state waters) and [WAC 220-660](#) (hydraulic code rules). It includes procedures for emergency/disaster maintenance and repair. Appendix F of the MOA is maintenance guidelines.

The [WDFW MOA](#) outlines WSDOT's obligation to create and maintain an effective Chronic Environmental Deficiencies (CED) program to maintain some of the benefits of the agreement. The purpose of the CED program is to develop and implement long-term solutions at locations where frequent highway maintenance and repairs have negative impacts on fish and fish habitat. See 300.08 and WSDOT's [CED webpage](#) for more information on this program. To efficiently implement the program, WSDOT maintenance staff are tasked with notifying the CED Coordinator of potential new CED sites, providing updates on the status of active CEDs, and assisting with prioritization of CED projects.

700.03(2) **MOU on Highways Over National Forest Lands**

This June 2019 [MOU](#) establishes procedures for coordinating transportation activities on national forest lands.

Provisions applicable to maintenance and operations:

- WSDOT will coordinate with USFS on maintenance activities that might affect national forest lands, including: removal/disposal of dangerous trees, disposal of slash or other waste, material source or storage, changes to drainage patterns, snow and avalanche control, and rock scaling.
- WSDOT will work with USFS to develop roadside vegetation management plans.
- WSDOT will furnish and maintain all standard highway signs, including guide signs requested by the USFS.
- WSDOT will coordinate with USFS for third party occupancy or use by utility facility installations on WSDOT easements.
- Specifies responsibilities for signage for maintenance or emergency activities.
- Specifies responsibilities for control of access to WSDOT easements by USFS or its permittee(s).

700.04 Applicable permits and approval process

As noted under [Section 700.02](#), the RMEC is responsible for coordinating or processing required permits and approvals applicable to WSDOT maintenance activities at the regional level. This may include Federal, State, and Local Permits. Most WSDOT maintenance activities are covered by general or programmatic permits (e.g. NPDES permits and General HPAs). Many of these permits are located on the WSDOT's [Fish](#) and [Stormwater & Water Quality](#) webpages.

In 2014, Ecology issued a [NPDES Municipal Stormwater Permit](#) to WSDOT. This permit covers the management of WSDOT's stormwater conveyance system. The Maintenance and Operations Office supports management and compliance with the permit.

Additionally, when maintenance activities are carried out on tribal lands, environmental protection measures may be required by the tribal government or the U.S. Environmental Protection Agency (USEPA). Local governments may also have authority to issue permits regulating activities in their jurisdiction.

700.05 WSDOT manuals

Technical guidance is summarized by reference to the WSDOT manuals described below. Refer to these documents for details. Most manuals can be accessed online from the [WSDOT Manuals and Standards](#) webpage.

Maintenance Manual M 51-01 – This manual covers procedures for highway maintenance. In several chapters, maintenance activities have environmental implications: emergency operations (hazardous materials spills), drainage maintenance (aquatic habitat, water quality, wetlands, shorelines), bridge repair, roadside maintenance (integrated vegetation management), snow and ice control, and procuring materials from quarries or pits.

Maintenance Accountability Process Manual – This document is the primary tool used by the Maintenance Office for evaluating program service delivery and identifying budget investment choices.

Roadside Manual M 25-30 – This manual provides consistent guidelines for roadside management, and supplements guidelines in the [Roadside Policy Manual M 3110](#). It is organized around a framework of roadside functions: operational, environmental, visual, and auxiliary. Environmental functions include water quality preservation, protection, and improvement; stormwater detention and retention; wetland and sensitive area protection; noxious weed control; noise control; habitat protection and connectivity; air quality improvement; and erosion control. Sections of the manual offer resources on designated and sensitive areas, wetlands, water quality, wildlife, and noise abatement.

700.06 Abbreviations and acronyms

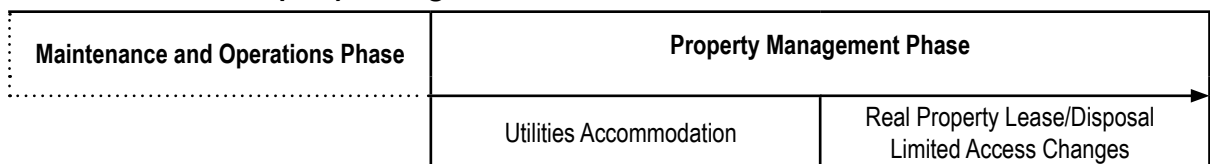
BMP	Best Management Practice
ESA	Endangered Species Act
HPA	Hydraulic Project Approval
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
PS&E	Plans, Specifications, and Estimates
RRMP	Regional Road Maintenance Program
RMEC	Regional Maintenance Environmental Coordinator
USEPA	United State Environmental Protection Agency
USFS	United States Forest Service
WDFW	Washington Department of Fish and Wildlife

- 800.01 Overview
- 800.02 Environmental commitments for utilities accommodation
- 800.03 Environmental considerations in real property disposal/lease
- 800.04 Environmental considerations in disposal of pit sites
- 800.05 Environmental considerations for changes in limited access
- 800.06 Statutes and regulations
- 800.07 Abbreviations and acronyms
- 800.08 Glossary

800.01 Overview

The property management phase of the Transportation Decision-Making Process has three major elements: utility accommodation, real property lease/disposal, and changes in limited access as shown in Exhibit 800-1.

Exhibit 800-1 Property Management Phase



This chapter describes the environmental policies related to each of these elements and provides links to the appropriate manuals that describe the procedures for accomplishing this work.

800.02 Environmental commitments for utilities accommodation

The [Utilities Accommodation Policy](#) M 22-86 enables the department to allow the installation of public and private utilities within the state right of way provided that they do not interfere with the free and safe flow of traffic, or otherwise impair visual quality. This policy was established in cooperation with the Federal Highway Administration (FHWA) and is consistent with state law and the American Association of State Highway and Transportation Officials (AASHTO) guidelines.

Utility companies may request permission from WSDOT to install their facilities within the state rights of way under WSDOT-issued permits or franchises. These projects are almost always funded by the utility. The process is described in [Utilities Manual Chapter 1](#). Utility funded projects are exempt from SEPA per [WAC 197-11-800\(23\)](#). In addition, utility projects seldom have a federal nexus and typically don't trigger NEPA review unless proposed within interstate rights of way. When proposed within the interstate system, FHWA will require NEPA, ESA, and Section 106 compliance, as listed in the [Utilities Manual Section 120.12](#). To ensure your project is in compliance, coordinate review efforts with the Region Utilities Office.

800.02(1) Utility work performed as part of WSDOT projects

Design Manual [Chapter 510](#) describes the region's responsibility to identify ownership of all utilities and arrange for necessary utility conflict mitigation, including relocation, if necessary.

Utilities Manual [Chapter 6](#) describes general practices, policies, and procedures with respect to coordinating WSDOT project with utilities when a utility company's facilities are impacted. It includes detailed procedures and examples for preparing PE agreements and construction agreements. It also includes information on roles and responsibilities, necessary agreements, cost responsibilities, environmental permitting and documentation, project award, and subsurface utility engineering.

For WSDOT projects, potential impacts to utilities must be disclosed during the environmental documentation phase. Impacts to the built and social environment are considered under Social and Community effects (see [Chapter 458](#)). The analysis must also consider potential impacts to the natural and manmade environment caused by relocating utility lines. This may be done as part of the WSDOT project or by the utility company. See [Section 458.06](#) and *Utilities Manual* [Section 600.09\(4\)](#) for guidance.

800.03 Environmental considerations in real property disposal/lease

WSDOT may determine that real property owned and under the jurisdiction of WSDOT is no longer required for transportation purposes, or that a non-highway use of WSDOT property should be allowed. If it is in the public interest, WSDOT may lease or dispose of the property by sale or exchange to entities listed in the [Right of Way Manual](#) M 26-01, or as detailed in state law.

The legislature has mandated that WSDOT surplus and sell properties no longer needed for transportation purposes. Region RES offices periodically review the properties they manage and determine if any should be declared surplus. They also periodically receive requests from the public to lease portions of WSDOT right of way. Region RES determines if these actions are appropriate by preparing a lease/disposal review package for circulation through various disciplines of WSDOT, including region Environmental staff. Region Environmental staff reviews the property for consideration of the environmental issues listed below. The HQ Environmental Services Office provides technical assistance upon request. If the region determines it is appropriate to sell or lease the reviewed properties, Real Estate Services (RES) completes the necessary steps to complete the transaction as further detailed in [Chapter 11](#) ([Chapter 7](#) of the new ROW Manual) of the *Right of Way Manual*.

The Region/Modal Environmental Manager determines if property is eligible for lease or disposal. The decision should take into account the environmental effect of the action, including:

- The potential of the property to fulfill a future transportation need such as stormwater treatment, stream enhancement, noise walls, bridge replacement and roadway realignment.
- The potential for the property to provide environmental mitigation. The potential for the proposed land use to adversely impact the safe and proper operations or maintenance of the highway presently or in the foreseeable future.
- The need to comply with NEPA documentation requirements before seeking FHWA approval of the action.

When FHWA approval is required before WSDOT can make a lease or disposal decision, WSDOT's action triggers a federal nexus. If a federal nexus is created, NEPA, NHPA, and ESA documentation must be completed prior to lease or disposal ([23 CFR 771.117\(d\)\(6\)](#)). Two common real estate decisions requiring FHWA concurrence or approval include:

1. When property being considered for lease or disposal is located within the right of way of an interstate highway or within the project limits of any project that FHWA reserves stewardship over.
2. If a parcel considered for lease or disposal was purchased with federal funding and the parcel will be sold for less than fair market value.

If either of these conditions is met the region RES staff will notify region Environmental staff that NEPA has been triggered. NEPA is not required for transactions on non-interstate facilities sold/leased at fair market value.

Property is not appropriate for lease or disposal if:

- It is suitable for a future transportation need such as stormwater treatment, stream enhancement, noise walls, bridge replacement and roadway realignment.
- It is suitable for retention to restore, preserve, or improve the scenic beauty adjacent to the highway.
- It is suitable for inclusion in WSDOT's wetlands inventory.
- It is needed for a park and ride lot, flyer stop, or other programmed or known future highway needs.
- It is suitable for water quality or flow control treatment facility location for future proposed widening or retrofit requirements.
- Hazardous material is present on the site or any necessary cleanup has not been completed.

If none of these environmental uses for the property become evident during the review, the property may be suitable for lease or disposal. If a lease/disposal is denied for any of these uses, region management should be involved to discuss the cost analysis required to retain the property, which may include assessments, ongoing costs to clear the property of illegal dumping or cleaning of frequent unsheltered encampments.

The Region/Modal Environmental Manager will determine the appropriate level of environmental documentation and resources to be expended for each property review. A review of the property includes completion of the Environmental Checklist for WSDOT Property (Form 220-015). Should the checklist not provide enough information, an Environmental Classification Summary (ECS) form must be completed. The following documentation options may be considered:

- Completion of a memo to file explaining why it was not necessary to complete the Environmental Checklist documenting that there are no endangered species, or historic/cultural concerns associated with the property. At a minimum, the following statement should be included in the explanation: "Complies with NEPA ([23 CFR 771.117\(d\) List](#)), ESA and Section 106 of the NHPA." An explanation should be provided for why no further documentation is needed, such as "the lease/disposal will not lead to construction." Attach a copy of the memo to the electronic engineering review for disposal/lease file.
- Completion of an Environmental Checklist for WSDOT Property (Form 220-015 or ECS).

- Completion of a WSDOT Local Programs or state ECS. If this option is chosen, the Region/Modal Environmental Office must attach a copy of the ECS to the RES-ER ECM property review package.
- The proposed lease or disposal may be addressed as part of a larger action in an EA/EIS. If this option is selected, the appropriate document must be referenced in the comment section of the RES-ER ECM property review package and a short summary of the environmental issues attached.

The HQ Environmental Services Office will not conduct a separate environmental review of lease and disposal actions unless specifically requested to do so by the Region/Modal Environmental Manager. If the region recommends lease or disposal of the property, the Environmental Checklist for WSDOT Property or other documentation is submitted to Headquarters by the region RES office.

800.04 Environmental considerations in disposal of pit sites

WSDOT owns and manages several mineral resources sites across the state commonly referred to as pit sites. Mineral resource sites include gravel pits, rock quarries, or barrow pits developed to produce mineral aggregates for highway projects. If the property to be disposed of is, or was a pit site, the following additional documentation needs to be included in the disposal review package:

- Pit Evaluation Report (Form 350-023)
- Reclamation Plan
- Hazardous Materials Assessment and Remediation Reports

Any suspected hazardous materials on WSDOT property should be reported to the Area Maintenance Superintendent (inside the operating right of way), Region RES Manager (outside the operating right of way), and Capital Facilities Manager. Areas of responsibility may overlap, but these managers maintain close lines of communications and will make sure the HQ Environmental Services Office and Attorney General's Office are consulted for assessment, remediation, and determination of liability. See [Chapter 447](#) for background and technical guidance on hazardous materials.

800.05 Environmental considerations for changes in limited access

Environmental impacts and/or benefits resulting from changes in access control must be disclosed during the environmental documentation phase of the project. This is typically done as part of the discussion of impacts to the built environment and can influence land use and transportation ([Chapter 455](#)), or the social and community network ([Chapter 458](#)). If a change in limited access control is included in the preferred alternative, you must complete the Environmental Checklist (Form 220-015) or complete the Access Request Checklist following the procedure described in *Design Manual* [Chapter 530](#).

See *Design Manual* [Chapter 520](#) for a general description of the types of access control on state highways, their purpose, and uses. See *Design Manual* [Chapter 530](#) or the [Access and Hearings](#) webpage for a description of the process and requirements for Modifications to Limited Access.

800.06 Statutes and regulations

- [23 CFR 645](#) Accommodating Utility Facilities
- [23 CFR 771.117](#) Categorical Exclusions
- [23 CFR 710.409](#) Disposal of excess real property
- [23 CFR 710.405](#) ROW use agreements
- [Chapter 47.44 RCW](#) Franchises on State Highways
- [Chapter 47.52 RCW](#) Limited Access Facilities
- [RCW 47.12.120](#) Lease of Unused Highway Land or Air Space
- [RCW 47.12.063](#) Surplus Real Property Program (disposal)
- [Chapter 468-34 WAC](#) Utility Lines – Franchises and Permits
- Highways Over National Forest Lands MOU with the United States Forest Service

800.07 Abbreviations and acronyms

AASHTO	American Association of State Highway and Transportation Officials
CFR	Code of Federal Regulations
EA/EIS	Environmental Assessment/Environmental Impact Statement
ECS	Environmental Classification Summary
ESA	Endangered Species Act
FHWA	Federal Highway Administration
HQ	WSDOT Headquarters
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
RCW	Revised Code of Washington
RES	Real Estate Services
RES-ER ECM	Real Estate Services Electronic Review Software within WSDOT's Electronic Content Management (ECM) system
ROW	Right of Way
WAC	Washington Administrative Code

800.08 Glossary

Franchise – A utility accommodation document that defines utility ownership, type, size, location, construction methods, maintenance, duration, and other information related to the utility installation operating on highway right of way, toll facilities, and the state ferry system.

Limited Access – WSDOT controls access to and from the state highway to preserve the safety and efficiency of the facility. Limited access control is accomplished by purchasing the access rights from adjacent property owners. See *Design Manual Chapter 520* for a policy guidance, implementing regulations, a description of the types of access control, their uses and benefits.

Utility – Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, cable television, electric power, light, heat, gas, oil, crude products, water, steam, waste, stormwater (not connected to highway drainage) and other similar commodities, including any fire or police signal systems, street light systems, and traffic control system interties, which directly or indirectly serve the public (see *Utilities Manual Chapter 2*).

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Appendix A **Executive orders**

Environmental executive orders issued at the federal and state level can address a variety of policy matters, and they remain active until rescinded. The following are some active executive orders on environmental matters that may affect transportation projects:

Presidential Executive Orders

11514	Protection and Enhancement of Environmental Quality
11988	Floodplain Management
11990	Protection of Wetlands
12898	Environmental Justice
13006	Locating Federal Facilities on Historic Properties in Our Nation's Central Cities
13007	Indian Sacred Sites
13112	Invasive Species
13166	Improving Access to Services for Persons With Limited English Proficiency
13175	Consultation and Coordination With Indian Tribal Governments
13186	Responsibilities of Federal Agencies to Protect Migratory Birds
13274	Environmental Stewardship and Transportation Infrastructure Project Reviews
13287	Preserve America
13693	Planning for Federal Sustainability in the Next Decade
13766	Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects
13778	Waters of the US
13807	Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects
13990	Protecting Public Health and the Environment and Resorting Science to Tackle the Climate Crisis

Other Presidential Executive Orders can be found at the [National Archives](#) website.

Governor's Executive Orders

80-01	Farmland Preservation
80-18	Environmental Permit Processing
81-18	Review of Federal Environmental Documents
89-10	Protection of Wetlands
90-04	Protection of Wetlands
02-03	Sustainable Practices by State Agencies
04-01	Persistent Toxic Chemicals
05-01	Establishing Sustainability and Efficiency Goals for State Operations
05-03	Plain Talk
21-02	Archaeological and Cultural Resources
06-02	Regulatory Improvement
14-04	Washington Carbon Pollution Reduction and Clean energy Action (superseded EO 09-05)
12-02	Workforce Diversity and Inclusion (superseded EO 93-07)

WSDOT Agency Policies

E 1010	Certification of Documents by Licensed Professionals
P 1018	<i>Environmental Policy Statement</i>
E 1025	Tribal Consultation
E 1031	Protections and Connections for High Quality Natural Habitats
E 1032	Project Management
E 1087	Title VI Policy
E 1090	Moving Washington Forward: Advancing Practical Solutions
E 1102	Wetlands Protection and Preservation
E 1103	Accommodation of Stormwater Runoff Onto Right of Way

Copies of the above-referenced WSDOT Executive Orders and Policy statements can be requested through the WSDOT [Public Disclosure Request Center](#).

Appendix B Interagency agreements

Over the years, WSDOT has entered into agreements with various agencies to clarify how they intend to deal with various environmental matters. These agreements include Memoranda of Understanding (MOUs), Memoranda of Agreement (MOAs), Implementing Agreements (IAs), and other interagency agreements. However, as circumstances change, these agreements (or parts of them) can become obsolete, and the agencies will occasionally void, replace, or amend their agreements. If you have questions about the status of an agreement, contact the [Environmental Manual Coordinator](#).

WSDOT's current agreements with other agencies on various environmental matters that affect WSDOT's business practices, include the following:

Agreement With	Subject/Link to Agreement
Ecology, WDFW	Alternative Mitigation Policy Guidance for Aquatic Permitting
FHWA, NMFS, USFWS	Assessing Stormwater Effects in Biological Assessments
CTUIR, FHWA	Coordination and Consultation on State Transportation Activities
Ecology	Coordination and Cooperation on Environmental Issues Under Ecology Jurisdiction
USCG, FHWA	Coordinating to Improve Bridge Planning and Permitting
DOH	Drinking Water Well Protection (Sanitary Control Areas)
WSCC	Farmland and Forest Preservation
PSCAA	Fugitive Dust
USFS	Highways Over National Forest Lands
Ecology	Highway Runoff Manual Implementing Agreement
ACHP, FHWA, SHPOs	Historic Properties (Nationwide)
ACHP, FHWA, WSHPO	Historic Properties (Statewide Programmatic Agreement Implementing Section 106)
WDFW	Hydraulic Project Approvals Including Fish Passage and Chronic Environmental Deficiencies
FHWA, WSDOT	2024 FHWA/WSDOT NEPA CE Programmatic Agreement (PCE)
FHWA, WSDOT	Stewardship and Oversight Agreement
FHWA, FTA, Sound Transit	Noise Methodology and Criteria
FHWA, USEPA	Sole Source Aquifers
WDNR	Utilities on Bridges Over Aquatic Lands
ACOE, Ecology, FHWA, NMFS, USEPA, USFWS, WDFW	Wetland Compensation Bank Program
Ecology	Use of Environmental Covenant Alternatives at WSDOT Sites

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Appendix C Letters, memos, and directives

Environmental policy and procedure is often set in response to requests by other governmental agencies. These letters, memos and directives remain active until rescinded or superseded.

The following documents influence environmental processes associated with transportation projects.

Letters

FHWA, Division Administrator Dan Mathis letter regarding impacts to Resource Conservation Areas, 2016. Additional information can be found in [Chapter 455](#).

Project Delivery Memos

Project Delivery Memos are design and construction documents used to implement an immediate change in any stage of a project, from design through advertisement and construction. [Project Delivery Memos](#) remain in effect until policy documentation can be updated or replaced.

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ENGLISH

Title VI Notice to Public

It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equity and Civil Rights (OECR). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OECR's Title VI Coordinator at 360-705-7090.

Americans with Disabilities Act (ADA) Information

This material can be made available in an alternate format by emailing the Office of Equity and Civil Rights at wsdotada@wsdot.wa.gov or by calling toll free, 855-362-4ADA(4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.

ESPAÑOL

Notificación de Título VI al Público

La política del Departamento de Transporte del Estado de Washington (Washington State Department of Transportation, WSDOT) es garantizar que ninguna persona, por motivos de raza, color u origen nacional, según lo dispuesto en el Título VI de la Ley de Derechos Civiles de 1964, sea excluida de la participación, se le nieguen los beneficios o se le discrimine de otro modo en cualquiera de sus programas y actividades. Cualquier persona que considere que se ha violado su protección del Título VI puede presentar una queja ante la Oficina de Equidad y Derechos Civiles (Office of Equity and Civil Rights, OECR) del WSDOT. Para obtener más información sobre los procedimientos de queja del Título VI o información sobre nuestras obligaciones contra la discriminación, comuníquese con el coordinador del Título VI de la OECR al 360-705-7090.

Información de la Ley sobre Estadounidenses con Discapacidades (ADA, por sus siglas en inglés)

Este material puede estar disponible en un formato alternativo al enviar un correo electrónico a la Oficina de Equidad y Derechos Civiles a wsdotada@wsdot.wa.gov o llamando a la línea sin cargo 855-362-4ADA(4232). Personas sordas o con discapacidad auditiva pueden solicitar la misma información llamando al Washington State Relay al 711.

한국어 – KOREAN

제6조 관련 공지사항

워싱턴 주 교통부(WSDOT)는 1964년 민권법 타이틀 VI 규정에 따라, 누구도 인종, 피부색 또는 출신 국가를 근거로 본 부서의 모든 프로그램 및 활동에 대한 참여가 배제되거나 혜택이 거부되거나, 또는 달리 차별받지 않도록 하는 것을 정책으로 하고 있습니다. 타이틀 VI에 따른 그/그녀에 대한 보호 조항이 위반되었다고 생각된다면 누구든지 WSDOT의 평등 및 민권 사무국(OECR)에 민원을 제기할 수 있습니다. 타이틀 VI에 따른 민원 처리 절차에 관한 보다 자세한 정보 및/또는 본 부서의 차별금지 의무에 관한 정보를 원하신다면, 360-705-7090으로 OECR의 타이틀 VI 담당자에게 연락해주시십시오.

미국 장애인법(ADA) 정보

본 자료는 또한 평등 및 민권 사무국에 이메일 wsdotada@wsdot.wa.gov 을 보내시거나 무료 전화 855-362-4ADA(4232)로 연락하셔서 대체 형식으로 받아보실 수 있습니다. 청각 장애인은 워싱턴주 중계 711로 전화하여 요청하실 수 있습니다.

русский – RUSSIAN

Раздел VI Общественное заявление

Политика Департамента транспорта штата Вашингтон (WSDOT) заключается в том, чтобы исключить любые случаи дискриминации по признаку расы, цвета кожи или национального происхождения, как это предусмотрено Разделом VI Закона о гражданских правах 1964 года, а также случаи недопущения участия, лишения льгот или другие формы дискриминации в рамках любой из своих программ и мероприятий. Любое лицо, которое считает, что его средства защиты в рамках раздела VI были нарушены, может подать жалобу в Ведомство по вопросам равенства и гражданских прав WSDOT (OECR). Для дополнительной информации о процедуре подачи жалобы на несоблюдение требований раздела VI, а также получения информации о наших обязательствах по борьбе с дискриминацией, пожалуйста, свяжитесь с координатором OECR по разделу VI по телефону 360-705-7090.

Закон США о защите прав граждан с ограниченными возможностями (ADA)

Эту информацию можно получить в альтернативном формате, отправив электронное письмо в Ведомство по вопросам равенства и гражданских прав по адресу wsdotada@wsdot.wa.gov или позвонив по бесплатному телефону 855-362-4ADA(4232). Глухие и слабослышащие лица могут сделать запрос, позвонив в специальную диспетчерскую службу штата Вашингтон по номеру 711.

tiếng Việt - VIETNAMESE

Thông báo Khoản VI dành cho công chúng

Chính sách của Sở Giao Thông Vận Tải Tiểu Bang Washington (WSDOT) là bảo đảm không để cho ai bị loại khỏi sự tham gia, bị từ khước quyền lợi, hoặc bị kỳ thị trong bất cứ chương trình hay hoạt động nào vì lý do chủng tộc, màu da, hoặc nguồn gốc quốc gia, theo như quy định trong Mục VI của Đạo Luật Dân Quyền năm 1964. Bất cứ ai tin rằng quyền bảo vệ trong Mục VI của họ bị vi phạm, đều có thể nộp đơn khiếu nại cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng (OECR) của WSDOT. Muốn biết thêm chi tiết liên quan đến thủ tục khiếu nại Mục VI và/hoặc chi tiết liên quan đến trách nhiệm không kỳ thị của chúng tôi, xin liên lạc với Phó Trí Viên Mục VI của OECR số 360-705-7090.

Thông tin về Đạo luật Người Mỹ tàn tật (Americans with Disabilities Act, ADA)

Tài liệu này có thể thực hiện bằng một hình thức khác bằng cách email cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng wsdotada@wsdot.wa.gov hoặc gọi điện thoại miễn phí số, 855-362-4ADA(4232). Người điếc hoặc khiếm thính có thể yêu cầu bằng cách gọi cho Dịch vụ Tiếp âm Tiểu bang Washington theo số 711.

العربية - ARABIC

العنوان 6 إشعار للجمهور

تتمثل سياسة وزارة النقل في ولاية واشنطن (WSDOT) في ضمان عدم استبعاد أي شخص، على أساس العرق أو اللون أو الأصل القومي من المشاركة في أي من برامجها وأنشطتها أو الحرمان من الفوائد المتاحة بموجبها أو التعرض للتمييز فيها بخلاف ذلك، كما هو منصوص عليه في الباب السادس من قانون الحقوق المدنية لعام 1964. ويمكن لأي شخص يعتقد أنه تم انتهاك حقوقه التي يكفلها الباب السادس تقديم شكوى إلى مكتب المساواة والحقوق المدنية (OECR) التابع لوزارة النقل في ولاية واشنطن. للحصول على معلومات إضافية بشأن إجراءات الشكاوى وأو بشأن التزاماتنا بعدم التمييز بموجب الباب السادس، يرجى الاتصال بمنسق الباب السادس في مكتب المساواة والحقوق المدنية على الرقم 360-705-7090.

معلومات قانون الأمريكيين ذوي الإعاقة (ADA)

يمكن توفير هذه المواد في تنسيق بديل عن طريق إرسال رسالة بريد إلكتروني إلى مكتب المساواة والحقوق المدنية على wsdotada@wsdot.wa.gov أو عن طريق الاتصال بالرقم المجاني: 855-362-4ADA (4232). يمكن للأشخاص الصم أو ضعاف السمع تقديم طلب عن طريق الاتصال بخدمة Washington State Relay على الرقم 711.

中文 - CHINESE

《权利法案》Title VI公告

<華盛頓州交通部(WSDOT)政策規定，按照《1964年民權法案》第六篇規定，確保無人因種族、膚色或國籍而被排除在WSDOT任何計畫和活動之外，被剝奪相關權益或以其他方式遭到歧視。如任何人認為其第六篇保護權益遭到侵犯，則可向WSDOT的公平和民權辦公室(OECR)提交投訴。如需關於第六篇投訴程式的更多資訊和/或關於我們非歧視義務的資訊，請聯絡OECR的第六篇協調員，電話360-705-7090。

《美国残疾人法案》(ADA)信息

可向公平和民權辦公室發送電子郵件wsdotada@wsdot.wa.gov或撥打免費電話 855-362-4ADA(4232)，以其他格式獲取此資料。听力丧失或听觉障碍人士可拨打711联系Washington州转接站。

Af-soomaaliga - SOMALI

Ciwaanka VI Ogeysiiska Dadweynaha

Waa siyaasada Waaxda Gaadiidka Gobolka Washington (WSDOT) in la xaqiijiyo in aan qofna, ayadoo la cuskanaayo sababo la xariira isir, midab, ama wadanku kasoo jeedo, sida ku qoran Title VI (Qodobka VI) ee Sharciga Xaquuqda Madaniga ah ah oo soo baxay 1964, laga saarin ka qaybgalka, loo diidin faa'iidooyinka, ama si kale loogu takoorin barnaamijyadeeda iyo shaqooyinkeeda. Qof kasta oo aaminsan in difaaciisa Title VI la jebiyay, ayaa cabasho u gudbin kara Xafiiska Sinaanta iyo Xaquuqda Madaniga ah (OECR) ee WSDOT. Si aad u hesho xog dheeraad ah oo ku saabsan hanaannada cabashada Title VI iyo/ama xogta la xariirta waajibbaadkeena ka caagan takoorka, fadlan la xariir Iskuduwaha Title VI ee OECR oo aad ka wacayso 360-705-7090.

Macluumaadka Xeerka Naafada Marykanka (ADA)

Agabkaan ayaad ku heli kartaa qaab kale adoo iimeel u diraa Xafiiska Sinaanta iyo Xaquuqda Madaniga ah oo aad ka helayso wsdotada@wsdot.wa.gov ama adoo wacaaya laynka bilaashka ah, 855-362-4ADA(4232). Dadka naafada maqalka ama maqalku ku adag yahay waxay ku codsan karaan wicitaanka Adeega Gudbinta Gobolka Washington 711.