Washington State
Department of Transportation

NEPA Categorical Exclusions
A Guidebook for Local Agencies

October 1, 2019

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A PDF of this document can be downloaded from the Local Programs website: http://www.wsdot.wa.gov/LocalPrograms/Environment/.

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INTRODUCTION

As a recipient of federal funding, local agencies are obligated to meet the requirements of the National Environmental Policy Act (NEPA). WSDOT's Local Programs office encourages local agencies to factor in all potential environmental requirements early in the project development process. This will help to prevent costly delays from occurring later in the project delivery process. To help with the environmental review Region Local Programs Engineers (LPE) are available to advise local agencies throughout the process. In addition, the LPEs coordinate with Local Programs environmental staff to ensure that all potential issues are identified and addressed. A NEPA "kick-off" meeting with the local agency, LPE and Local Programs Environmental Engineer (EE) is an excellent way to get all potential environmental issues identified early in the process. The NEPA kick-off meeting should occur very early in the design of the project, and preferably before any environmental documents have been started.

Each year greater than 99% of the local agency projects processed by Local Programs are classified as NEPA Categorical Exclusions (CE; Appendix A). This level of environmental review usually requires preparation of some supporting environmental documentation, but is a much faster than the process for completing an Environmental Impact Statement (Appendix B) or an Environmental Assessment (Appendix C). For CE-level projects, the NEPA Categorical Exclusion Documentation form (Appendix D), with attachments as described in this Guidebook, is the central NEPA document.

This guidebook provides detailed guidance for completing a NEPA Categorical Exclusion documentation form. In addition, it provides general guidance on the preparation of discipline reports and discusses the related review processes. The guidebook is composed of six sections that follow the six sections of the CE documentation form:

1. Project Description.
2. Categorical Exclusion.
3. Permits and Approvals.
4. Environmental Disciplines.
5. Endangered Species Act & Essential Fish Habitat.
6. FHWA Comments.

Environmental documents prepared to satisfy NEPA must be sent by the local agency or their consultant to the region Local Program Engineer (LPE). With approval of the Region LPE, copies may be sent concurrently to the Environmental Engineer (EE) or Archaeologist**.** After receiving approval from the LPE, the EE or Archaeologist will begin the appropriate reviews.

Following the guidance provided in each of these sections will ensure that CE-level NEPA documentation meets Federal requirements, and thereby will help to assure that project timelines can be met. Readers needing detailed guidance for developing EA- and EIS-level

NEPA documents should also consult the following resources: Appendices B and C in this guidebook, Chapter 24 of the Local Agency Guidelines (LAG), and WSDOT's Environmental Manual (EM).

What is the environmental process for local agency projects that have only state funding?

Occasionally, the state Legislature funds local agency projects that lack any federal funding. These projects must comply with state environmental regulations, and the local agency is responsible for completing SEPA and obtaining any required state and local permits. The extent of WSDOT's role in the environmental process for these projects is technical assistance in complying with the Governor's Executive Order 05-05 process related to cultural resources. On these projects, the LPE coordinates with the Local Programs archaeologist to complete the 05-05 process. More information on the 05-05 process is provided in Section 4.3 of this guidebook. The most important consideration in the 05-05 process is for the local agency to contact the LPE prior to consulting with either tribes or the Department of Archaeology & Historic Preservation.

PART 1 – PROJECT DESCRIPTION

Why is the project description so important?

While it may seem obvious, the project description defines what the project will construct, and any major work element not identified could be determined to be ineligible for federal reimbursement. FHWA and WSDOT staff routinely refer to the project descriptions in the STIP, Project Prospectus, Local Agency Agreement and NEPA document to determine whether project expenses are eligible for reimbursement. Significant authorization delays can also occur when there are inconsistencies in how the major project elements and termini are described in the various project documents. Hence, it is vitally important for all project descriptions to be consistent and to accurately describe a project with the proper amount of detail.

What level of detail should be included in project descriptions?

The amount of detail included in a project description may vary depending on the type of document – STIP, Project Prospectus, Local Agency Agreement or NEPA. However, project descriptions must be consistent between all documents and should accurately identify both the project limits and the major project elements – for example, road resurfacing, sidewalk improvements, culvert replacement, signage, roundabout. It is equally important to avoid including unnecessary details about design and construction, such as specific materials, dimensions, and equipment. While environmental reviews frequently require additional information on the extent of ground-disturbing activities and construction methods, this is best addressed in supplemental documentation and should not be included in the project description. The bottom line is that while project descriptions do not need to be exactly the same across documents, all should identify the same basic project elements -- with the level of information expanding only when absolutely necessary.

What if a project needs to make changes that are inconsistent with the project description?

Well written project descriptions that avoid unnecessary design and construction detail will minimize the need to revise project descriptions. However, when the need for a significant change to a project arises prior to completion of NEPA, the various project descriptions (STIP, Project Prospectus, Local Agency Agreement and NEPA) need to be revisited and amended to maintain eligibility for federal funding. The good news is that Local Programs is available to assist local agencies make the necessary updates. The Region LPE should be notified as soon as the local agency becomes aware of the need for a project change that is not addressed in the project description. Early notification of project changes is vitally important in preventing a noncompliance issue and risking federal eligibility.

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Part 1.

- ***Federal Aid Number.*** This number is assigned by the Region Local Programs Engineer (LPE). Contact the Region Local Programs staff to obtain this number.
- ***NEPA Start Date.*** NEPA kickoff meetings or APE submittals are most common.
- ***Intent of Submittal.*** Check one of the three boxes. *Preliminary* is checked when the CE documentation form is being submitted as a review draft and is not intended for final approval. *Final* is checked when the CE documentation form is being submitted for the final approval. *Re-evaluate* is checked only when the document is being submitted for approval of an environmental update to a previously-approved NEPA document.

> **Tip**
> Remember to include a vicinity map with each submittal. The map should be reproduced at a scale that permits readers to clearly see the limits of the entire project in the context of its surroundings.

- ***Agency.*** The local agency proposing the project.
- ***Project Title.*** Provide the name of the project as it appears in the STIP.
- ***Beginning terminus.*** Provide the starting point for linear projects within a road system.
- ***Ending terminus.*** Provide the ending point number for linear projects within a road system.
- ***Miles.*** Provide the length of the project in miles.
- ***Sections, Township, and Range.*** Provide the Section(s), Township and Range where the project is located; it is not necessary to provide quarter sections. U.S. Geological Survey maps and some gazetteer atlases depict the Section, Township and Range. For long projects crossing multiple sections, include a vicinity map that clearly identifies the entire limits of the project.
- ***County.*** The county in which the project is located.
- ***Project Description.*** The project description needs to be consistent in all project documents, including the CE documentation form, STIP, prospectus, and discipline reports. The description should identify all project elements and activities and should be written in plain language that is understandable to members of the general public. Lastly, the description should include a purpose and need statement that explains why the project is being proposed; for example, safety and mobility. FHWA uses this information to determine whether the project has independent utility and logical termini and helps them to evaluate the *feasibility* and *prudence* of alternatives when there is *use* of a 4(f) resource.

PART 2 – CATEGORICAL EXCLUSIONS & STIP

Unless significant or potentially significant impacts are readily apparent, Local Programs recommends that the local agency start by taking the approach that the project will fit a CE classification. If either greater impacts or substantial controversy are identified later, the NEPA process can be upgraded to an EA or EIS.

When and how should NEPA for a project be reevaluated?

There are a few instances when NEPA must be reevaluated on a project that has previously received NEPA approval. The most common reasons for a project to update NEPA are:

- Change to the project scope.
- Passage of significant time—more than three years since last FHWA action.
- Passage of a new law or regulation.
- New ESA species or critical habitat listing.
- Change in the project area.

There are no regulations or guidance that specifies the format of a reevaluation, so an agency should work with Local Programs staff to select the method that best fits the information to be conveyed.

For relatively simple reevaluations, a letter or memo format is the most efficient way to convey the information pertaining to the reevaluation. The letter/memo should include the following:

- A clear statement of the reason(s) for the reevaluation.
- A summary of the impacts of the change(s).
- Updated or revised information supporting the determination that the original NEPA review is still valid. Depending on the nature of the change(s) that triggered the reevaluation, this may include a completed ESA re-initiation, Section 106 revised area of potential effects/determination of effect, or other analysis.
- A clear statement that the original NEPA review has been determined still valid. If this statement cannot be made, a new CE (or a Supplement for EA or EIS) is required.

For reevaluations that need to update information on several environmental disciplines, the preparation of a new CE documentation form along with updated environmental documentation, as appropriate, is a good way to convey the relevant information. On the CE documentation form, the preparer should state whether the CE documentation form is a reevaluation of the entire project or if it is limited to just the project changes and must be reviewed in combination with the original NEPA documentation. The FHWA Washington Division Office's policy is for the Area Engineer to review and approve reevaluations of all NEPA decision documents originally approved by FHWA. If the reevaluation finds new adverse effects, then a supplement will be required.

Does a subsequent project phase need to appear in the STIP before completing NEPA?

Prior to approval of final NEPA documents, FHWA regulations require that a subsequent phase of a project be programmed into the State Transportation Improvement Plan (STIP). Eligible phases include Right of Way and Construction. In cases where no federal money is available for a subsequent phase, projects may be listed in the STIP by allocating local agency money for a subsequent project phase.

Questions on the form

- ***CE Type.*** Identify one CE listed in Appendix A that fits the entire project. Consult with your LPE if the project does fit into one of CEs listed in Appendix A.
- ***What subsequent project phase is identified on the STIP? ROW ☐ Construction ☐*** Check the applicable box/s based on information provided on the STIP.
- ***A copy of the STIP page listing the subsequent project phase must be included with the CE documentation form.*** STIP pages are available on the Local Programs web page: http://webpub1.wsdot.wa.gov/LocalPrograms/Projects/Reports/ProjectSearch.aspx
- ***Local Agency Approving Authority.*** For local agencies with a Certification Acceptance (CA) agreement, this line is for the signature of the official authorized in the CA agreement. For non-CA agencies, this may be the city or county engineer, public works director, or an elected official. The local agency signature certifies that the project information in the CE documentation form has been reviewed and determined to be complete and accurate.
- ***Region Local Programs Engineer.*** This line is for the signature of the WSDOT LPE or a designated Assistant LPE. The LPE's signature certifies that the project description provided in the CE documentation form is consistent with the scope of the project, and that all the questions on the CE documentation form have been completed.
- ***Local Programs Environmental Engineer.*** This line is for the signature of either the EE or Local Programs Environmental Manager. The Environmental Engineer's signature indicates that the NEPA documentation has been reviewed and determined to be complete and to meet all applicable environmental requirements.
- ***Federal Highway Administration.*** This line is for signature by the FHWA Area Engineer for those CEs that require FHWA signature.
- ***Completed By (Print Official's Name).*** Print the name of either the person that prepared the document or the key contact at the local agency. This information is often overlooked, but is very important in the review of the documentation. The intention is to provide a local agency contact name in case questions arises about the project documentation.
- ***Telephone (include area code).*** Provide the telephone number of the key contact.
- ***E-mail.*** Provide the e-mail address of the key contact.

PART 3 – PERMITS, APPROVALS, & RIGHT-OF-WAY

What permits and approvals are required for my project?

Part three of the CE documentation form requests information on the permits, approvals and right-of-way (ROW), and any other federal agencies that have a federal nexus (approval actions or funding) required for the project. FHWA and Local Programs have neither a role in nor the responsibility for obtaining permits and approvals, although there are reporting requirements for FHWA, and Local Programs may assist FHWA in obtaining planned and actual permit schedule information from the local agency. It is the responsibility of the local agency to coordinate with federal, state and local permitting agencies to secure the necessary permits. The local agency is also responsible for ensuring that all ROW acquisition complies with the applicable federal regulations and requirements.

When should I start discussing my project with permitting agencies?

To minimize the risk of delays arising during the completion of the environmental process, local agencies need to recognize the specific submittal packages and review timeframes of the various resource agencies. Early coordination meetings and site visits with permitting agencies are recommended in order to avoid delays to project schedules. Local Programs recommends including the EE in early coordination meetings. Prior to agreeing to mitigation or other environmental commitments, the local agency should always consult with the EE and FHWA Area Engineer to ensure that it is warranted and will be eligible for federal reimbursement.

Federal agencies typically cannot issue permits, including 404 permits, until after NEPA has been completed. Many federal agencies will adopt FHWA's NEPA process provided that it has been agreed to in advance. Part II of this guidebook explains how to coordinate NEPA on projects that have federal nexuses with multiple federal agencies.

Where can I find more information about permits that might apply to my project?

Both the Governor's Office of Regulatory Assistance and WSDOT have web pages that provide useful information on the state and federal permits that could be required for a project.

Under what circumstances is it allowable to acquire ROW prior to starting NEPA?

Per 23 CFR 710.501, it is allowable to acquire property for the project prior to starting NEPA provided that acquisitions do <u>not</u> limit the selection of alternatives or have adverse environmental impacts. See LAG Chapter 25 for a thorough explanation of federal requirements related to early acquisition of ROW.

All properties purchased <u>for the project</u> prior to starting NEPA must comply with the following conditions:

(1) The property is not a 4(f) land per 23 U.S.C. 138.

(2) The property is acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
(3) The action is in compliance with Title VI of the Civil Rights Act of 1964.
(4) The acquisition did not influence the environmental review for the project.

What are the instructions for documenting compliance with the NEPA conditions for ROW acquired prior to the NEPA start date?

For projects that acquire ROW for the project prior to starting NEPA, the local agency must consult with the LPE and Environmental Engineer to determine whether additional documentation will be required.

What if a project has a federal nexus with multiple federal agencies?

It is critically important to identify as early as possible whether a project is going to have nexus with more than one federal agency. A common example of this is a FHWA-funded project that crosses U.S. Forest Service lands. Another is a project that receives funding from both FHWA and the Federal Transit Authority (FTA). In such cases, it is important to get the federal agencies together at the beginning of the environmental process to agree on how the NEPA process will be conducted to satisfy both Federal agencies. In some cases, there will be co-lead federal agencies. In others, it will be possible for one of the federal agencies to serve as the NEPA lead for both agencies—provided that there is an agreement on documentation requirements and that the other federal agency serves as a cooperating or participating agency. Working this out at the very beginning of the NEPA process will save considerable time and will help to prevent problems from developing later.

Questions on the form

- ***Is permanent ROW acquisition needed?*** Check either Yes or No. No ROW acquisition needed means that the proposed project can be built entirely within the existing roadway facility. Existing ROW is defined as land already incorporated into the roadway facility, or land previously certified under a previous federal-aid project. New ROW is defined as land necessary for construction, operation and maintenance of the proposed project.
- ***Is any temporary ROW needed?*** This includes temporary easements and permits that are needed to complete the construction. Permits and easements are generally considered ROW acquisition (the facility may be something other than roadway for transportation enhancement projects).
- ***Has ROW already been acquired for this project?*** For the purpose of answering this question, ROW is defined as land acquisition that was made specifically for the project; this does not include properties within the existing ROW that were purchased as a part of a previous project. If yes documentation demonstrating compliance with 23 CFR 710.501 may be needed -- contact your LPE and EE for guidance.

- ***U.S. Coast Guard Permitting*** The purpose of this question is to determine if a bridge permit from the USCG will be required. Sometimes the USCG does not have jurisdiction over the waterway that is being crossed by the project, sometimes they have jurisdiction over the waterway, but the work proposed is exempt from USCG bridge permit requirements if properly documented, and in some cases, the project will require a USCG bridge permit.
  - *Does the project propose any new or modify <u>any</u> existing bridges or culverts crossing a waterway?* Check either Yes or No.
    - *If Yes, attach a copy of the jurisdictional determination email from the U.S. Coast Guard*. <u>NEPA cannot be approved without a copy of the jurisdictional determination email from the Coast Guard.</u> Contact Mr. Danny McReynolds at (206) 220-7234 (Danny.G.McReynolds@uscg.mil) to request a USCG jurisdictional determination.
- ***Other Federal Agencies.*** The purpose of this question is to identify any federal agencies that might need to be co-lead on the NEPA. Identify all federal agencies with land holdings in the project area (for example, US Forest Service), that need to issue a permit (for example, U.S. Army Corps), or that are providing funding (for example, Federal Transit Administration).

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PART 4 – ENVIRONMENTAL DISCIPLINES

Parts four and five of this guidebook address the nineteen environmental disciplines that must be considered to fulfill the requirements of NEPA and comply with other environmental legislation. For many simple projects the answers to the questions on the CE documentation form will provide sufficient documentation. For more complex projects, the CE documentation form must be supplemented with discipline reports that provide more robust analyses and discussions of environmental disciplines. If there is a question or concern regarding the need for preparation of a discipline report, the local agency should contact the LPE who will set up a meeting with one of the EEs to provide direction.

Local agencies should always ensure that basic project information, such as the project description, provided in discipline reports is consistent with what is in the STIP, the Project Prospectus, Local Agency Agreement and CE documentation form. In addition, authors of discipline reports should always remain factual and avoid introducing speculative or unnecessary background information.

How can a local agency ensure an appropriate level of documentation?

Great care should be taken to avoid the preparation of either unnecessary or over-documented discipline reports. As previously mentioned, the answers to the questions on the CE documentation form frequently provide sufficient information for many routine projects. Many questions allow space for additional explanation to be added to provide supporting documentation for the answer, such as citing an information source or documenting a field visit.

To assist with the preparation of discipline reports, WSDOT has developed a series of templates and outlines, which are available on WSDOT's environmental website and in this guidebook. However, it is important to keep in mind that these templates are only a starting point. In most instances, they do not fully explain the proper scaling of analysis and discussion for a range of potential projects. "Right-sizing" requires consideration of both the project's potential impacts and the applicable regulatory requirements.

For example, a cultural resources discipline report for an overlay project that requires a construction detour through in a downtown historic district would be significantly less complex and require significantly less effort to prepare than would a street-widening project in the same location. In the first example, the potential effects needing to be analyzed under Section 106 and 4(f) would likely be minimal. The second project example, however, would likely require surveys for buried cultural resources, an analysis of potential construction impacts on historic buildings, and possibly a discussion of mitigation measures.

4.1 Air Quality

When do air-quality regulations apply to my project?

Local agencies must consider the potential impacts from a project on air quality for all non-exempt projects located within non-attainment or maintenance areas for criteria air pollutants. There are currently no non-attainment areas in Washington State. There are maintenance plans for carbon monoxide (CO), particulate matter (PM_{10} and $PM_{2.5}$). Non-attainment areas are areas that the Environmental Protection Agency (EPA), Department of Ecology (Ecology) and local clean air authorities have determined to be in violation of the National Ambient Air Quality Standards (NAAQS) based on measured data. Once a non-attainment area achieves compliance with the NAAQS, the area is considered a maintenance area until compliance has occurred for two consecutive ten-year periods.

Ecology maintains a series of maps on their website that identify the location of all non-attainment and maintenance areas within the state. Chapter 425 of the EM provides more detail on air-quality requirements, process, documentation, and examples.

Projects exempt from air quality analysis are listed in 40 CFR 93.126 and are provided in Appendix G. If the project is not exempt, a quantitative project-level analysis of potential air-quality impacts ("hot-spot" analysis) is required. Examples of non-exempt projects include new dedicated left turn lanes, increased capacity and/or travel lanes, and/or adding a traffic signal. Further definition is provided below.

What are project-level conformity and hot-spot analyses?

Project-level conformity is used to ensure that the project will not exceed NAAQS and/or is included in the current Transportation Improvement Program (TIP). The TIP is modeled on the regional level to ensure that all the projects in a region conform to the State Implementation Plan (SIP) that included emission level limits for the nonattainment or maintenance area where the project is located. Currently project-level conformity, or hotspot, analysis, applies only to non-exempt projects within CO, $PM_{2.5}$ and PM_{10} non-attainment and maintenance areas.

The project-level analysis must be submitted to the Region Local Programs office for review by WSDOT experts. Review of discipline reports typically requires three to four weeks and may require more than one revision of the document.

What kinds of projects require a hot-spot analysis?

For non-exempt projects within non-attainment/maintenance areas for CO, a hot-spot analysis may be required. The most current version of MOVES emissions model and CAL3QHC air dispersion model must be used to demonstrate conformity. A project that meets the following conditions needs to prepare a CO hot-spot analysis.

- Projects that will affect one or more intersections by adding a new dedicated left turn lane, increase capacity and/or travel lanes, and/or add a traffic signal, <u>and</u>

- Projects affecting intersections at level of LOS D, E, or F, or those projected to change to D, E, or F with the project in a future year, or
- Affect one or more of the top three intersections with the highest traffic volumes, or worst level of service (LOS) in a non-attainment or maintenance area as identified in the applicable SIP.

A hot-spot analysis may be required for non-exempt projects within $PM_{2.5}$ and PM_{10} non-attainment and maintenance areas that:

- Build new or expanded highway, bus or rail terminal, and transfer points that have ADT greater than 125,000 ADT and 8% or more of heavy duty trucks.
- Contribute to a 10% increase in heavy duty truck traffic.
- Affect locations, areas or categories of sites identified in the $PM_{2.5}$ or PM_{10} SIP as sites of violation or possible violation.

The most current version of MOVES emissions model and CAL3QHCR or AERMOD dispersion models must be used to quantify project-level PM emissions for project level conformity.

Should Mobile Source Air Toxics (MSATs) be addressed in NEPA documents?

FHWA and Local Programs do not recommend analyzing MSATs for NEPA CEs. However, Local Programs and FHWA do recommend that local agencies follow the Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents (FHWA, 2012) for preparing NEPA EAs and EIS documents.

Should greenhouse gas emissions and climate change be addressed in NEPA documents?

Local Programs and FHWA recommend that local agencies follow the *Guidance for Project-Level Greenhouse Gas and Climate Change Evaluations* (WSDOT, March 2013) when preparing EAs and EIS documents. However, analysis of greenhouse gas emissions and climate change are not needed for CE-level projects.

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.1.

- ***Is the project exempt from air quality conformity requirements?*** A project is exempt from regional conformity analysis if it is included in the current TIP. A project is exempt from project-level conformity when it is on the list of exempted project types, per 40 CFR 93.126/127.
  If the project is exempt, check Yes and note the appropriate exemption.
- ***Is the project included in the Metropolitan Transportation Plan?*** Identify whether the proposed project is included in the local Metropolitan Transportation Plan; check either Yes or No. All transportation projects that include federal funds or are regionally significant must be analyzed for regional air quality emissions. The regional analysis is modeled by the local metropolitan planning organization (MPO) or regional transportation planning organization (RTPO). Exemptions to the

regional analysis are outlined in Appendix. The list of exemptions can also be found in 40 CFR 93.126 and 40 CFR 93.127.

- ***Date.*** If the response to the previous question was Yes, enter the date of adoption of the plan and the TIP project number into the space provided.
- ***Is the project located in an Air Quality Non-Attainment Area or Maintenance Area (for carbon monoxide, ozone, PM_{10}, or $PM_{2.5}$)?*** Check either Yes or No. Local agencies should refer to the previously referenced Ecology maps for determining the location of non-attainment and maintenance areas. If the proposed project is located in a non-attainment or maintenance area, check Yes. If the proposed project is not located within a non-attainment or maintenance area, check No and proceed to Part 4, Question 2 of the CE documentation form.

What are the common elements in an air quality report?

- Introduction, including narrative of the analysis and/or EPA models used and project-conformity status including any mitigation strategies if applicable.
- Summary of the affected environment, including existing air-quality conditions / attainment status, major terrain features, and meteorology.
- Studies performed, and relation to regional transportation improvement plans.
- Modeling performed and assumptions; for example, traffic conditions, number of lanes, growth, signal timing.
- Qualitative and/or quantitative analysis of impacts for each alternative, including no-build.
- Qualitative or quantitative analysis of MSATs for each alternative including no-build if applicable.
- Project conformity statement, including results of the hot-spot analysis, as appropriate.
- Construction activity impacts and recommended mitigation.

4.2 Critical & Sensitive Areas

Critical and sensitive areas can be thought of as landforms that provide important ecological functions within their surrounding environment. The Growth Management Act (GMA) definition of critical areas includes the following areas and ecosystems:

- Areas with a critical recharging effect on aquifers used for potable water.
- Geologically hazardous areas.
- Fish and wildlife habitat conservation areas.
- Wetlands.
- Frequently-flooded areas.

This section of the CE documentation form requires information on environmentally sensitive areas that require some type of federal permit or approval and species/habitats of local significance.

4.2(a) Sole Source Aquifer Areas

"Sole Source" Aquifers are designated by EPA because they provide the sole source of drinking water for an area. Contamination of a sole source aquifer would threaten human health.

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.2(a).

- ***Is the project within a Sole Source Aquifer Area?*** Answer by checking either Yes or No. Local agencies should check with their Planning and Water Resources departments to determine if a Sole Source Aquifer area is present in the project area.
- ***If located in a sole-source aquifer, is the project exempt from EPA approval?*** Check either yes or no. If the proposed project is located within either a Sole Source Aquifer Area the local agency must consider whether or not the project is exempt. On October 1, 2014, FHWA, EPA and WSDOT signed a Memorandum of Understanding (MOU) that established a list of exempt projects (Appendix H).
    - **If *yes, please list exemption.***
    - ***If no, date of EPA approval*.** If the proposed project does not fit within the list of exempt activities for a Sole Source Aquifer, the local agency must contact EPA's Sole Source Aquifer Protection Program and obtain their review and approval for the proposed work. The MOU sets a 30-day time period for EPA to review and respond on FHWA-funded transportation projects. If the agency initiates the review, it is important to reference the MOU agreement. Alternatively, an agency may submit the appropriate documentation to their Region LPE, who will forward the documentation to the EE for coordination with EPA. If EPA does not respond within the 30-day period, the project may proceed.

The EM provides more detail on groundwater requirements, process, documentation and examples.

4.2(b) Wildlife, Rare Plants, and Habitats Not Addressed by ESA

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.2(c):

- ***Will this project impact species/habitat other than ESA-listed species?*** Check either Yes or No. This question is intended to address designated Priority Species that are not listed under the Endangered Species Act (ESA), designated Priority Habitats, and state-listed Rare Plants that are not protected under ESA; Part 5 of the CE documentation form addresses ESA-listed species. The Washington Department of Fish & Wildlife (WDFW) is the best resource for obtaining

information about known Priority Species and Habitats that occur in the project area. The Department of Natural Resource (DNR) Natural Heritage Program can provide assistance in determining the presence of state-listed rare plants.

This section should also explain any impacts to wildlife or their habitat that might create an impact to the road or traveling public. For instance, could the project result in additional wildlife crossings, thereby leading to increases in wildlife-vehicle collisions? In addition, will a traffic-safety problem (for example, vehicle collisions with wildlife) be relieved? Chapter 436 of the EM provides more detail on fish and wildlife requirements, process, documentation, and examples.

- ***Is the project within Bald Eagle nesting territories, winter concentration areas or Bald Eagle communal roosts?*** Check either Yes or No. If Yes is checked, provide a description. The Bald Eagle was removed from the list of threatened and endangered species on August 8, 2007. Despite the removal from protection under the Endangered Species Act (ESA), the Bald Eagle is still afforded protection under the Bald and Golden Eagle Act (Eagle Act) and the Migratory Bird Treaty Act. The Eagle Act makes is illegal to *take* a Bald Eagle—that is, kill, wound, pursue, shoot, poison, capture, trap, collect, disturb. *Disturb* is defined in the Eagle Act as to agitate or bother a Bald or Golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. The Bald and Golden Eagle Act applies to all projects and will require project proponents to consider the impacts of a proposed project on Bald and Golden eagles.

  The National Bald Eagle Management Guidelines is a tool for determining if a project can comply with the Eagle Act (such as through the use of timing restrictions). If a project cannot comply with the guidelines, a permit is required from the U.S. Fish and Wildlife Service for disturbance to bald eagles. Technical assistance for Bald Eagle issues and permits is provided by the USFWS field offices in Spokane, Lacey, and Wenatchee. A copy of the National Bald Eagle Management Guidelines is available on USFWS website (http://www.fws.gov/pacific/eagle/). It is the responsibility of the local agency to secure a permit when needed.

  Is the project within one mile of a Bald Eagle nesting territory, winter concentration area or bald eagles communal roost? Check either Yes or No. If Yes, the local agency must go to the US Fish & Website (http://www.fws.gov/pacific/eagle/) and work through the *Do I Need a Permit?* section. The local agency must print out the Certificate/Signature page, sign the Certificate and send it back with the signed CE form. If a permit is needed, contact your Environmental Engineer for further guidance.

4.2(c) Wetlands

This question solicits information on the extent of wetland impacts and any wetland mitigation that results from the project. FHWA uses this information to track impacts and mitigation associated with federally funded projects.

Questions on the form

The following bullet point provides guidance for preparing the response to the question in 4.2(d).

- ***Are wetlands present within the project area?*** Check either Yes or No. If yes, provide the area of impact to wetlands in acres. Typically, this information is contained in the wetland discipline report and/or the wetland mitigation plan. If available, please provide a copy of the wetland discipline report and wetland mitigation plan with the CE documentation form.

What should be included in wetland discipline reports and mitigation plans?

The WSDOT Environmental Services Office (ESO) web site provides report templates and other information on preparing both wetland reports and mitigation plans. Ecology's website provides additional information on wetland rating, delineation, and mitigation.

4.3: Cultural Resources

This section discusses the process local agencies must follow to consider the effects their projects may have on cultural resources. This process requires coordination with the Department of Archaeology and Historic Preservation (DAHP), affected Indian Tribes, and other interested groups.

What is Section 106 and when does it apply?

Section 106 is part of the National Historic Preservation Act of 1966. It applies when a project has a federal nexus—that is, it uses federal funds, needs a federal permits or approvals, or is located on federal land. Under Section 106, Federal agencies are required to consult with affected Indian tribes, the State Historic Preservation Officer (SHPO), and any other interested parties to consider the effect of the proposed undertaking (project) on historic properties. Historic properties are cultural resources that are either on or are determined eligible for listing in the National Register of Historic Places. Figure 2 summarizes the Section 106 process.

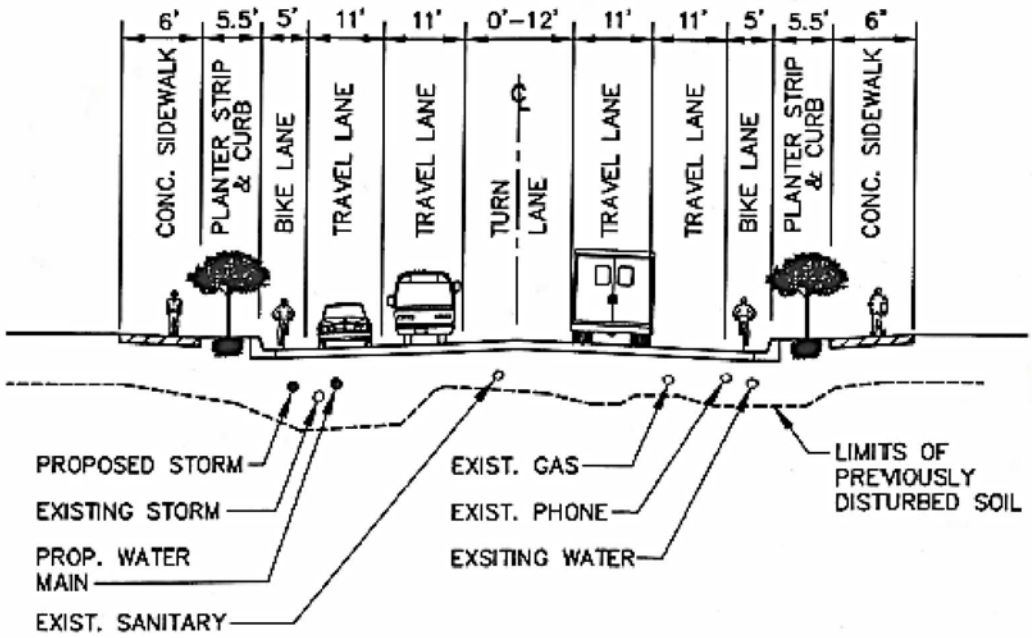
What are cultural resources?

A cultural resource can be a historic building, structure, site, object, structure, artifact, implement and location of pre-historical or archaeological interest. Typically, a resource must be at least 50 years old to be considered for eligibility as a cultural resource.

Are there any types of projects that are exempt from Section 106?

An undertaking of one or more of the types of projects listed in Appendix J will not require Section 106 review with SHPO, so long as the undertaking is limited to the types listed in Appendix J, and it is not a part of another undertaking. However, if at any time in the course of the undertaking information becomes available that would make this procedure inapplicable, including but not limited to the discovery of historic properties or human remains, Section 106 review must be initiated by WSDOT on behalf of FHWA.

Figure 1. Graphic demonstrating previous disturbance in project area.



What is a Traditional Cultural Property?

A Traditional Cultural Property (TCP) is a property or site that is 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 rooted in that community's history and important in maintaining the continuing cultural identity of the community. TCPs are most common with Indian tribes although a TCP may be applicable to other groups as well. It is important to coordinate early with tribes to identify TCPs.

What is an APE?

Per 36 CFR 800.16 (d), a project's Area of Potential Effects (APE) is a geographic area that defines the extent of potential impacts, regardless of whether or not cultural resources are present. The APE includes both a vertical and horizontal component—that is, it includes the depth of excavations required to construct a project. The transmittal of the APE to DAHP, tribes, and other interested parties

> **Tip**
> The typical APE is the project's footprint, plus adjacent properties that may experience indirect impacts.

usually functions as the official announcement of an undertaking and invites other parties to comment on the project.

The APE considers all proposed project activities and their potential to affect historic properties—for example, road grading, utility trenching, demolition of historic buildings or bridges, construction of access roads or disruption of a historic viewshed. These activities may also have an effect on adjacent historic properties or historic districts. Effects from construction staging, borrow pits, or disposal areas are also considered under Section 106.

What does my proposed APE documentation need to include?

APE documentation should include the following elements:

- Vicinity maps.
- Detailed project description.
- Section, township, and range.
- Simple plans showing the scope of work and cross-sections, if applicable.
- Photographs of the general setting.
- Areas of ground disturbance including rough estimates of excavation, if applicable.
- Information on known staging areas or borrow sites that will be used.

This documentation must be submitted to the LPE as an electronic PDF file less than 10 MB in size who will forward it to the Local Programs Archaeologist. Transmittal of Section 106 documentation is the legal responsibility of FHWA, who has formally delegated that responsibility to WSDOT.

What happens after the APE request?

No ground-disturbing work should commence until after Local Programs receives concurrence from DAHP. Once Local Programs' Archaeologist receives the concurrence on the proposed APE, the next step is to prepare a cultural resources survey. An individual who meets the Secretary of Interior's (SOI) Professional Qualification Standards (that is, requirements for specific education background and experience) must prepare the cultural resources survey. Local Programs does not accept cultural resource surveys that are prepared by individuals who do not meet the SOI standards. The survey identifies the cultural resources present within the APE, evaluates the cultural resources in regards to their eligibility for listing in the National Register of Historic Places and assesses the project's effect on the cultural resources. Effect determinations may consist of one of the following determinations:

- No Historic Properties Affected.
- No Adverse Effect to Historic Properties.
- Adverse Effect to Historic Properties.

The effect determination in the survey report is a recommendation based on the author's professional judgment. The ultimate determination of effect is made by Local Programs on behalf of the FHWA.

What is the review process for the cultural resources survey?

Upon completion of the survey, the local agency will submit the document to the LPE who will forward it to Local Programs' Archaeologist for review. The Local Programs Archaeologist will generally complete the review of the document within two weeks of receiving it.

Once the document is deemed ready for submittal, the Local Programs Archaeologist will forward it with a determination of effect for the project to the DAHP, the affected Indian tribes, and any other interested parties for review. All entities are afforded 30 days to complete their respective reviews. If no response is received within 30 days, the project may proceed.

Section 106 is complete when the SHPO concurs with Local Programs' determinations. If the SHPO or the tribes do not concur with Local Programs' determinations, additional coordination is undertaken to resolve the impasse. If resolution does not occur, the Section 106 regulations outline a dispute-resolution process.

What are Adverse Effects and a Memorandum of Agreement?

In the case of an adverse effect on an historic property, a Memorandum of Agreement will need to be prepared for the project and signed by the Local Agency, WSDOT, FHWA, and the SHPO, as well as affected Indian tribes and other interested parties, as appropriate. FHWA must also notify/invite the Advisory Council on Historic Preservation (ACHP) to participate in the MOA.

For projects needing to obtain a 404 permit, the Corps will be invited to participate in the development of the MOA and project-specific Programmatic Agreements (PA). For a project that fall under this category, the Corps will be included as an invited signatory to the project's MOA or PA.

A typical Memorandum of Agreement (MOA) includes the following elements:

- Legal text referencing the applicable statutes, notifications to the ACHP and the purpose for the MOA.
- Stipulations that will be undertaken to mitigate for the adverse effect to historic properties.
- Duration of the agreement.
- Monitoring and reporting requirements.
- Dispute resolution.
- Amendment process.
- Result of non-compliance/termination.
- Signature page.

The MOA may also include appendices, such as, archaeological site treatment plans, unanticipated discovery plans and supporting maps/figures.

How does Executive Order 05-05 apply to local agency projects?

The Governor's Executive Order 05-05 (EO 05-05) requires state agencies with capital improvement projects to consult with affected Indian tribes and the Department of Archaeology & Historic Preservation (DAHP) to determine potential impacts to cultural resources. "Capital Improvement Projects" are defined as projects that have received state funds from the Washington State Legislature. EO 05-05 is superseded by Section 106 of the National Historic Preservation Act, which means any project that has undergone Section 106 review automatically has satisfied the requirements of EO 05-05.

Any local agency that receives capital construction funds from WSDOT's Local Programs Division should contact their Local Programs Engineer before consulting with affected Indian tribes or DAHP. The Local Programs Engineer will discuss the proposed project with the Local Programs Archaeologist, who will determine if the project meets the exemptions in Appendix J. Projects that meet the exemptions are logged into a cultural resources tracking sheet and posted on the Local Programs' internet site. If the project cannot be exempted, the local agency will be notified and are then responsible for consulting with the affected tribes and DAHP. The Local Programs Archaeologist is available to assist local agencies in their EO 05-05 consultation — however the local agency serves as the lead agency in the process.

Where can I find additional information on the Section 106 process?

Chapter 456 of the EM provides more detail on cultural resource requirements, process, documentation, and examples.

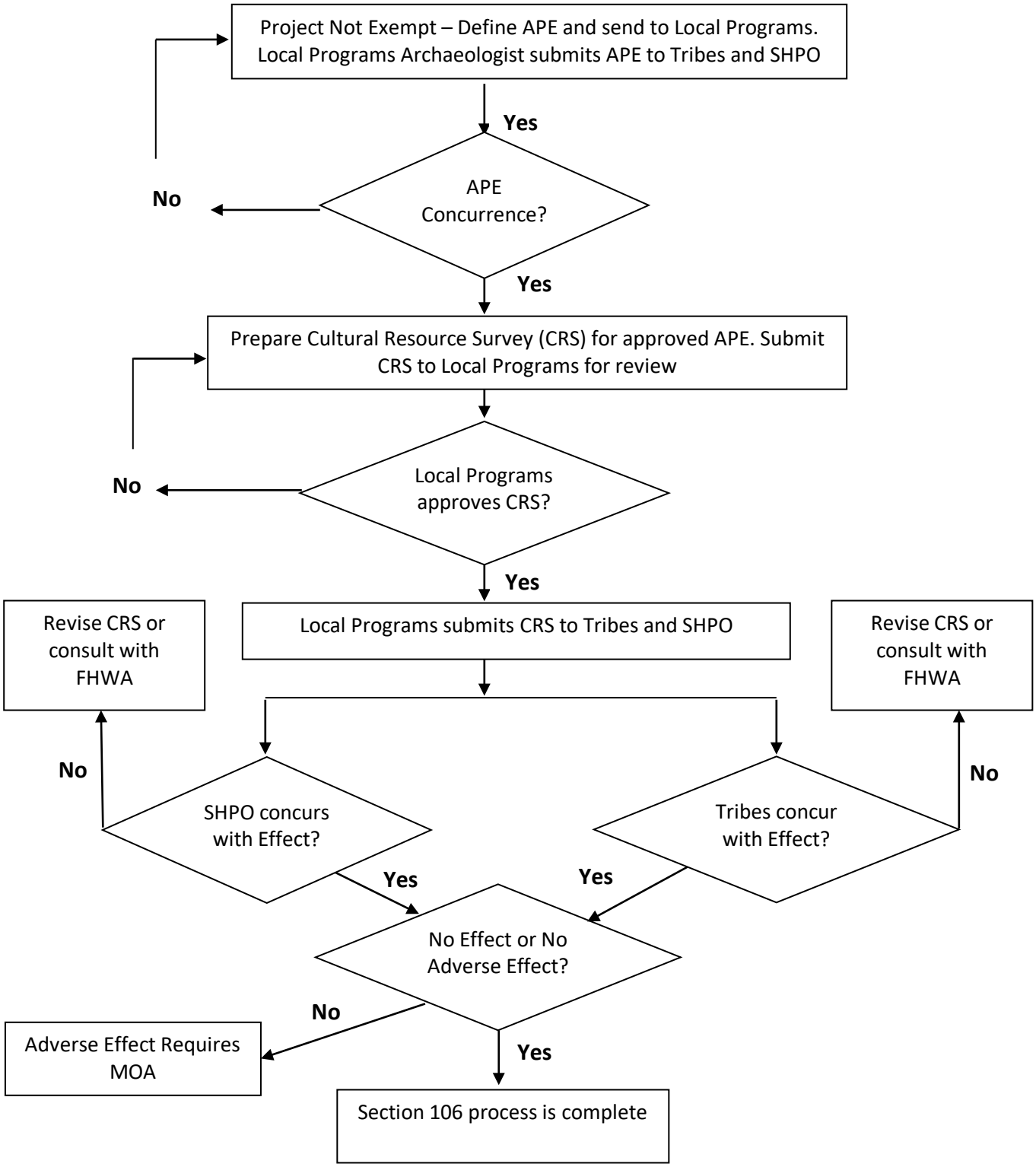
Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.3.

- ***Does the project fit into any of the exemptions listed in Appendix J of the NEPA CE Guidance Guidebook?*** Check either Yes or No. If Yes, note exemption. As a means of streamlining the consultation process, FHWA, FTA, WFLHD, WSDOT, ACHP, and DAHP entered into a programmatic agreement that allows certain types of projects to be exempted from further Section 106 review. The projects included in the programmatic agreements typically do not result in effects to cultural resources. As such, if a local agency's proposed project fits the list of project types in the programmatic agreement, no further consultation with DAHP, tribes, and any other interested parties is required. Appendix J outlines the list of exempt projects. If the proposed project fits the list of exemptions, note the specific exemption.
- ***Date of DAHP concurrence.*** If the proposed project does not fit the list of exemptions, the local agency must complete the Section 106 consultation process. The local agency should start this process as soon as the proposed project area is determined. Once the project area and proposed activities are known, the project's proposed APE should be submitted to Local Programs. The date of concurrence from DAHP is the date that must be noted on the CE documentation form.

- ***Date of tribal consultation(s) (if applicable).*** As discussed in the previous sections, consultation with the tribes will occur concurrently with the consultation with DAHP. Again, WSDOT is the only delegated entity permitted by FHWA to consult with the tribes. Any contact with a tribe, on the part of the local agency, is considered unofficial, but should be included in the NEPA documentation. The tribes may consult on a project at any point in the project development so it is best to initiate consultation early. In most instances, tribes are the only source for information on TCPs.
- ***Adverse effects on cultural/historic resources?*** This is determined by the results of the cultural resources survey and consultation between Local Programs and DAHP. Check either Yes or No.
- ***If Yes, date of approved Section 106 MOA.*** Provide date of the approved MOA.

FIGURE 2. Section 106 Process Flowchart



What are the common elements in a cultural resource survey report?

Cultural resources survey reports include the following common elements:

- Description and location of the project and the APE.
- Results of background research conducted at the DAHP or pertinent THPO offices.
- Survey methodology.
- Cultural resources within the APE.
- National Register evaluations of cultural resources within the APE.
- Determination of effect for any historic properties within the APE.
- Supporting photos, maps, figures, historic property inventory forms, archaeological site forms.
- References cited/bibliography.
- Tribal coordination—if applicable.

4.4 Floodplains and Floodways

What is a floodplain?

A floodplain is any land area susceptible to being inundated by floodwaters from any source. Usually the floodplain consists of the flat or nearly flat land on the bottom of a stream valley or tidal area that is covered by water during floods. One-hundred-year floodplains are mapped by the Federal Emergency Management Agency (FEMA).

What is a floodway?

A floodway is the channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively raising the water surface elevation more than a designated height.

The locations of the 100-year floodplain and 100-year floodways are mapped by FEMA. The planning and public works departments at local agencies typically have paper copies and/or electronic copies of FEMA floodplain and floodway maps. In addition, FEMA's website has electronic copies of floodplain maps for many areas.

What information do I provide?

An encroachment is defined, for the purposes of this CFR, as an action within the limits of the floodplain, and a significant encroachment is: A highway encroachment and any direct support of likely base floodplain development that would involve one or more of the following construction or flood-related impacts: (1) a significant potential for interruption or termination of a transportation facility, which is needed for emergency vehicles or provides a community's only evacuation route; (2) a significant risk or a significant adverse impact on natural and beneficial flood-plain values. 23 CFR 650.113 provides for FHWA approval of a significant encroachment only if the proposed action is the only practicable alternative, and this shall be supported by the following information:

- The reason why the proposed action must be located in the floodplain.
- The alternatives considered and why they were not practicable.

- A statement indicating whether the action conforms to applicable state or local flood-plain protection standards.

Questions on the CE documentation form

The following bullet points provide guidance for preparing responses to the questions in Section 4.4.

- ***Is the project located in a 100-year floodplain?*** Check either Yes or No. Indicate whether or not the proposed project is located within the 100-year floodplain.
- ***If yes, is the project located in a 100-year floodway?*** Check either Yes or No?
- ***Will the project impact a 100-year floodplain?*** Check either Yes or No. If Yes, describe the impacts. Impacts to floodplains are covered under 23 CFR 650 Part A. In particular, this portion of the CE documentation form covers impacts to the 100-year floodplain.

What are the common elements in a floodplain discipline report?

Chapter 432 of the EM contains general guidance, as well as FHWA guidance in Exhibit 432-2. Exhibit 432-1 is a checklist used by WSDOT to evaluate floodplain/floodway discipline reports. In summary, the discipline report should include the following elements:

- Introduction including an analysis of design alternatives with consideration given to capital costs and risks; and the magnitude, approximate probability of accidence, and the water surface elevation associated with the overtopping flood.
- Investigation of potential problems such as channel stability.
- Section on studies and coordination, including flood history, permits required, scour history, potential changes in watershed, etc.
- Summary of analysis done and conclusions reached.
- Discussion of whether the project will result in a significant encroachment as defined above.

4.5: Hazardous and Problem Waste

Do all projects need a Hazardous Materials Discipline Report?

For most CEs the completed CE documentation form provides the appropriate level of documentation on hazardous materials. A report typically is not needed when a project:

- Does not require new acquisition of land.
- Does not require excavation below the existing ground surface.
- Is located in a completely undeveloped area—must include historic research to show that buildings, parking or storage areas, or agriculture (other than grazing) were <u>not</u> present at the site.

When is a Hazardous Materials Discipline Report required?

A Hazardous Material Discipline Report is necessary when a project meets any of the following:

- Is primarily located in a developed area, where current and historic land uses are industrial, commercial and residential.
- Requires large portions of permanent or temporary property acquisition.
- Includes large amounts of excavation below existing grade.

A discipline report should be modified to fit the individual project needs. As stated in 40 CFR 1502.2, "Impacts shall be discussed in proportion to their significance" and "in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted." The level of documentation should be based on the complexity and size of the project, severity of potential contaminants, and other project specific conditions. The level of documentation must allow transportation staff to make informed decisions regarding the selection of alternatives, or mitigation measures and/or the necessity of initiating early coordination with relevant regulatory agencies. A reduced level of effort may be sufficient when a project:

- Requires minor amounts of temporary or permanent acquisition of property.
- Involves minor amounts of excavation below existing grade; for example, installation of guardrails, utilities, and illumination bases.
- Is located primarily in a residential or undeveloped area.

For nearly all small projects that need a Hazardous Materials Discipline Report, a low-level report provides the appropriate level of documentation for NEPA purposes. A low-level discipline report is less than 10 pages of text, not including attachments, and is conducted with limited research work in general accordance with ASTM 1527 for Phase I Environmental Site Assessments. The purpose of the report is to assess the sites along the project corridor for the potential presence of contamination. The report must be project specific and identify and evaluate known or potentially contaminated sites that may:

- Affect the environment during construction.
- Create significant construction impacts.
- Incur cleanup liability to the local agency.

When are additional reports required?

For NEPA purposes, additional investigation beyond a Hazardous Materials Report is only necessary if more information is needed to evaluate whether an identified impact may be significant in terms of environmental impacts or costs associated with mitigation, construction or future cleanup liability. Additional investigation beyond a Discipline Report is not preferable, as the Discipline Report should already provide the necessary level of detail to allow transportation staff to make informed decisions. For identified sites of concern that are not considered a significant adverse impact and can be reasonably managed with standard mitigation measures or BMPs, it is acceptable to recommend additional investigation after the completion of the NEPA process, such as additional investigation prior to acquisition or prior to the development of special provisions in the construction contract. However, occasionally additional investigations may be justified to further evaluate and determine potential significant impacts, such as a Phase I or Phase II Environmental Site Assessment.

A Phase I Environmental Site Assessment per ASTM 1527 is a study to identify potential contamination on a single piece of property. The investigation involves a historical land-use evaluation, records research, site reconnaissance and interviews. The only time a complete Phase I assessment per the 2005 standard should be conducted is when the local agency is planning to acquire a potentially contaminated property and legal counsel deems it necessary in order to secure a defense against future cleanup liability.

A Phase II Environmental Site Assessment is soil, sediment or groundwater sampling. Although sampling may be prudent for several reasons, rarely is it necessary for completing NEPA/SEPA documentation. Prior to completing NEPA/SEPA, a Phase II would be necessary if a site that cannot be avoided is identified as a significant impact and may have substantial contamination that may either impact the environment or the construction project. Otherwise, Phase II work is typically conducted after the NEPA/SEPA documentation phase and prior to acquisition and/or construction.

Where can I find more information?

The WSDOT Hazardous Materials web page has additional information on addressing hazardous materials issues associated with transportation projects. The Department of Ecology's web page is helpful in locating known or potentially contaminated sites.

Questions on the form

These questions are intended to start the process of evaluating the potential for a project to have significant impacts to either the environment or the construction project. Answering these questions will help Local Programs to determine whether the information on the CE documentation form will be sufficient or if additional documentation will be necessary.

The following bullet points provide guidance for preparing responses to the questions in Section 4.5.

- ***Does this project require excavation below the existing ground surface?*** Check either Yes or No. Excavation could expose an abandoned underground storage tank or a forgotten dump site. The local agency needs to consider where chemicals may have been historically used prior to the enactment of modern environmental laws. Investigating the local history is the key to assessing the hazardous waste risk.
- ***Will groundwater be encountered?*** Check either Yes or No.
- ***Will any properties be acquired as a part of this project?*** Check either Yes or No.
- ***Is this project located in an undeveloped area (that is, no buildings, parking, storage areas, or agriculture?*** Check either Yes or No. An area that has historically been industrial or commercial has a high risk of having contamination. Typically rural and agricultural areas do not have contamination that could pose a significant impact to the environment or the project. However, keep in mind that although an area may look rural and undisturbed it is not always the case. In Washington State many rural farms and timber processing areas would fuel, grease, and oil

equipment on site. The old "mom-and-pop" gas stations of the nineteen fifties are great examples of rural potential hazardous waste sites of today.

- ***Is this project located within a one-mile radius of a site of a known Superfund site?*** Check either Yes or No. Ecology's CSCS list includes the U.S. EPA's Superfund sites and Washington State cleanup sites. The one-mile radius is intended to follow current industry standard (ASTM 1527 – Phase I Environmental Site Assessment) for identifying sites that may be a source of contamination to a property. An area such as a port could have numerous sites recorded over a sprawling land base. Once again learning the local history is a key when reporting hazardous waste issues. Ecology maintains a database of sites and facilities that previously were or are known contaminated sites on their website. This site may be useful in searching for known sites within the project area.
- ***Is this project located within a 1/2-mile radius of a site or sites listed on any of the following Department of Ecology Databases?*** Check either Yes or No. If Yes, check whether the site is listed as a Voluntary Cleanup Program site, an Underground Storage Tank, Leaking Underground Storage Tank, or Confirmed and Suspected Contamination List. Several databases are available at Ecology to help research and report on the project's potential hazardous waste history.
- ***Has site reconnaissance (windshield survey) been performed***? Check either Yes or No. If yes, please identify any properties not identified in the database search that may affect the project (name, address, and property use). A field visit should take place before preparing the CE documentation form. Staff should field verify the locations identified in the Ecology records and look for other possible "red flags" in regard to potential hazardous waste issues. Old gas stations, dry cleaners, and equipment staging areas are just a few examples of land uses that have created hazardous waste sites.
- ***Based on the information above and project-specific activities, is there a potential for the project to generate acquire of encounter contaminated soils, groundwater or surface water?*** Answer either Yes or No; if yes, explain. Contamination can be generated from excavating soil or dewatering activities. If known, explain what type of work may generate the material and whether the quantities are expected to be large or small. The local agency must keep in mind that the proposed project has the potential to create a hazardous waste site—for example, accidental chemical spills can occur and demolition can lead to the release of asbestos. The local agency is required to provide a waste handling and disposal plan. Chapter 447 of the EM provides the details needed for documenting the CE. Potential hazardous waste issues should start being addressed early in the planning to avoid potential delays.

Answering yes to one or more questions does <u>not</u> mean that a hazardous materials discipline report will be required. Local Programs will help the local agency make that decision and has access to experts who can provide advice before paying for the preparation of a discipline report.

4.6 Noise

What are noise impacts and when do they trigger a noise analysis?

Increased noise resulting from a highway project can create impacts to people, as well as to fish and wildlife. Realigning a roadway or bridge can change a noise source's proximity and corresponding impact to the natural and built environment. Widening roadways or clearing away noise-blocking embankments can also increase traffic noise for people living near the project. Traffic noise levels of 66 decibels (dB) or louder is considered a traffic noise impact.

The four triggers for conducting a noise analysis are:

- Construction of a new roadway.
- Highway realignment: significant changes to the horizontal and vertical alignment of an existing roadway.
- Increase in the number of through traffic lanes on an existing highway.
- Altering terrain adjacent to a roadway to create a new line-of-sight from receivers to the roadway.

The above triggers are considered Type 1 activities (23 CFR 772.5) and require a noise study. If a noise study is required, the local agency will submit the completed discipline report to the LPE, who will transmit the document to the EE. The EE will coordinate a review of the document with appropriate WSDOT expert. This review typically requires three to four weeks and may require more than one revision.

WSDOT's Noise website, Chapter 446 of the EM and the 2011 WSDOT Noise Policy & Procedures provide more detail on noise study requirements, process, documentation and examples. Additional information is also available on FHWA's website.

What is noise mitigation?

If the modeling analysis indicates an impact, the consideration of appropriate mitigation is required. Noise barriers, of various types and sizes, are the most common mitigation for reducing traffic noise. However, their use must be deemed both reasonable and feasible.

- <u>Feasibility</u> of a proposed mitigation measure refers to whether the barrier is constructible and whether it can provide a certain reduction in noise levels. Figure 4 provides examples of noise wall locations and the subsequent effectiveness of noise walls. Once a noise wall has been determined to be feasible, reasonableness is considered.
- <u>Reasonableness</u> is determined according to a cost allowance applied to residences that are expected to be impacted by the project or who benefit from a noise wall. The amount of allowable cost per impacted residence (per FHWA 23CFR 772) is determined according to the modeled future sound levels. See the WSDOT noise policy for more details.

If the allowable mitigation cost is less than the minimum wall cost needed to achieve certain sound level benefits, then a noise wall is recommended. If mitigation is determined not to be feasible and/or reasonable, the decision must be documented and supported in the noise analysis.

Are there different levels of documentation required depending on the project?

In general, there are two levels that a noise discipline report can take: an abbreviated and a complete discipline report. A decision tree for when and how to conduct a noise analysis is mapped out in Figure 3.

An abbreviated Noise Report can be prepared for areas where no noise impacts have been identified and/or no sensitive receivers are present. The Traffic Noise Model (TNM) must be used to report noise levels adjacent to the roadway, but no analysis of abatement is required. An abbreviated noise discipline report using the must include the following:

- Project description.
- A written or visual description (as appropriate) of the project area outlining the land use and presence/absence of sensitive receivers.
- Traffic data used in modeling.
- Results of sound levels that extend as far from the roadway as traffic noise impacts are predicted to occur in the future build condition.
- Electronic copy of TNM model files.

A complete Noise Report is usually required when traffic noise impacts to receivers have been identified. The more thorough documentation is needed to explain the level of impacts and the feasible and reasonableness evaluation of mitigation. EM Section 446.08 WSDOT Noise Report Template and Checklist, available on the WSDOT Noise webpage, describe the specific information that must be included in a complete Noise Discipline Report as follows:

- Description of the project, and existing noise environment.
- Impacts from all alternatives, including the no-build alternative.
- Feasibility and reasonableness evaluation.
- Recommended mitigation.
- Maps and other visual aids.
- Typical sound sources and noise levels.
- The basis for traffic noise assumptions / modeling and field data.
- Electronic copy of TNM model files.

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.6:

- ***Does this project involve constructing a new road?*** Answer either Yes or No.
- ***Is there a change in either the vertical or horizontal alignment of the existing road?*** Answer either Yes or No.

- ***Does the project increase the number of through traffic lanes on an existing roadway?*** Answer either Yes or No.
- ***Will the project change topography adjacent to the roadway?*** Answer either Yes or No.
- ***If you answered yes to any of the preceding questions.*** Attach a copy of the noise analysis.

FIGURE 3. Decision tree for when and how to conduct a noise analysis.

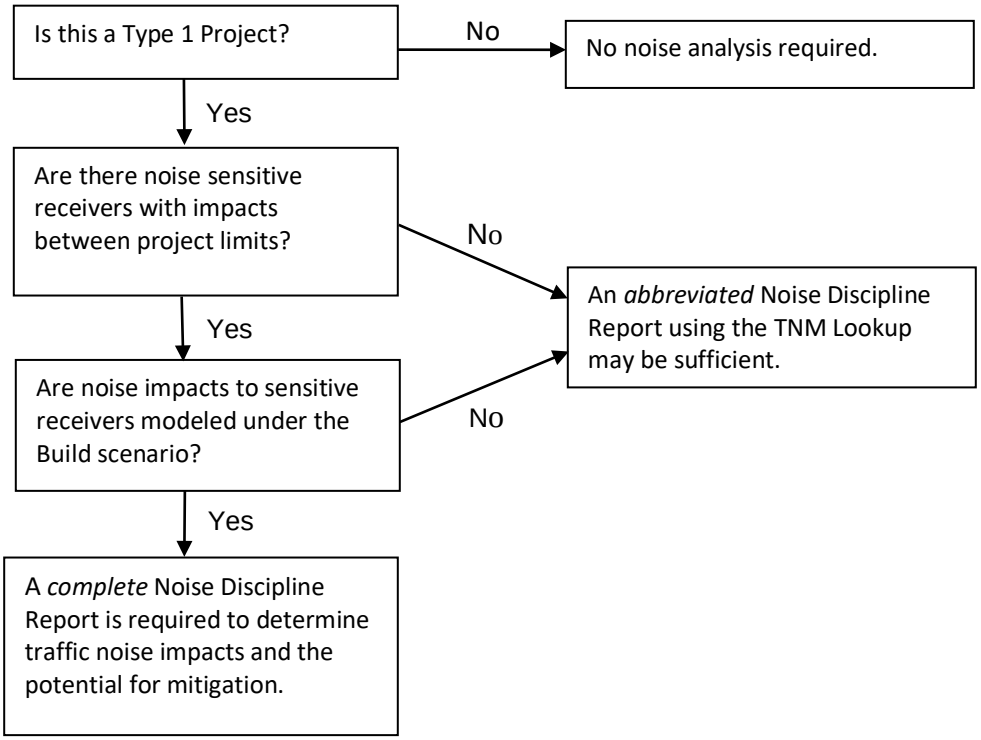
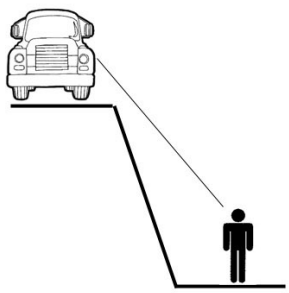
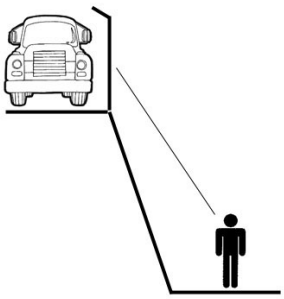
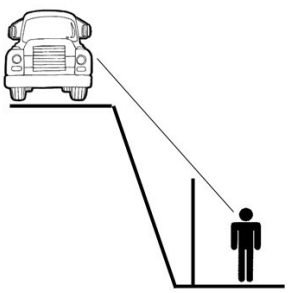
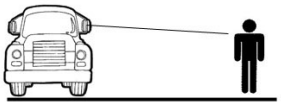
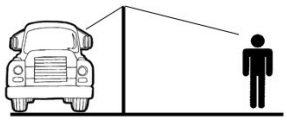
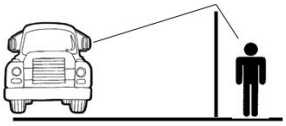
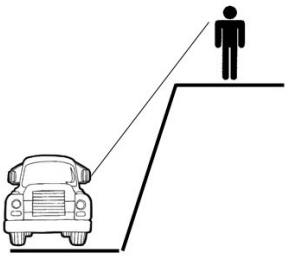
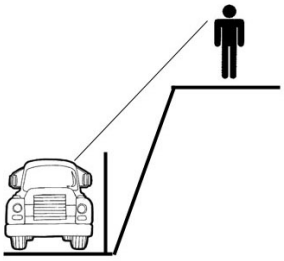
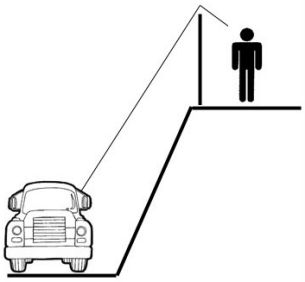


FIGURE 4. Effectiveness of noise barriers.

barrier / roadway	none	near source	near receiver
elevated	May be some noise reduction by terrain	Barrier is very effective	Barrier has no effect
			
level	Noise travels directly to receiver	Barrier is effective	Barrier is effective
			
depressed	May be some noise reduction by terrain	Barrier has no effect	Barrier is effective
			

4.7: Section 4(f), 6(f) Properties, Scenic Byways and Wild & Scenic Rivers

What is Section 4(f) and what is a 4(f) property?

Section 4(f) of the Department of Transportation Act of 1966 prohibits FHWA from approving the use of land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site, unless a determination is made that both of the following conditions are met:

1. There is no feasible and prudent alternative to using the property.
2. The proposed action includes all possible planning to minimize harm resulting to the property from such use.

If right-of-way is required from a 4(f) resource to build the proposed project, then it is considered a *use* of the resource. Establishing whether there will be a use of a 4(f) property is determined by answering yes to the following question: Are you incorporating land from a 4(f) resource into a transportation facility?

> **Remember!**
> After demonstrating that some alternatives are not feasible and prudent, additional analysis must be done on remaining alternatives to determine which one does the least overall harm.

Section 4(f) requirements apply to a historic site when the property is either on or eligible for the National Register of Historic Places. As such, the Section 4(f) and Section 106 processes should be closely coordinated.

The local agency may need to consider a number of different alternatives in its initial analysis to explore opportunities to avoid or minimize the impacts to the Section 4(f) resources. If the local agency neglects to discuss other alternatives that were considered but rejected in the evaluation, then the reviewers will presume that none were considered and may not concur with the evaluation.

What qualifies as not being feasible and prudent?

In order to select an alternative that impacts a Section 4(f) resource, a local agency must illustrate that a feasible and prudent avoidance alternative does not exist. Feasible means that, all other considerations aside, the alternative is conceivable from an engineering and constructability perspective. Alternatives generally will pass the feasibility test. Prudent allows the consideration of other factors, including:

- Not meeting the project's purpose and need.
- Excessive cost of construction—typically needs to be two or three times the total construction costs, not just the costs in the area of the 4(f) resource.
- Unacceptable adverse social, economic, or environmental impacts.
- Serious disruption of a community.
- An accumulation of a lesser magnitude of the above types of factors.

If it can be shown that a feasible and prudent avoidance alternative does not exist, then FHWA can approve an alternative that requires a use of a Section 4(f) resource. If a feasible

and prudent avoidance alternative exists, then FHWA cannot approve an alternative that uses a Section 4(f) resource. Consequently, it is very important to coordinate with WSDOT Local Programs and FHWA early whenever an agency suspects that their project will use a Section 4(f) resource.

What is the process for addressing a 4(f) resource?

When a project proposes the use of a Section 4(f) resource, a Section 4(f) evaluation is required. This evaluation may lead to one of the following:

- A *de minimis* impact determination.
- A programmatic evaluation.
- An individual evaluation.

The following three sections provide greater detail on how the process works for these different 4(f) determinations/evaluations.

What is a *de minimis* impact determination?

The passage of the SAFETEA-LU in 1995 provided streamlined opportunities for FHWA to simplify the Section 4(f) process for those projects determined to have *de minimis* impacts on 4(f) resources. Projects qualifying to use *de minimis* are <u>not</u> required to conduct analyses demonstrating that there are no "feasible and prudent" alternatives to using the 4(f) resource. To qualify, a project must have no adverse impact on the qualifying resource. FHWA's has prepared guidance and templates on documenting *de minimis* uses and temporary occupancies of 4(f) resources which can be found in Appendix K.

Upon receiving concurrence from the EE that the use of a *de minimis* determination appears to be appropriate, the local agency needs to acquire specific supporting documentation:

- A letter from the park/site manager supporting the project and stating that the 4(f) use is beneficial in nature and that the project will not adversely affect the features, attributes or activities qualifying the property for protection under 4(f).
- Documentation of public involvement regarding the *de mimimis* impact, typically minutes from a public meeting (such as a city council meeting) demonstrating that the use of *de minimis* on the project has been presented and discussed as an agenda item.
- For projects where there is a co-lead federal agency (for example, Corps of Engineers) in the NEPA process, the local agency also needs to provide a letter from the co-lead agency concurring with the use of *de minimis* on the project.

What is a programmatic Section 4(f) evaluation?

FHWA has prepared five programmatic evaluations to be used for projects having more than *de minimis* impacts on resources covered by Section 4(f). However, a project must demonstrate that it meets the criteria set forth in any programmatic evaluation. The criteria include the following:

- Independent walkway and bikeway construction projects.

- Historic bridges.
- Minor involvements with historic sites.
- Minor involvements with parks, recreation areas and waterfowl and wildlife refuges.
- Net benefits to a Section 4(f) property.

The programmatic evaluations do not exempt a project from Section 4(f), nor do they relax the requirements. Rather the evaluations offer a streamlined approach to coordination required under Section 4(f).

If the local agency determines that a programmatic evaluation is appropriate, then the agency must document their findings and submit a report to the LPE. The LPE will then forward the document on to the EE who, after reviewing the document, will send it on to FHWA for final review and approval.

Regardless of type of evaluation, a local agency typically must secure written concurrence from FHWA (or in some cases FTA or FRA), agreeing with the proposed project and use of the resource. An individual Section 4(f) evaluation may take a lengthy period of time to process. This process should be started early if potential impacts to Section 4(f) resources have been identified.

What is an individual Section 4(f) evaluation?

The individual evaluation is completed in several steps. The local agency begins by preparing a draft evaluation that includes a description of the following: the proposed project; each 4(f) resource; impacts to the 4(f) resource(s); avoidance alternatives; mitigation measures; and coordination to date. The draft evaluation undergoes reviews by the EE and FHWA, including a review by FHWA's legal counsel. Once FHWA is comfortable with the document, it is sent to the U.S. Department of Interior for a 45-day review. Upon completion of this review, the local agency prepares the final evaluation. The final evaluation is submitted to the EE, via the LPE, for review and transmittal to FHWA. The process is completed by FHWA's approval of the final evaluation.

Where can I find additional information?

AASHTO has a 4(f) Practitioner's Handbook that contains a wealth of up-to-date information on the Section 4(f) process. Chapter 455 of the EM provides details on the Section 4(f) requirements, process, documentation, and examples. In addition, FHWA's web page contains copies of the five programmatic agreements, as well as an informative policy paper that provides a variety of answers to common questions about Section 4(f).

What is a Section 6(f) property?

Section 6(f) of the Land and Water Conservation Act regulates the conversion of recreational property acquired or developed with Land and Water Conservation Funds to purposes other than public outdoor recreation. This dictates agencies securing Washington State Recreation and Conservation Office (RCO; formerly called the Interagency Committee

for Outdoor Recreation [IAC]) and National Park Service approval before converting the property to other uses.

What is the process for complying with Section 6(f)?

When it is determined that a project will require the use of outdoor recreation property, the local agency must contact the agency with jurisdiction over the recreation property to determine if RCO funds were used.

Once an agreement is reached with the property owner, the local agency must coordinate with RCO staff to obtain their approval. An assessment must be prepared and submitted to the RCO for review and approval. Typically, the RCO requires submittals two months prior to the next RCO meeting. Agencies should also afford a sixty-day period for NPS's review and approval.

Where can I find additional information?

Chapter 455 of the EM provides more detail on the Section 6(f) requirements, process, documentation, and examples. In addition, the RCO web page provides a list of contacts, as well as an interactive map that shows the location of projects that used Land and Water Conservation funds.

What are Wild & Scenic Rivers?

The Wild and Scenic Rivers Act designates certain rivers for special protection. Federally designated rivers within Washington State include:

- Illabot Creek, headwaters to approximately two miles upstream from its confluence with the Skagit River and just south of the Rockport-Cascade Road
- Skagit River, including various segments of its Sauk, Suiattle, and Cascade tributaries, upstream of the pipeline crossing at Sedro Wooley (classified as a wild and scenic river).
- Pratt River, from its headwaters to its confluence with the Middle Fork of the Snoqualmie River.
- Klickitat River, from Wheeler Creek to the confluence with the Columbia River (classified as a recreational river).
- White Salmon River, from its confluence with Gilmer Creek (near the town of BZ Corner) to its confluence with Buck Creek (classified as a part wild and part scenic river).

If a project will impact one of these designated rivers, a report discussing the impacts and mitigation measures must be prepared and coordinated appropriately with the agency with jurisdiction over the river. Chapter 453 of the EM provides more detail on the wild and scenic rivers requirements, process, documentation, and examples.

What are Scenic Byways?

The National Scenic Byways Program is a grassroots collaborative effort established to help states recognize, preserve and enhance selected scenic routes. A map of the Scenic Byways in Washington State is available on Local Programs' website.

Questions on form

The answers to the three questions in this section require the identification of 4(f) and 6(f) resources and impacts along with the presence of Wild & Scenic Rivers within the project limits. If none of these resources are present simply state none present. In cases where the project will have impacts on one or more of these resources it usually will be appropriate to simply refer to the discipline report.

4.8 Agricultural Lands

If the project will result in an impact to farmland, quantify the impact and provide perspective on its level of significance. *Farmland* means prime or unique farmlands as defined in 7 CFR 658.2. Farmland does not include land already in or committed to urban development or water storage. Farmland already in urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as urbanized area (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps.

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.8.

- ***Agricultural Lands.*** Answer either Yes or No. In this section give the legal description & estimated square acreage to any farm/agriculture land within the project area. Describe what the project will do to alter the farm property.
- ***If present, is resource considered to be prime and unique farmland?*** Answer Yes or No. Local Programs recommends contacting the Washington office of the NRCS or the local conservation district. The conservation district and Washington office of the NRCS will be able provide information on the location and use of agricultural land.
- ***If Yes, date of approval from Natural Resources Conservation Service (NRCS).*** If the farmland is determined to be prime and unique and the project will impact the resource, approval is required from the NRCS. 450 of the EM and the WSDOT Land Use web page provide more detail on the agricultural and farmland requirements, process, documentation, and examples.

4.9 Rivers, Streams or Tidal Waters

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.9.

- ***Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.*** Describe all water bodies located within 300 feet of the project. Description should include the names of the water body, distance from the propose project's limits, and a map.
- ***Identify stream crossing structures by type.*** List and map all stream crossings within the proposed project area. Describe stream crossings by type (box, pipe, open-bottom, etc.) include the dimensions. Include the name of the stream in question. Describe the stream's characteristics and provide a reference to any enclosed maps or plans.

4.10 Tribal Lands

Questions on the form

The following bullet point provides guidance for preparing the response to the question in Section 4.10.

- ***Tribal Lands – Identify whether the project will occur within any tribal lands including reservation, trust and fee lands. Please do not list usual and accustomed areas.*** Reservations are the most common and easiest to recognize. Throughout the history of Washington State many different programs were offered to the tribes and one of the earliest was giving the tribes the right to break off pieces of the reservation to sell or designate to their members. These designated areas, although no longer officially reservation land can hold treaty rights for the modern-day families. *Trust lands* are properties located off the reservation that are owned by a tribe. *Fee lands* are properties located off the reservation that are owned by tribal members or families.

  If the project is either located on or will impact tribal land, the local agency will need to coordinate with tribal police, natural resource staff, schools, and the cultural resource department. Each tribe will identify the appropriate contact. Keep that contact informed throughout the planning process. If a local agency project will impact tribal land, it is important to document the coordination that occurs, and to include a written approval for the project from the appropriate tribal contact.

4.11 Water Quality/Stormwater

What do I need to document about stormwater?

Stormwater is a significant issue in Washington State. While Ecology's stormwater management manuals for eastern and western Washington, WSDOT's Highway Runoff Manual (HRM), and a handful of local agencies' local-equivalent manuals outline the appropriate measures and standards for designing stormwater-runoff treatment and flow-control facilities, there are a number of variations in how federal and state resource agencies assess the impacts of those systems.

In designing the stormwater system, the local agency will consider a design storm and its impacts to a receiving water and/or discharge point, both prior and post construction. The resulting difference between the two scenarios determines the volume of stormwater that must be accounted for. Regardless of the design method or standard, the following questions must be addressed in an agency's analysis.

- Will stormwater generated as a result of the project have a significant impact to water quality and/or quantity?
- Has a NPDES construction stormwater general permit been obtained, or is it required?
- Does the discharge occur within a Phase I or Phase II NPDES municipal stormwater general permit designated area?
- Do any local/area-specific requirements apply; for example, TMDLs, critical area ordinances, shoreline master programs?
- What are the effects on ESA-listed species and designated critical habitat?

When do I need to prepare a surface-water discipline report?

A surface-water discipline report is typically required when a proposed project will result in one of the following:

- Increase the amount of pollutant loading to receiving waters.
- Increase peak-runoff flows to receiving waters.
- Involve work within waterbodies, buffers, or floodplains.

A surface-water discipline report usually is <u>not</u> required when a project:

- Does not increase the acreage of impervious surfaces.
- Does not increase traffic capacity.
- Does not present a significant risk of eroded sediments or spilled pollutants entering the water body.
- Does not involve in-water work.

If a discipline report is determined to be unnecessary, simply provide the appropriate justification on the CE documentation form.

Part 4, Question 11 of the form prompts consideration of how much existing and proposed new impervious surface is within the project limits and assists with the determination as to whether or not a discipline report is necessary.

How could flow control affect my project? Are there exemptions?

Controlling increases in discharge rates and volume requires increases in storage and/or replacement of infiltrative capacity—both of which add to the project's cost. Direct discharge to larger waterbodies may be exempt, per the 2011 HRM, Section 3-3.6.2. The 2011 HRM is available on the WSDOT website.

Common pitfalls to avoid

Chapter 430 of WSDOT's EM notes that if a project is in compliance with water quality permits, including the best management practices (BMP) contained within the HRM, then it is presumed to be in compliance with state and federal water quality standards. Furthermore, the chapter recognizes that the eventual BMP selection can only occur once adequate design information is available—typically after the NEPA process.

As such, it is inappropriate to commit to a specific BMP or location in the surface-water discipline report. Nor is it appropriate to agree to monitor the effectiveness of approved BMPs as mitigation measures. However, inclusion of general statements about the project's approach to stormwater design that identifies potential areas for BMP placement and that the stormwater design may vary as the project progresses are encouraged.

The HRM covers the entire state and meets the level of stormwater management established by Ecology. The HRM provides technically sound stormwater management practices, equivalent to guidance provided in Ecology's stormwater management manuals, to achieve compliance with federal and state water quality regulations through the *presumptive approach*.

Engineers and designers have the option of not following the stormwater management practices in this manual and seeking compliance via the *demonstrative approach*. However, this requires (1) demonstrating that the project will not adversely impact water quality by collecting and providing appropriate supporting data to show that the alternative approach protects water quality and satisfies state and federal water quality laws, and (2) performing the technology-based requirements of state and federal law.

Both the presumptive and demonstrative approaches are based on best available science and result from existing federal and state laws that require stormwater management systems to be properly designed, constructed, maintained, and operated.

Where can I find additional information?

Chapter 430 of the EM focuses on the types of things that need to be considered in a NEPA document to address stormwater. The WSDOT HRM provides guidance, flowcharts,

and other information needed to design stormwater facilities. Both the EM and the HRM are available on the WSDOT website.

Questions on the form

The following bullet points provide guidance for preparing responses to the questions in Section 4.11.

- ***Will the project's proposed runoff treatment and flow control facilities be consistent with the guidelines provided either by WSDOT's HRM, DOE's western or eastern Washington stormwater manuals, or a local agency equivalent manual?*** Answer either Yes or No. If No, please explain the proposed runoff treatment and flow control for new and any existing pollution generating impervious surface associated with the proposed project.
- ***Amount of existing pollution generating impervious surface within the project limits?*** Provide an estimate of the area (in square feet) of pollution generating impervious surface within the project area. Refer to the HRM for definitions on impervious surface.
- ***Net new pollution generating impervious surface to be created as a result of the project.*** Provide an estimate of the area (in square feet) of net new pollution generating impervious surface to be created as a result of the project. Refer to the HRM for definitions on net new pollution generating impervious surface.
- ***Amount of proposed post-project untreated pollution generating impervious surface.*** Provide an estimate of the area (in square feet) of post-project untreated pollution generating impervious. This often comes from threshold discharge areas below the 5,000 limit. Refer to the HRM for more information.

What are the common elements in a Surface Water Discipline Report?

The surface water discipline report typically includes the elements listed below.

- Summary of the conclusions: What were the findings of the report? Briefly discuss the impacts of the proposed project on water quality and quantity as well as any proposed stormwater management measures.
- Purpose and need of the action: Describe what the project entails and why it is being conducted. Make sure the descriptions are consistent with those of other discipline reports or documents.
- Description of alternatives under consideration: fully describe all alternatives being evaluated; include a summary of the water quality and quantity effects associated with each alternative and how the effects differ amongst alternatives.
- Studies, coordination, methods, and regulations: document the approach taken for the analysis. Justify the appropriateness and thoroughness of the approach. This includes a review of rules and regulations and the proposed project's compliance.
- Project area then and now: describe the existing environment, as a means of establishing the baseline to which the effects of the proposed project can be compared.
- Environmental consequences: this portion of the report is broken up into three sections. The first, comparison of alternatives, offers an impacts assessment for

each alternative, both during construction and operation, focusing on the effects to water quality and quantity. The second section, indirect and cumulative effects, offers an analysis of the potential future effects of the proposed alternative. Finally, the third section, conservation and mitigation, outlines the proposed measures that may be taken to prevent or minimize the adverse effects of the project, if applicable. This section should also have a statement on how the project complies with the WSDOT HRM.

4.12: Previous Environmental Commitments

Environmental commitments include both mitigation required through environmental permitting (e.g., 404/401, HPA) and conservation measures that are made to agencies (USFWS/NMFS) or the public to mitigate a project's environmental impacts.

What are the potential sources of environmental commitments?

Environmental commitments may arise out of various documents and at various stages of the environmental review process. Potential sources of environmental commitments include:

- NEPA documents.
- Section 106 Memorandum of Agreements.
- Biological Assessments and Biological Opinions prepared as part of Section 7 Consultations under the Endangered Species Act.
- Section 404 or other wetland waterway permits.
- State environmental agency permits or coordination.
- Other state, regional and local permits and coordination.
- Other study documents, agreements, Memoranda of Understanding.
- Other commitments to stakeholders.

Question on the form

The following bullet provides guidance for preparing responses to the questions in Section 4.13.

- ***Describe previous environmental commitments that may affect or be affected by the project – if any.*** One simple example is a wetland mitigation site that was constructed within the project limits as a part of a previous project. Another example is a project that agreed to preserve a 200' riparian corridor along a stream. Now ten years later as a part of a new/different project, the local agency proposes to construct a segment if a trail through the same riparian area. Failure to disclose and address this previous commitment places the local agency at risk of non-compliance.

4.13: Environmental Justice and Social Effects

Regulations that require federal agencies to identify and, where possible, avoid adverse affects on communities and protected populations include:

- EPA, Title VI of the Civil Rights Act of 1964.
- Civil Rights Restoration Act of 1987.
- Americans with Disabilities Act.
- Age Discrimination Act.
- Uniform Relocation Act as amended.

Executive Order (EO) 12898 further requires all federal agencies to consider the impacts of their proposed activities on low-income and minority populations – referred to as environmental justice (EJ) populations. The EO requires the federal agency to identify potential impacts on EJ populations and ensure those impacts are not disproportionately high and adverse.

Are any projects exempt from the need to analyze impacts on EJ populations?

Appendix L identifies the types of projects that are exempt from the need to analyze impacts to EJ populations. In order to qualify, all aspects of the proposed project must meet one of the listed exemptions.

What documentation is required for projects that do not qualify for an EJ exemption?

Projects that do not qualify for the exemptions in Appendix L must provide some level of documentation to address EJ. The level of the documentation, however, depends on the presence of EJ populations and the potential for populations to be adversely affected.

<u>Documentation for CE-level Projects with no EJ populations present</u>:

For a project that has no EJ populations present, the completed CE documentation form and EJ matrix Appendix M), along with both census and school data showing the lack of an EJ population in the census block or school service area, is sufficient documentation.

<u>Documentation for CE-level Projects with no impacts on EJ populations</u>:

For a project that has an EJ population present but does <u>not</u> impact that population, the EJ documentation must include:

1. EJ Matrix.
2. Demographic data -- census block and school data.
3. A written description of why the project will not have affects (e.g., noise, detours, etc.). This information may be provided on the form or as a separate memo.

Documentation for CE-level projects with impacts on EJ populations:

When a project impacts an EJ population, the documentation must identify the nature and extent of impacts and determine if the impacts are disproportionate and adverse using the methodology in Chapter 458 of the EM and on WSDOT's Environmental Justice website. The documentation should also identify any mitigation measures and include supporting analysis.

When must project information be translated to other languages?

EO 13166, *Improving Access to Services for Persons with Limited English Proficiency* (LEP), requires federal agencies to examine services provided and to ensure persons with LEP have meaningful access to those services. All local agencies in Washington State have either a Title 6 Plan or a Non-Discrimination Agreement, which identifies how the local agency will address communication with and outreach to limited English speaking populations. The commitments in these documents must be followed from project planning through construction.

There is no requirement for formal public involvement for a CE under NEPA. However, agencies may need to communicate with the public to comply with other regulatory requirements, such as *de minimis* Section 4(f) determinations, or to provide project information, such as dates of paving, or road closure and detour information. If demographic data from the census and closest elementary school indicate that 5% or 1000 persons or more in a project area speak a language other than English, public outreach materials (newsletters, websites, fliers, etc.) must do one of the following:

1. Contain a statement in the appropriate language(s) providing contact information where the LEP persons can obtain information on the project in the appropriate language(s).
2. Be printed (or provided electronically) in English on one side and in the appropriate language(s) on the other.

Must I document effects on elderly and disabled populations?

It is not necessary to demonstrate whether elderly and disabled populations are disproportionately affected. However, it is important to be aware of how they may be affected by the project since they are protected populations. It is especially important to consider their needs for public involvement, construction and design.

Where can I find additional information?

In addition to Title VI of the Civil Rights Act and the above Executive Order, see also FHWA technical advisory 6640.23 available through the FHWA website, WSDOT's website on Environmental Justice, and Chapter 458 of the EM.

Questions on the form

- ***Does the project meet any of the exemptions, as noted in Appendix L of the NEPA* CE Documentation *Guidebook?*** After referring to the exemptions listed in Appendix L, answer Yes or No. If the project is determined to meet an exemption, no further EJ documentation is required.
- ***If no, are minority or low-income populations located within the limits of the project's potential impacts?*** Answer Yes or No and attach the required documentation. The supplemental documentation required of projects that do not qualify for an exemption depends on two factors:
  1. Is a minority or low-income population present in the project area?
  2. Does the project affect a low-income or minority population?

  Additional information on how to properly document EJ is provided earlier in this section.

What are the common elements in an Environmental Justice discipline report?

As detailed on WSDOT Social and Community Effects web page, an Environmental Justice report should include the following elements:

- Introduction, including a definition of environmental justice, and information on the demographics of the affected area (percentages, etc.).
- Reference to Title VI of the Civil Rights Act of 1964, Presidential Executive Order 12898, and Presidential Executive Order 13166.
- Description of the methodology that was used.
- Description of public involvement effort, explaining the measures taken to include minorities and those with lower-incomes.
- Description of efforts to overcome any barriers to public involvement, such as language.
- Documentation of mitigation measures, and the community's response to these measures.
- Results of public involvement strategy.
- Description of adverse / disproportionate impacts and evaluation of alternatives against that definition; should include displacement, noise, impacts to employment or businesses, mobility, access, community cohesion.
- Description of benefits received.
- Summary, with recommended actions, and a determination of whether the project has resulted in high adverse and disproportionate impacts and, if it has, how these have been minimized and or mitigated.
- Documentation of data sources and methods used for determination.
- A template for an environmental justice discipline report can be found on the WSDOT environmental website.

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PART 5 – ENDANGERED SPECIES ACT & ESSENTIAL FISH HABITAT

Why write a biological assessment?

Section 7 of the Endangered Species Act (ESA) requires all federal agencies to ensure that any action authorized, funded or carried out by a federal agency is not likely to jeopardize the continued existence of any endangered, threatened or proposed species. The analysis of the project's effects on listed and proposed species is normally documented in a Biological Assessment (BA). The BA is used to initiate consultation with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). FHWA Washington Division requires that local agencies use the BA format on WSDOT's website.

What are effects and effect determinations?

The BA documents the effects of the proposed project on listed species and designated critical habitat. The effects are comprised of direct and indirect effects, all of which must to be considered within a BA analysis.

- **Direct effects.** Impacts resulting from the proposed action.
- **Indirect effects.** Effects that are caused by or result from the proposed action and are later in time but reasonably certain to occur.
- **Cumulative effects.** The effects of other, future state or private actions that are reasonably certain to occur within the federal project action area (This definition of cumulative effects is different from the one provided under NEPA.)

In addition to analyzing the effects from the proposed action, the BA must address the potential effects resulting from interrelated and interdependent actions.

- **Interrelated action.** An action that is part of a larger action and depends on the larger action for its justification. Interrelated actions are aspects of the project that would not occur "but for" the project; for example, the construction of a temporary access road would not be needed, but for the proposed project.
- **Interdependent action.** An action having no independent utility apart from the proposed action.

Based on the consideration of all impacts and actions (except cumulative effects), the BA will use one of the following effect determinations for each listed species and designated critical habitat that is addressed in the BA.

- **No Effect**. The appropriate conclusion when the proposed action will not affect a listed species or its critical habitat.
- **May Affect, Not Likely to Adversely Affect (NLTAA).** The appropriate conclusion when effects on listed species or critical habitat are expected to be discountable, insignificant or completely beneficial.
- **May Affect, Likely to Adversely Affect (LTAA).** The appropriate finding if any adverse effect on listed species or critical habitat may directly or indirectly result from the proposed action or its interrelated or interdependent actions, and the

effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but is also likely to cause some adverse effects, then the proposed action is likely to adversely affect the listed species. If incidental take is anticipated to result from the proposed action, a determination of likely to adversely affect should be made, requiring initiation of formal Section 7 consultation.

What is Local Programs' process for ensuring compliance with Section 7 of the ESA?

Local Programs' process begins with the completion of Part 5 of the CE documentation form. If an agency is able to respond to the questions with all No responses or an occasional Yes response with additional justification in the space provided, the effect determination for the species and designated critical habitat may be determined a no effect; in such instances the checklist will serve as the project's ESA no-effect documentation. If an agency cannot respond to all or most of the questions with a No, but the ESA biologist still believes that a no-effect determination is warranted, the preparation of a three- to six-page no-effect letter will be required. In other words, the project will require more justification than the checklist to support the effect determination. Regardless of the approach taken, a no-effect determination must be supported by sufficient documentation to allow an independent reviewer to understand the basis for the conclusion.

Consultation with the Services is not required for projects that are determined to have no effect on all listed species and designated critical habitats within the project's action area. Only the lead federal agency has the authority to assume the risk for making a no-effect determination. Once an agency has secured WSDOT's and FHWA's approval on a no-effect determination, the ESA process is complete. Consultation with the Services is required for projects with effect determinations of either NLTAA or LTAA.

How does the consultation process work?

When a project requires consultation with the Services, a BA is prepared by the local agency. Upon submittal of the completed BA to the LPE, the EE coordinates a quality review by a WSDOT ESA biologist. This review can take up to 30 days to complete. Upon completion of the review, the ESA biologist's comments are forwarded to the local agency. The BA is resubmitted to the LPE after all of WSDOT's recommended edits have been incorporated. FHWA's Web-Based BA Tool Local Programs' standard method for coordinating reviews and submitting BA's to the Services—more on this below.

For projects with an effect determination of NLTAA, the EE transmits the BA documentation to the Services to initiate informal consultation. ESA does not specify a time limit for informal consultation. Upon completion of the informal consultation, the Service(s) issue a letter of concurrence for the proposed action and the BA's findings. A copy of the letter of concurrence must be included in the NEPA documentation before the NEPA approval is finalized.

For projects with an effect determination of LTAA, the EE forwards the BA to the FHWA Area Engineer, requesting they initiate formal consultation -- only the lead federal agency can initiate formal consultation. Occasionally, FHWA requests additional edits to the BA prior to submitting it to the Services. Once the BA is determined to be complete, FHWA initiates formal consultation with the Services.

ESA regulations stipulate that formal consultation does not begin until a BA submittal is deemed complete. Some follow-up questions from the Services may follow their review of the initial submittal. Upon the completion of the consultation, the Services complete a Biological Opinion (BO).

Two important sections of the BO are the *incidental take statement* and the *terms and conditions*. The incidental take statement provides FHWA and the local agency with legal protection for the incidental take of listed species and adverse effects to critical habitat. The terms and conditions, which are intended to minimize the take that results from the project, are non-discretionary requirements placed on the project. Towards the conclusion of formal consultation, the Services share the draft terms and conditions with FHWA for review and comment by the local agency. If the Services conclude that the project will not jeopardize listed species or adversely modify critical habitats, issuance of the BO and acceptance of the BO's terms and conditions by FHWA concludes the formal consultation process.

Local Programs tracks the amount of time that formal and informal consultations take to complete with the Services. Informal consultations currently take between 60 to 300 days; formal consultations are taking between 220 to 400 days.

How do we handle post-consultation design and construction changes?

Like NEPA documents, ESA consultations are living records that follow a project through construction. ESA regulations (50 CFR 402.16) define when reinitiation of formal consultation is required. These are the four triggers:

- The amount or extent of taking as specified in the Incidental Take Statement (ITS) is exceeded;
- New information reveals effects of the action that may affect listed species/critical habitat in a manner or to an extent not previously considered;
- The action is modified in a way that results in effects not previously considered.
- A new species is listed or critical habitat is designated.

Project changes that occur after the consultation is complete require evaluation to determine if reinitiation is required or if a project update is necessary. Most common types of project scenarios requiring updates include:

- Changes to the physical project area or scope of work.
- Changes to timing restrictions, including in-water work windows.
- Changes to construction methods assumed in the BA and LOC or BO documents.

For projects under construction that have changes, early involvement with the EE is essential to keep the schedule intact, especially when timing restrictions apply to the consultation. The local agency will need to prepare a written explanation to update the ESA consultation record. This letter or memo includes the following information:

- What is changing.
- Reason for the change.
- Description of the physical impacts to the site.
- Graphics showing different construction methods and project limits.
- Impacts to critical or sensitive times for listed species.
- Statement about impacts to each of the listed species present, relative to the BO, ITS or conclusions made in the LOC.

The proposed change will be handled based on the explanation presented in the memo. When the memo does not require detailed analysis to support a "no effect" or "no new effects" conclusion, the change is handled solely by the EE. The EE sends the update simultaneously to FHWA and the Services with no further approvals required. The project may proceed with the proposed change.

When the memo does require detailed analysis to support a "no effect" or "no new effects" conclusion, the change requires additional approvals before the proposal can be implemented. If the original consultation was formal, the EE coordinates with FHWA to determine if a reinitiation is warranted. If a reinitation is not warranted, then the EE sends the update to the Services and requests a response. The proposed change cannot be implemented until the Services agree there is no change to the original conclusions in the BO. If the original consultation was informal, the EE may engage FHWA if the effects seem uncertain.

If a reinitiation is required, the project cannot proceed with the elements that triggered this review until the Services are engaged and provide direction for how to proceed. It is possible that certain work activities may cease until the consultation record is updated.

ESA updates will also require NEPA reevaluations to document that the changes will not impact other NEPA disciplines.

What is the Regional Road Maintenance Program and ESA 4(d) Coverage?

The Regional Road Maintenance Program (RRMP) consists of WSDOT and thirty-three local agencies in western Washington. In 2003 NMFS issued a BO on the RRMP granting members ESA coverage under Limit 10 of the ESA section 4(d) rule. Subsequently in 2011 NMFS provided written clarification that actions covered under the RRMP have satisfied their ESA Section 7 responsibilities and that projects that either have FHWA funding or require permits from the Corps qualified under the program. The RRMP defines the scope of actions covered under the program. Projects that are covered by

the RRMP include culvert replacements, placement of riprap that does not expand the original footprint, and mitigation required by other agencies. The benefit of this new approach is that qualifying projects no longer need to consult with NMFS under Section 7 of the ESA, which results in significant time savings of time. As a part of the RRMP, the participating agencies have agreed to: (1) training staff in the selection and installation of BMPs, (2) application of appropriate BMPs on projects, and (3) participate in the Regional Forum process. The thirty-one local agencies that that have received 4(d) approval from NMFS are listed in the table below.

TABLE 1. Public Road Maintenance Agencies Covered by ESA 4d

Bellevue	Kittitas County	Sea Tac
Bremerton	Lake Forest Park	Shoreline
Burien	Lakewood	Skagit County
Clallam County	Lewis County	Skamania County
Clark County	Maple Valley	Snohomish County
Covington	Mason County	Sumner
Cowlitz County	Mill Creek	Tacoma
Edgewood	Monroe	Thurston County
Everett	Newcastle	University Place
Kenmore	Pierce County	WSDOT
Kent	Poulsbo	Winlock
King County	Renton	
Kitsap County	Sammamish	

What is FHWA's ESA Web Tool?

FHWA's ESA Web Tool is Local Programs' standard method for coordinating reviews and submitting BAs to the Services. This tool, which establishes a website for each project, permits the team members to easily share, review and edit drafts of BAs. In addition, it allows Local Programs and FHWA to submit BAs electronically to the Services. This tool has the following advantages:

- Shortens time needed for internal reviews of BAs.
- Eliminates the need to print and mail drafts of the BA for internal reviews.
- Collects and archives relevant documents and correspondence.
- Enables users to check the status of the ESA consultation on-line.
- Expedites initiation and completion of consultation by the Services.
- Provides access to an online library of information pertaining to ESA.
- Provides access to an archive of ESA documents.

In the case of Biological Assessments (BA) submitted electronically using FHWA's ESA Web Tool, the local agency may work directly with the EE to get the process started; the LPE will be added as a "team member" ensuring that they are notified of the BA by email.

Please contact the LPE or EE for more information.

What is Essential Fish Habitat and how does it relate to ESA?

Under the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (MSA), NMFS was given legislative authority to regulate the commercial fisheries of the United States. In 1996 MSA was amended to emphasize the sustainability of the nation's fisheries and create a new habitat conservation approach. MSA calls for direct action to stop or reverse the continued loss of fish habitats. This habitat is called Essential Fish Habitat (EFH). Congress defined EFH for federally managed fish species as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Some ESA-listed fish are also commercially fished, so both regulations apply to those species.

Federal agencies must consult with NMFS on all activities or proposed activities that are authorized, funded, or undertaken by the agency that may result in an adverse effect to EFH. While there is some overlap with the ESA, the Magnuson-Stevens Act requires separate analysis and consideration. FHWA and NOAA have agreed to include the EFH analysis with a BA.

MSA also differs slightly from ESA with respect to the effect determinations. EFH only offers two options: (1) no effect on EFH and (2) may adversely affect EFH.
Similar to ESA, documentation that supports a finding of no effect on EFH does not require consultation with NMFS.

A finding of *may adversely affect EFH* does require consultation with NMFS, which is initiated by FHWA in a similar manner as described for the formal ESA consultation. NMFS will review the findings and offer conservation recommendations to the lead federal agency. The lead federally agency has thirty days to respond to NMFS, either indicating their agreement to implement the recommendations or the reasoning, with appropriate justification, as to why the agency has chosen not to implement the recommendations.

How does Local Programs address the designation of new critical habitat and listing of new species under ESA?

When the Services propose to either designate new critical habitat or list a new species, Local Programs implements the following procedure to ensure that local agency projects are in compliance with the Endangered Species Act.

(1) The Environmental Policy Branch Manager sends an email message to the LPE instructing them to identify all projects that may be affected by the proposed change. This email will contain a link to the federal register along with PDFs of maps

showing the known affected areas. In addition, this email will have a response deadline—typically one to two weeks, and will ask for the names and locations of all projects that have completed NEPA and that will not have completed construction prior to the expected date of the new species listing or critical habitat designation.

(2) The EEs follow up with the LPEs or their assistants to ensure that they understand what is needed and to offer their assistance.

(3) The LPEs work with local agencies as needed to develop the list of projects.

(4) Upon receipt of the list of projects from the Regions, the EEs review the project information and, if necessary, make site visits to make a preliminary determination of effect for the appropriate species or critical habitat. The Local Programs ESA Biologist will be consulted regarding making the preliminary effect determinations.

(5) Local Programs requests conferencing with the Service(s) if the conditional project effect determination is either *may affect, but not likely to affect* (informal conference) or *likely to adversely affect* (formal conference) for the proposed species or proposed critical habitat.

(6) Upon species listing or critical habitat designation, Local Programs reinitiates consultation with the Service(s) via a batched consultation to address the projects that were addressed previously via a conference.

All projects that are in NEPA review or that have not started NEPA address proposed listings/critical habitat designations by requesting conferencing (except on projects determined to have *no effect*). If the listings/critical habitat designations have occurred prior to biological assessment submittal, the projects follow the normal ESA consultation process.

Questions on form

Questions one through eleven are completed by checking either Yes or No. In addition, Questions one and ten require the local agency to attach current lists of ESA listed species for the action area. Species listings should be downloaded from the USFWS' and the NMFS' websites. In the USFWS IPaC website use the "Define Area" feature to drill down to your project area. This gives a more accurate listing than the entire county geographic listing. In addition, the specific locations of the ESA-listed species occurring within the action area should be obtained from WDFW's Priority Habitats & Species Program (wildlife) and DNR's Washington Natural Heritage Program (plants). Please refer to Appendix N for guidance on assessing the suitability of habitat for Northern Spotted Owls, Marbled Murrelets, Canada Lynx and Grizzly Bears.

Additional questions include:

- ***Effect Determination.*** Check the appropriate box for the effect determination. Leave the lines under NOAA Fisheries and USFWS blank; this part will be completed by the EE.
- ***Analysis for No-Effect Determinations.*** For projects determined to have No Effect on listed species, all questions responded to with Yes answers must be further

explained by describing why the project actions will not result in any effects to ESA-listed species. This explanation should be provided either in the provided space, or, if additional space is necessary, in a separate no-effects letter. This documentation must contain sufficient documentation for an independent reviewer to clearly understand the rationale for the effects call.

- ***Guidance specific to Question 11.*** *(Does a mature coniferous or mixed forest stand occur within 200' of the project site?) A "Yes" answer requires the following analysis.*
    - Maintenance-scope projects. These are projects, such as paving and guardrail installation, where the only potential impact to the natural environment is construction noise and visual disturbance. Only in *rural* areas do local agencies need to provide documentation to justify no effect calls related to construction noise where suitable habitat is present within 200' of the project -- typically, suitable habitat is assumed occupied unless information from species experts supports otherwise. This applies to common construction noise levels, and excludes activities like blasting, pile driving or sandblasting. This supporting documentation could include:
        - An aerial photo of the project area and adjacent lands. If mature forest is present, provide information from WDFW and/or USFS on the date of the last species survey in the area and if the species(s) could potentially use the site (for nesting in the case of murrelets and nesting/roosting/foraging for spotted owls.).
        - If the contact above determines that the species may be present, noise impacts must be evaluated. The considerations described in the last section should be reviewed to determine if a no effect call can be supported and documented.

    - Non maintenance-scope projects. This includes projects generating excessive noise (sandblasting, jack hammering, pile driving), or projects affecting lands beyond the road prism (tree removal, vegetation clearing) contact the EE to determine if no effect letter or a biological assessment will be needed. Factors to be considered are listed below.

What are the common elements in biological assessments and no-effect letters?

No-effect determinations must be documented either in Part 5 of the CE documentation form or in a separate no effect letter; this documentation must be sufficient for an independent reviewer to understand the basis for the conclusion. No effect letters should address the following considerations:

- Site visit.
- Distance to occupied and suitable habitat.
- Ambient noise levels (traffic).

- Project noise levels/equipment use.
- Project timing.
- Project duration.
- Site topography.

FHWA's Washington Division requires all BAs submitted to the Services to conform to WSDOT's BA outline. Both the BA outline and templates for no-effect letters are available on WSDOT's website. In addition, WSDOT's website provides detailed guidance on the preparation of BAs for transportation projects in Washington State.

PART 6 – FHWA COMMENTS

Who fills out Part 6 of the CE documentation form?

This section is for FHWA comments only. The FHWA Area Engineer uses this section to note any agreements or additional clarification for the purposes of their record keeping.

MISCELLANEOUS

Is the CE documentation form available in an electronic format?

The CE documentation form is available in both Microsoft Word and as a writeable PDF. The Word version of the form can be downloaded from the Local Programs Environmental webpage http://www.wsdot.wa.gov/LocalPrograms/Environment/.

How is a CE documentation form submitted and processed?

The local agency always submits the CE documentation forms and supporting environmental documentation through the LPE. The EE reviews the document and comments as appropriate. NEPA is complete when the CE documentation form is signed by the EE and, when necessary, by the FHWA Area Engineer. Upon final approval, the EE provides a copy of the signed CE documentation form to the local agency through the LPE.

How can I track the status of project documentation?

Local agencies can track the status of projects undergoing Section 106 review on Local Programs' Environmental website. Local agencies that use FHWA's ESA Web Tool are able to track the status of projects undergoing Endangered Species Act consultations.

APPENDIX A

23 CFR 771.117 – NEPA Categorical Exclusions

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23 CFR 771.117 – NEPA Categorical Exclusions

(a) Categorical exclusions (CEs) are actions that meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions that: do not induce significant impacts to planned growth or land use for the area; do 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; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by section 4(f) requirements or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section and normally do not require any further NEPA approvals by the FHWA:

(1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions that establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 23 U.S.C. 125; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (that may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

(23) Federally-funded projects:

(i) That receive less than $5,500,515.05 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) of Federal funds; or

(ii) With a total estimated cost of not more than $33,003,090.30 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in that there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, that may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 70 FR 24469, May 9, 2005; 74 FR 12529, Mar. 24, 2009; 78 FR 8983, Feb. 7, 2013; 78 FR 11602, Feb. 19, 2013; 79 FR 2118, Jan. 13, 2014; 79 FR 60115, Oct. 6, 2014; 81 FR 34274, May 31, 2016]

APPENDIX B

Local Programs Process for NEPA Environmental Impact Statements

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LOCAL PROGRAMS PROCESS FOR NEPA ENVIRONMENTAL IMPACT STATEMENTS

This document lays out a process for local agencies to follow for projects that require a NEPA Environmental Impact Statements (EIS). EIS-level projects are those expected to have significant adverse effects on the built and/or natural environment. Projects that rise to this level typically have severe effects that cannot be mitigated to insignificance. Often there is substantial harm to multiple resources, and public controversy regarding these impacts. Local agencies should not declare or initiate work on an EIS prior to consulting with and receiving concurrence from the LPE, the EE and the FHWA.

1. **Project brought to the LPE.** The local agency submits a new project to the LPE. In most cases the region has enough information to schedule a NEPA kickoff meeting with the EE and Environmental Manager.
2. **A project kickoff meeting is scheduled.** The EE reviews the project information and requests the LPE to organize a scoping/NEPA kickoff meeting. Attendees should include the LPE, EE, Local Programs Environmental Manager, FHWA Area Engineer, FHWA Environmental Program Manager, the local agency and their consultant (if one has been hired to work on the project). The following issues are addressed during the kickoff meeting:
    a. ***Determine federal nexus and roles.*** Identify the federal lead agency, and possible cooperating and participating federal agencies.
    b. ***Discuss purpose and need.*** Explain what problem we are trying to solve, and why this project is the solution to the problem.
    c. ***Discuss early alternatives.*** It is important to evaluate possible alternatives including the no-build alternative.
    d. ***Discuss information required - discipline reports and studies.*** These include documents required for compliance with other regulations such as Section 4(f), ESA, and Section 106.
    e. ***Establish communication protocol.*** Discuss how information will flow from the local agency to all parties.
    f. ***Discuss Coordination Plan and schedule.*** The local agency begins preparing the participating agency list, which includes federal and state resource agencies and some departments within local governments. The Coordination Plan documents how each agency will be involved. The schedule must include the target dates for issuing the Draft and Final EIS and the Record of Decision (ROD).
3. **Site visit and previous meeting(s) determine the required discipline reports.** The local agency, FHWA, LPE and EE review the list of NEPA disciplines. The site visit should provide enough information to determine which disciplines require a separate report and which disciplines can be documented in the EIS without additional supporting documentation. Additional discipline reports considered after this step require prior approval by the EE before the local agency begins writing any documents or reports.

4. **The EE invites cooperating and participating agencies to meetings to discuss the EIS process.** The EE provides the local agency with document templates that they must complete to initiate this process.
5. **Local agency's project office sends EIS notification letter to Local Programs Director.*** The purpose of this step is to ensure broad agreement on the NEPA compliance strategy.
6. **Draft participating and cooperating agency letters**. The EE reviews and finalizes the proposed participant list and sends invite letters.
7. **FHWA contacts their headquarters for "major infrastructure project" determination.** If yes, compliance with EO 13807 "One Federal Decision" (OFD) policy applies specific timelines and coordination steps to the EIS process for the project. On OFD projects, the NOI must be published 45 days after receipt of the letter in Step 7.
8. **Local agency develops Coordination Plan and schedule with cooperating or participating agencies.** Establish communication protocols and concurrence points. Describe methods used to identify stakeholders, community groups, and EJ populations and explain protocols for engaging with them in the public involvement plan.
9. **FHWA uploads the schedule to the Permitting Dashboard.** This must occur within 90 days of FHWA receiving the project initiation letter.
10. **Local agency project team drafts Environmental Scoping Package**. The Environmental Scoping Package consists of the following elements:
    - A brief explanation of what scoping is and how scoping will proceed.
    - A draft Purpose and Need statement.
    - A brief description and map(s) showing the project termini and all proposed alternatives.
    - A general description of the known environmental impacts and benefits of each alternative, extent of analysis needed for each resource, and potential mitigation.
    - A list of specific issues on which comments are requested.
    - The materials should: encourage reviewers to recommend improvements to the proposed alternatives; disclose environmental and social issues of concern; and emphasize that the preferred alternative has not been selected at this stage.
    - A schedule for completion of the environmental document.
    - An assessment of the potential for the project to meet MAP-21 Section 1319 requirements for combining the FEIS and ROD.
    - Public involvement plan.
    - Tribal coordination plan.
11. **FHWA concurrence on purpose and need statement and range of alternatives.** The EE, Local Programs Environmental Manager and FHWA Area Engineer review and approve the project's purpose and need. For OFD projects FHWA gets written concurrence from Cooperating Agencies as well. This review finalizes the purpose and need statement.

12. **Environmental scoping package sent to the participating agencies**. After review and approval, the EE submits the scoping package to the participating agencies. This package is used to present the project at the early-coordination meeting. The package is submitted to the participating agencies fourteen days before the scheduled event.
13. **Local Agency starts preparing required discipline reports.** Local agency sends first drafts of all required discipline reports to the LPE who reviews and forwards them on to the EE.

14. **The lead federal agency should obtain written concurrence from cooperating agencies** during the pre-NOI stage on: 1) Purpose and Need and 2) the range of alternative. A third concurrence point related to the preferred alternative occurs later in the process.
15. **Local agency provides draft Notice of Intent (NOI) to EE and FHWA.** The NOI must identify the date of the public scoping meeting. In addition, the NOI must identify the beginning and ending of the 30-day public and agency comment period on the Purpose and Need statement and the Range of Alternatives.
16. **FHWA publishes the NOI in the Federal Register.** This must be done within 45 days of receiving the project initiation letter from Local Programs (Step 7).
17. **FHWA uploads the schedule to the Permitting Dashboard.** This must be done within 90 days of the NOI publishing in the Federal Register (Step 15). In developing the project schedule, the local agency should plan to initiate permit activities, such as preapplication processes, as soon as possible.
18. **Scoping of the SEPA Determination of Significance by local agency.** Local Programs recommends that the local agency combine the NEPA and SEPA processes. However, this process may vary depending on the local agency's procedural requirements.
19. **Local agency publishes newspaper notices.** The local agency publishes public notices regarding the proposed project in newspaper.
20. **Scoping meeting(s).** This may be held as either a single meeting including both the participating agencies and the general public, or as two separate meetings. The local agency coordinates with the EE to plan and host the public scoping meeting. The meeting should provide displays and handouts focusing on the purpose and need of the project, the proposed alternatives, and the methods for analyzing impacts to local resources. The public scoping meeting must comply with Title VI Civil Rights Act; accommodations may be required (ADA accessible, translator, etc.).
21. **Thirty-day comment period for draft purpose and need and range of alternatives.** The comment period can begin with the public scoping meeting.
22. **Scoping comments addressed**. In close coordination with the EE and LPE, the local agency addresses scoping comments as appropriate.
23. **EE and cooperating and participating agencies determine methods for assessing impacts**. The EE must coordinate with resource agencies whenever standard practices identified in WSDOT's Environmental Manual web pages are modified.
24. **Local agency and FHWA identify final range of alternatives to be analyzed in the DEIS.** The local agency presents the proposed range of alternatives to the LPE. The

FHWA Area Engineer, LPE, EE and Local Programs Environmental Manager are required to concur on the proposed alternatives before approaching cooperating and participating agencies.

25. **For OFD projects, FHWA gets written concurrence from cooperating agencies on the preferred alternatives to be presented in the DEIS**. All parties need to agree on and have consistent understandings concerning the alternatives advanced for consideration.
26. **EE coordinates reviews of discipline reports.** The EE completes the initial review of discipline reports. If any are determined to be of poor quality, the EE returns them to the local agency for editing. After approval by the EE, discipline reports are forwarded to the appropriate discipline expert for formal review. The local agency is strongly recommended to make all of the recommended edits. The NEPA process does not proceed until all discipline reports have been approved by the EE.
27. **The LPE, EE, Local Programs Environmental Manager, FHWA Area Engineer and local agency review findings.** Once the discipline reports are complete, the LPE schedules a meeting to discuss the findings. At this time FHWA may decide to end the EIS process and proceed with a lower level of documentation.
28. **EE schedules DEIS kick-off meeting.** This meeting includes the LPE, EE, local agency and the assigned author of the document.
29. **EE and the Local Programs Environmental Manager review the DEIS working version.** DEIS reviews typically progress in the following steps: (1) outline, (2) *purpose and need* and proposed *alternatives* chapters, (3) *affected environment* chapters. Local Programs requires the reader-friendly format on all DEIS and FEIS documents.
30. **Local agency makes required edits on DEIS first draft.** The local agency is preparing the DEIS draft and is required to make all requested edits.
31. **EE and Local Programs Environmental Manager review the second draft.** The EE reviews the second draft to determine if the document can be passed on to FHWA.
32. **EIS number assigned.** FHWA assigns the project an EIS tracking number.
33. **Preliminary DEIS reviewed by FHWA, including legal review.** The FHWA requires legal review on all preliminary DEIS projects. The EE will coordinate with the FHWA Area Engineer to determine if the legal review can be concurrent with the initial FHWA Division review.
34. **Local agency makes required edits.** The EE sends FHWA's comments to the local agency for final editing. All FHWA edits are required to be made before the NEPA process proceeds.
35. **The camera-ready DEIS completed.** Once the EE and FHWA agree the edits have been made, a camera-ready copy of the DEIS is sent to the EE. The EE then schedules:
    - ***Meeting with Director of Local Programs***. The EE and Local Programs Environmental Manager brief the Director of Local Programs and acquire signature.
    - ***Meeting with FHWA***. The EE will meet with the Area Engineer and Environmental Program Manager for a project briefing, signature & approval to print DEIS.

36. **Printing the DEIS.** The signed title page and approval to print the DEIS are passed to the LPE and in turn are forwarded on to the local agency for printing.
37. **DEIS distribution initiated.** The EE works with local agency to develop a list of agencies/persons and acceptable formats for distribution.
38. **FHWA submits DEIS to EPA**. FHWA uploads to EPA's system, and EPA generates a Notice of Availability for the Federal Register.
39. **Notice of Availability published in Federal Register (45-60 days).** A comment period of at least 45 days, up to 60 days begins upon publication of the NOA in the Federal Register.
40. **Public Notice.** The local agency advertises the DEIS, comment period, and public hearing date. Typically this involves:
    - Publishing the notice in the local newspaper of record where the project is located.
    - Notifying agencies with jurisdiction, affected tribes, and groups or individuals known to be interested in the proposal.
    - Contacting news media and placing notices in appropriate regional, neighborhood or ethnic periodicals.
41. **Public Hearing.** The hearing date is a minimum of 15 days after the NOA. The DEIS continues to be available for at least 15 days after the hearing date.
42. **Prepare list of comments with responses.** The local agency must consider and respond to all substantive comments received on the DEIS. The final EIS will include copies of the comments received and the agency's responses. If comments are voluminous, they may be summarized. If the final EIS is amended in response to comments, those changes should be referenced in the responses.
43. **Final Environmental Impact Statement (FEIS) kick-off meeting.** The local agency and FHWA select the preferred alternative based on the DEIS analysis and the public and agency comments. From this point on in the NEPA process that alternative is the official preferred alternative for the project. All comments are evaluated to determine whether (1) significant changes to the project are required; or, (2) significant new information was provided about the project's impacts that had not been addressed. FHWA will determine whether:
    - Additional discipline reports are needed to respond to those comments.
    - Impacts of the preferred alternative fall within the discussed impacts for alternatives described in the DEIS.
    - Current discipline reports are sufficient to meet current standards and that they cover the entire footprint of the preferred alternative.
    - If a preferred alternative is selected <u>unmodified</u>, there may be possible streamlined options for proceeding with the FEIS.
    - Based on the discussion items above, the local agency writes draft FEIS.
44. **EE and Local Programs Environmental Manager review the first draft FEIS.** The EE and Local Programs Environmental Manager review the draft FEIS. Edits from this review must be made before the document is forwarded to FHWA.

45. **FHWA and cooperating agencies review first draft FEIS.** The EE sends a copy of the first FEIS to the FHWA Area Engineer and cooperating agencies for review.
46. **Local agency edits draft FEIS.** The EE reviews and sends edits to the local agency.
47. **FEIS sent to participating agencies for review.** Once FHWA and the EE approve the edits, the local agency sends the draft FEIS to participating agencies for review and comment.
48. **FHWA legal sufficiency review of the preliminary FEIS.** This review is performed by FHWA legal staff prior to approval of the final document. This review typically takes 30-45 days. The review will determine the document's compliance with applicable FHWA and Council of Environmental Quality (CEQ) NEPA laws and regulations.
49. **Local agency edits FEIS.** The EE sends the FHWA legal staff's comments on the FEIS back to the local agency for further editing. The FEIS will not proceed until these edits are incorporated and a revised FEIS is provided to the EE, and the FHWA attorney is satisfied with the responses.
50. **Second legal sufficiency review.** A second legal review of the FEIS may be required by FHWA. The second legal review may take up to 30 days, and is concluded when the FHWA attorney determines the document is legally sufficient.
51. **Camera-ready FEIS prepared for signatures.** After FHWA legal review is complete, the local agency creates a final camera-ready edition of the FEIS. This edition is signed by the local agency and circulated for signatures in the following order:
    - ***First meeting with the Local programs Director.*** The EE and Local Programs Environmental Manager brief the Local Programs Director for signature on the FEIS.
    - ***Meeting with FHWA Division Administrator*.** Local Programs and the FHWA Area Engineer brief the FHWA Division Administrator. The FHWA Division Administrator is the final approval authority for the FEIS.
    - ***FEIS with signature page printed.*** The signed title page is passed to the LPE and in turn forwarded on to the local agency for printing.
52. **Distribution of FEIS.** The FEIS is mailed to all reviewers and individuals that requested to review the document during its development. Circulation of the FEIS can include posting on the local agency's website and mailing of hard copies and compact disks.
53. **Notice of Availability in Federal Register.** FHWA uploads the FEIS to the EPA eNEPA website and EPA publishes a NOA for the Federal Register. The local agency may publish adoption of the FEIS to satisfy SEPA at this time.
54. **Preparation of Record of Decision (ROD).** The local agency begins preparing the ROD.
55. **EE and the Local Programs Environmental Manager review draft ROD.** The EE sends edit to the local agency as necessary.
56. **Local agency edits draft ROD.** Local agency makes all edits required by Local Programs before the ROD is sent to FHWA for review.
57. **ROD sent to FHWA and cooperating agencies.** EE sends compiled edits to the local agency.
58. **Local agency makes edits.** Once the EE confirms the edits are complete, EE sends the ROD to FHWA for review.

59. **FHWA legal review.** FHWA often asks the lawyers to review the ROD. This review may take up to 30 days.
60. **Local agency makes final edits to the ROD.** FHWA Division may opt to complete the final ROD in house.
61. **FHWA signs the ROD.** FHWA is the only agency that signs the ROD.
62. **Notice of Availability (NOA) published in local newspaper.** The local agency is required to publish the NOA in the local newspaper of record.
63. **Statute of Limitations (SOL) discussed with FHWA.** Not all projects warrant publishing a SOL notice in the Federal Register, but it is recommended for contentious projects that might face legal challenge.
64. **SEPA Notice of Action Taken.** SEPA notification is the responsibility of the local agency and may not apply in all cases. In most cases the local agency can adopt their completed NEPA FEIS NEPA to satisfy SEPA requirements.

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* Local Programs environmental team coordinates the review and approval process for NEPA EISs prepared for local agency projects that receive federal aid. Projects that include a portion of the state highways system or city streets designated as state highways include close coordination/involvement with the Environmental Services Office. The EE ensures that all appropriate staff in the Environmental Services Office is present at key steps in the EIS process

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APPENDIX C

LOCAL PROGRAMS PROCESS FOR NEPA ENVIRONMENTAL ASSESSMENTS

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LOCAL PROGRAMS PROCESS FOR NEPA ENVIRONMENTAL ASSESSMENTS

This document lays out a process for local agencies to follow for projects that require a NEPA Environmental Assessment (EA). The EA process is for projects that are not clearly either CE-level or EIS-level projects. Discipline report findings and public outreach are the primary factors in deciding whether NEPA can be completed with a Finding of No Significant Impact (FONSI), or will require elevation to an EIS.

1. **Project brought to the LPE.** The local agency submits a new project to the LPE. In most cases the region has enough information to schedule a NEPA kickoff meeting with the EE and Environmental Manager.
2. **A project kickoff meeting is scheduled.** The EE reviews the project information and requests the region to organize a scoping/NEPA kickoff meeting. Attendees should include the LPE, EE, Local Programs Environmental Manager, FHWA, the local agency and their consultant (if one has been hired to work on the project). The following issues are addressed during the kickoff meeting:
    a. ***Determine federal nexus.*** Identify the federal lead agency, and possible cooperating and participating agencies.
    b. ***Discuss purpose and need.*** Explain what problem we are trying to solve, and why this project is the solution to the problem.
    c. ***Discuss early alternatives.*** It is important to evaluate possible alternatives including the no-build alternative.
    d. ***Discuss information required - discipline reports and studies.*** These include documents required for compliance with other regulations such as Section 4(f), ESA, Section 106, etc.
    e. ***Establish communication protocol.*** Discuss how information will flow from the local agency to all parties.
    f. ***Discuss Coordination Plan and schedule.*** The local agency begins preparing the participating agency list, which includes federal and state resource agencies and some departments within local governments. The Coordination Plan documents how each agency will be involved. The Schedule must include the target dates for issuing the EA and the FONSI.
3. **Site visit and previous meeting(s) determine the required discipline reports.** The local agency, FHWA, LPE and EE review the list of NEPA disciplines. The site visit should provide enough information to determine which disciplines require a separate report and which disciplines will just be covered in the EA.
4. **The EE invites cooperating and participating agencies to a meeting to discuss the EA process.** The EE provides the local agency with document templates that they must complete to initiate this process. This step is optional but recommended.
5. **Local agency's project office sends EA notification letter to Local Programs Director.*** The purpose of this step is to ensure broad agreement on the NEPA compliance strategy.
6. **Draft participating and cooperating agency letters**. The EE reviews and finalizes the proposed participant list and sends invite letters.

7. **Local agency develops Coordination Plan and schedule with cooperating or participating agencies.** Establish communication protocols and concurrence points. Describe methods used to identify stakeholders, community groups, and EJ populations. Explain protocols for engaging with them in the public involvement plan.
8. **FHWA uploads the schedule to the Permitting Dashboard.** This must occur within 90 days of FHWA receiving the project initiation letter.
9. **FHWA concurrence on purpose and need statement.** The EE, Local Programs Environmental Manager and FHWA review and approve the purpose and need.
10. **Create an outline for the EA document.** The local agency prepares an outline of the document including the following: purpose and need, alternatives considered but rejected, project description, summary of the affected environment and any proposed mitigation.
11. **EE coordinates reviews of discipline reports.** The EE completes the initial review and edits of discipline reports. After edits approved by the EE, discipline reports are forwarded to the appropriate discipline expert for formal review. The NEPA process does not proceed until all discipline reports have been approved by the EE.
12. **Local Programs reviews the EA.** The EE and Local Programs Environmental Manager review the EA. Edits must be incorporated into the EA before it is sent to FHWA.
13. **Preliminary EA reviewed by FHWA.** EE verifies edits and forwards to FHWA.
14. **EE sends Preliminary EA back for final edits.** The EE sends FHWA edits to the local agency.
15. **Preliminary EA edits verifies by FHWA, legal review started if needed.** FHWA legal review is required if the project has an individual Section 4(f) evaluation. FHWA may also require legal review for complicated or controversial projects.
16. **Local Agency makes required edits.** At this stage in the review process most issues and edits will have been addressed. Any remaining comments are usually minor.
17. **Camera-ready EA prepared by the local agency.** Once the EE and FHWA agree the edits have been addressed, the local agency provides copies of the entire EA document to the EE, LPE, and FHWA. Cooperating and participating agencies get copies as well.
18. **EE establishes signature date for the EA.** The local agency provides the EE with original signature pages signed by the responsible official of the local agency.
19. **EA briefing and signatures by Local Programs Director and FHWA.*** The EE prepares a briefing for the Director of Local Programs including a description of the project, environmental impacts, mitigation, public involvement and any controversy surrounding the project. The Director approves the EA by signing and dating the EA title sheets. The EE briefs FHWA who approves the EA by signing and dating the EA title sheets.
20. **Local agency prints EA.** The EE returns one of the original signed sheets to the local agency for printing.
21. **EA distribution per the distribution list within the EA.** The local agency is required to mail or deliver the copies of the EA to the distribution list.
22. **Local agency starts comment period.** Typically this is 30 days. If an individual Section 4(f) evaluation was required, a 45-day comment period is required.

23. **Public Notice.** The local agency advertises the EA, comment period, and open house/public hearing date. Typically this involves:
    - Publishing the notice in the local newspaper of record where the project is located. FHWA needs a copy of the newspaper certification of this (23 CFR 771.111(h) (2) (VI)).
    - Notifying agencies with jurisdiction, affected tribes, and groups or individuals known to be interested in the proposal.
    - Contacting news media and placing notices in appropriate regional, neighborhood or ethnic periodicals.
24. **Open house /hearing no earlier than the 16th day after public notice.** A public hearing is highly recommended, especially if the project has been the subject of any public controversy. The local agency is responsible for capturing all the comments collected at the open house/hearing as well as those submitted through other means.
25. **Local agency prepares list of comments and responses, and draft Finding of No Significant Impacts (FONSI).** A revised version of the EA may be required if the comments lead to changes to the preferred alternative or EA document.
26. **EE and FHWA review Draft FONSI.** The EE returns edit to the local agency.
27. **Local agency revises FONSI.** The FONSI is resubmitted to FHWA after all of the final comments have been resolved and final edits have been made.
28. **Local agency submits photo-ready draft of FONSI to EE.** The local agency submits two copies of the final FONSI to the EE.
29. **EE reviews changes and submits FONSI to FHWA for final approval.** FHWA approves FONSI by signing and dating it. A copy is sent to the EE.
30. **Local agency distributes FONSI to those on the EA distribution list.** This is the same distribution from previous mailing; no review period or comment period is needed.
31. **Notice of Availability (NOA) of the FONSI in a local newspaper.** The local agency is required to publish the NOA in the local newspaper of record.
32. **Local agency tracks environmental commitments to ensure their inclusion in project plans and documents.** Contact your EE on how to properly track environmental commitments. Please refer to the Local Programs LAG manual for further guidance.
33. **Statute of Limitations (SOL) discussed with FHWA.** Not all projects warrant publishing a SOL notice in the Federal Register, but it is recommended for contentious projects that might face legal challenge. The SOL limits the FONSI appeal period to 150 days.
34. **SEPA Notice of Action Taken.** SEPA notification is the responsibility of the local agency and may not apply in all cases. In most cases the local agency can adopt their completed NEPA FEIS NEPA to satisfy SEPA requirements.

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*Local Programs environmental staff coordinates the review and approval process for NEPA EAs prepared for local agency projects that receive federal aid. Projects that include a portion of the state highways system or city streets designated as state highways include coordination with the WSDOT Environmental Services Office (ESO). The EE ensures that all appropriate staff in the ESO is present at key steps in the EA process.

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APPENDIX D

NEPA Categorical Exclusion Documentation Form

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Washington State Department of Transportation

NEPA Categorical Exclusion Documentation Form

Federal Aid Project Number:	NEPA Start Date:	Intent of Submittal: ☐ Preliminary ☐ Final ☐ Re-Evaluate
Agency:	Project Title:	
County:		
Beginning terminus: _____ Ending terminus: _____ Miles: _____	Township(s): _____ Range(s): _____ Section(s): _____	

Part 1 - Project Description (Attach Vicinity Map)

Part 2 – Categorical Exclusion & STIP

- Identify one CE from 23 CFR 771.117 (CE Guidebook - Appendix A) that fits the entire project
- Per 23 CFR Part 452(l) identify the subsequent project phase identified on the STIP? ☐ ROW ☐ Construction
- Attach a copy of the STIP page to the CE documentation form.

NEPA Approval Signatures

_____	_____	_____	_____
Local Agency Approving Authority	Date	Local Programs Environmental Engineer	Date
_____	_____	_____	_____
Regional Local Programs Engineer	Date	Federal Highway Administration	Date

Completed by (Print Official's Name):	Telephone (include area code):	E-mail address:

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Part 3 - Permits, Approvals & Right of Way (ROW)

Yes	No	Permit or Approval	Yes	No	Permit or Approval
☐	☐	Corps of Engineers ☐ Sec. 10 ☐ Sec. 404	☐	☐	Water Quality Certification – Section 401 Issued by _____
		☐ Nationwide Type _____	☐	☐	Tribal Permit(s) (if any) _____
		☐ Individual Permit No. _____	☐	☐	Other Permits (List) _____
☐	☐	Coastal Zone Management Certification	☐	☐	Is permanent ROW acquisition needed? If yes, amount needed: _____ (acres/sq. ft.).
☐	☐	Critical Areas Ordinance (CAO) Permit	☐	☐	Is any temporary ROW needed?
☐	☐	Forest Practices Act Permit	☐	☐	Is relocation required?
☐	☐	Hydraulic Project Approval	☐	☐	Has ROW (property and/or property interests) been acquired for this project prior to the NEPA start date? If yes, documentation demonstrating compliance with 23 CFR 710.501 may be required.
☐	☐	Local Building or Site Development Permits	☐	☐	Is a detour required? If yes, please attach detour information.
☐	☐	Local Clearing and Grading Permit			
☐	☐	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction			
☐	☐	Shoreline Permit			
☐	☐	State Waste Discharge Permit			
☐	☐	Water Rights Permit			

U.S. Coast Guard Permitting

a. Does the project propose any new or modify ***any*** existing bridges or culverts crossing a waterway? ☐ Yes ☐ No

b. If Yes, attach a copy of the jurisdictional determination email or letter from the U.S. Coast Guard.

Other Federal Agencies - Does the project involve any federal properties, approvals or funding from other/additional federal agencies? ☐ Yes ☐ No If Yes, please describe.

Part 4 - Environmental Considerations

Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information if necessary.

1. Air Quality - Identify any anticipated air quality issues.

Is the project exempt from Air Quality conformity requirements? ☐ Yes ☐ No

a. If Yes, identify exemption – please refer to Appendix G in the CE Guidebook for a list of exemptions.

b. Is the project included in the Metropolitan Transportation Plan? ☐ Yes ☐ No
If Yes, date Metropolitan Transportation Plan was adopted _____

c. Is the project located in an Air Quality Non-Attainment Area or Maintenance Area for carbon monoxide, ozone or PM 10 or PM 2.5? ☐ Yes ☐ No

2. Critical and Sensitive Areas

a. Is this project within a sole source aquifer ☐ Yes ☐ No
If located within a sole source aquifer, is the project exempt from EPA approval?
If Yes, please list exemption: _____
If No, date of EPA approval: _____

b. Will this project impact Species/Habitat other than ESA listed species? ☐ Yes ☐ No Explain your answer.

c. Is this project within one mile of a Bald Eagle nesting territory, winter concentration area or communal roost?
☐ Yes ☐ No If Yes, the local agency must go to the US Fish & Website (http://www.fws.gov/pacific/eagle/) and work through the *Do I Need a Permit?* section.

d. Are wetlands present within the project area? ☐ Yes ☐ No If Yes, estimate the impact in acres: _____
Please attach a copy of the proposed mitigation plan.

3. Cultural Resources/Historic Structures - Identify any historic, archaeological or cultural resources present within the project's Area of Potential Effects.

Does the project fit into any of the exempt types of projects listed in Appendix J of the CE Guidebook?

☐ Yes ☐ No If Yes, note exemptions below.

If No: Date of DAHP concurrence: _____

Date of Tribal consultation(s) (if applicable): _____

Adverse effects on cultural/historic resources? ☐ Yes ☐ No

If Yes, date of approved Section 106 MOA: _____

4. Floodplains and Floodways

a. Is the project located in a 100-year floodplain? ☐ Yes ☐ No

b. If Yes, is the project located within a 100-year floodway? ☐ Yes ☐ No

c. Will the project impact a 100-year floodplain? ☐ Yes ☐ No If Yes, describe impacts.

5. Hazardous and Problem Waste - Identify potential sources and type(s).

a. Does the project require excavation below the existing ground surface? ☐ Yes ☐ No

b. Will groundwater be encountered? ☐ Yes ☐ No

c. Will any properties be acquired as part of this project? ☐ Yes ☐ No

d. Is this site located in an undeveloped area (*i.e.* no buildings, parking, storage areas or agriculture)? ☐ Yes ☐ No

e. Is the project located within a one-mile radius of a known Superfund Site? ☐ Yes ☐ No

f. Is this project located within a ½-mile radius of a site or sites listed on any of the following Department of Ecology databases?
☐ Yes ☐ No If Yes, check the appropriate boxes below.

☐ Voluntary Cleanup Program (VCP), State Cleanup Site (SCS), or Independent Cleanup Program (ICP)

☐ Underground Storage Tank (UST)

☐ Leaking Underground Storage Tank (LUST)

☐ Confirmed and Suspected Contaminated Sites List (CSCSL)

g. Has site reconnaissance (windshield survey) been performed? ☐ Yes ☐ No (Please identify any properties not identified in the Ecology or ERS database search as an attachment -- name, address and property use).

h. Based on the information above and project specific activities, is there a potential for the project to generate, acquire or encounter contaminated soils, groundwater or surface water? ☐ Yes ☐ No

Please explain:

If you responded Yes to any of these questions above (5A - 5F or 5H), contact your Region LPE for assistance as a "Right-Sized" HazMat Analysis Report/Memorandum most likely will be required.

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6. Noise

a. Does the project involve constructing a new roadway? ☐ Yes ☐ No

b. Is there a change in the vertical or horizontal alignment of the existing roadway? ☐ Yes ☐ No

c. Does the project increase the number of through traffic lanes on an existing roadway? ☐ Yes ☐ No

d. Is there a change in the topography? ☐ Yes ☐ No

e. Are there auxiliary lanes extending 1-½ miles or longer being constructed as part of this project? ☐ Yes ☐ No

f. If you answered Yes to any of the preceding questions, identify and describe any potential noise receptors within the project area and subsequent impacts to those noise receptors. Please attach a copy of the noise analysis if required.

If impacts are identified, describe proposed mitigation measures.

7. 4(f)/6(f) Resources: parks, recreation areas, wildlife refuges, historic properties, wild & scenic rivers, scenic byways

a. Please identify and 4(f) properties within the project limits and the areas of impacts.

b. Please identify any properties within the project limits that used funds from the Land & Water Conservation Fund Act.

c. Please list any Wild and Scenic Rivers and Scenic Byways within the project limits.

8. Agricultural Lands -

a. Are there agricultural lands within 300 feet of the project limits? ☐ Yes ☐ No If Yes, describe impacts:

b. Are impacted lands considered to be unique and prime farmland? ☐ Yes ☐ No

If Yes, date of project review by Natural Resource Conservation Service (NRCS): _____

9. Rivers, Streams (continuous or intermittent) or Tidal Waters

a. Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.

b. Identify stream crossing structures by type.

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10. Tribal Lands - Identify whether the project will occur within any Tribal lands, including reservation, trust and fee lands. Please do no list usual and accustomed area.

11. Water Quality/Stormwater

a. Will this project's proposed stormwater treatment facility be consistent with the guidelines provided by either WSDOT's HRM, DOE's stormwater management manual for eastern/western Washington or a local agency equivalent manual?

☐ Yes ☐ No

If No, explain proposed water quality/quantity treatment for the new and any existing pollution generating impervious surface associated with the proposed project.

b. Amount of existing pollution generating impervious surface within the project limits: _____

c. Net new pollution generating impervious surface to be created as a result of this project: _____

d. Amount of proposed post-project untreated pollution generating impervious surface: _____

12. Previous Environmental Commitments

Describe previous environmental commitments that may affect or be affected by the project - if any.

13. Environmental Justice - Does the project meet any of the exemptions noted in Appendix L of the CE Documentation Guidebook? ☐ Yes ☐ No

If Yes, please note the exemption and appropriate justification in the space below.

If No, are minority or low-income populations located within a 0.50-mile of the project? ☐ Yes ☐ No

If No, attach appropriate data to support findings. If Yes, describe impacts and attach appropriate supporting documentation. Findings should be confirmed using at least two information sources. Please refer to the CE Guidebook for more information.

Part 5 - Biological Assessments and EFH Evaluations

1. Do any listed species potentially occur in the project's action area and/or is any designated critical habitat present within the project's action area? ☐ Yes ☐ No Attach species listings.

Affected ESA Listed Species	2. Will any construction work occur within 0.25 mile of any of the following?	3. Does the project involve blasting, pile driving, concrete sawing, rock-drilling or rock-scaling activity within one mile of any of the following?
Oregon Spotted Frog proposed critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Yellow-billed Cuckoo suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Spotted Owl management areas, designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Marbled Murrelet nest or occupied stand, designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Western Snowy Plover designated critical habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Is the project within 0.25 mile of marine waters? If Yes explain potential effects on Killer Whales and on Marbled Murrelet foraging areas.	☐ Yes ☐ No	☐ Yes ☐ No

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Killer Whale designated critical habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Grizzly Bear suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Gray Wolf suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Canada Lynx habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Columbia White-tailed Deer suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Woodland Caribou habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Streaked Horned Lark designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Taylor's Checkerspot designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Mazama Pocket Gopher designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Eulachon designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Rockfish proposed critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
A mature coniferous or mixed forest stand?	☐ Yes ☐ No	☐ Yes ☐ No

4. Will the project involve any in-water work?	☐ Yes	☐ No
5. Will any construction work occur within 300 feet of any perennial or intermittent waterbody that either supports or drains to waterbody supporting listed fish?	☐ Yes	☐ No
6. Will any construction work occur within 300 feet of any wetland, pond or lake that is connected to any permanent or intermittent waterbody?	☐ Yes	☐ No
7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)?	☐ Yes	☐ No
8. Will the project discharge treated or untreated stormwater runoff or utilize water from a waterbody that supports or drains into a listed-fish supporting waterbody?	☐ Yes	☐ No
9. Will construction occur outside the existing pavement? If Yes go to 9a.	☐ Yes	☐ No
9a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling or modification of vegetation or tree-cutting?	☐ Yes	☐ No
10. Are there any Federally listed Threatened or Endangered plant species located within the project limits? If Yes, please attach a list of these plant species within the action area.	☐ Yes	☐ No
11. Does a mature coniferous or mixed forest stand occur within 200' of the project site?	☐ Yes	☐ No

Analysis for No Effects Determination – If there are any Yes answers to questions in Part 5, additional analysis is required. Attach additional sheets if needed.

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Analysis for RRMP ESA 4(d) determination for NMFS – A local agency must be certified by the Regional Road Maintenance Forum to utilize 4(d).

Maintenance Category (check all that apply)

☐ 1. Roadway Surface	☐ 6. Stream Crossings	☐ 11. Emergency Slide/Washout Repair
☐ 2. Enclosed Drainage Systems	☐ 7. Gravel Shoulders	☐ 12. Concrete
☐ 3. Cleaning Enclosed Drainage Systems	☐ 8. Street Surface Cleaning	☐ 13. Sewer Systems
☐ 4. Open Drainage Systems	☐ 9. Bridge Maintenance	☐ 14. Water Systems
☐ 5. Watercourses and Streams	☐ 10. Snow and Ice Control	☐ 15. Vegetation

Describe how the project fits in the RRMP 4(d) Program:

Effect Determinations for ESA and EFH

If each of the questions in the preceding section resulted in a "No" response or if any of the questions were checked "Yes," but adequate justification can be provided to support a "no effect" determination, then check "No Effect" below. If this checklist cannot be used for Section 7 compliance (i.e., adequate justification cannot be provided or a "may effect" determination is anticipated), a separate biological assessment document is required.

	NMFS	USFWS	EFH Determination
☐ No Effect	_____	_____	☐ No Adverse Effect
☐ NLTAA - Date of Concurrence	_____	_____	☐ Adverse Effect - Date of NMFS concurrence _____
☐ LTAA - Date BO Issued	_____	_____	
☐ RRMP 4(d)	_____		☐ Not Applicable

Part 6 - FHWA Comments

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APPENDIX E

Programmatic Categorical Exclusion Agreement

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PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINSTRATION, WASHINGTON DIVISION
AND
THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT ("Agreement"), made and entered into this 1ST day of MAY 2015, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION and the STATE of WASHINGTON, acting by and through its DEPARTMENT OF TRANSPORTATION hereby provides as follows:

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (hereinafter "FHWA") and the Washington State Department of Transportation (hereinafter "WSDOT").

II. PURPOSE

The purpose of this Agreement is to authorize the WSDOT to determine on behalf of FHWA whether a project qualifies for a Categorical Exclusion (CE) specifically listed in 23 CFR 771 without further review and approval by FHWA. This agreement allows WSDOT to make NEPA CE approvals on FHWA's behalf for projects using Federal-aid funds or requiring FHWA approval.

III. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

A. National Environmental Policy Act, 42 U.S.C. 4321 - 4370

B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)

C. 40 CFR parts 1500 - 1508

D. DOT Order 5610.1C

E. 23 CFR 771.109, 771.113 and 771.117

IV. RESPONSIBILITIES

A. WSDOT is responsible for:

1. Approving CEs for actions specifically listed in 23 CFR 771.117(c) and 23 CFR 771.117(d) including c list activities constrained by 23 CFR 771.117(e), on behalf of FHWA. WSDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.

2. Consulting with FHWA for actions that involve unusual circumstances (23 CFR 771.117(b)) to determine the appropriate class of action for environmental analysis and documentation. WSDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.

3. Meeting applicable documentation requirements, as listed in Section V of this agreement, for State CE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.

4. Relying only upon employees directly employed by the State to make CE approvals under this agreement. WSDOT may not delegate its responsibility for CE approvals to third parties (e.g., local government staff, other State agency staff).

B. FHWA is responsible for:

1. Providing timely review and response to a request from WSDOT for a CE determination for an action not specifically listed in 23 CFR 771.117.

2. Providing timely review and response to any request for coordination, consultation, or compliance with any environmental requirement under law, regulation, or Executive Order related to the State's processing of CE actions under this agreement. This includes all Section 4(f) evaluations and *de minimis* and temporary occupancy determinations, all formal ESA consultations except those included in a programmatic ESA consultation, all responses to Essential Fish Habitat conservation recommendations, all Section 106 Memorandums of Agreement, and government-to-government consultation with Native American Tribes.

3. Providing timely advice and technical assistance on CEs to WSDOT, as requested.

4. Overseeing the implementation of this Agreement in accordance with 23 CFR 771.117(g).

V. DOCUMENTATION OF WSDOT CE APPROVALS

A. For WSDOT CE approvals, WSDOT shall ensure that it fulfills the following responsibilities for documenting the project specific determinations made:

   1. For actions listed in 23 CFR 771.117(c) and 23 CFR 771.117(d), WSDOT will identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete WSDOT's NEPA form(s) with a WSDOT signature evidencing approval.

   2. In addition, for actions listed in 23 CFR 771.117(d), WSDOT shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.

B. WSDOT should maintain a project record for CE approvals it makes on FHWA's behalf. This record should include at a minimum:

   1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;

   2. Any stakeholder communication, correspondence, consultation, or public meeting documentation;

   3. The name and title of the document approver and the date of WSDOT's approval.

   4. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).

C. Any electronic or paper project records maintained by WSDOT should be provided to FHWA at its request. WSDOT should retain those records, including all letters and comments received from governmental agencies, the public and others for a period of no less than three (3) years after completion of project construction, according to state records retention schedules. This provision does not displace or relieve WSDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. CE APPROVALS AND RE-EVALUATIONS

A. WSDOT's CE approvals may only be made by the WSDOT Director of Environmental Services, WSDOT Region and Modal Environmental Managers, WSDOT's Local Program Environmental Manager or staff they choose as delegates.

B. In accordance with 23 CFR 771.129, the WSDOT shall re-evaluate its determinations and approvals for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING AND PERFORMANCE

A. WSDOT Quality Control and Quality Assurance

WSDOT agrees to carry out regular quality control and quality assurance activities, as described in WSDOT procedures, the Environmental Manual and Local Agency Guidelines to ensure WSDOT's CE approvals are made in accordance with applicable law and this Agreement. The signatories of the CEs are responsible for ensuring quality.

B. WSDOT Performance Monitoring and Reporting.

1. FHWA and WSDOT should cooperate in monitoring performance under this Agreement and work to assure quality performance.

2. WSDOT will implement corrective actions to ensure compliance with the terms of this agreement as needed.

C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of WSDOT, as well as WSDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of WSDOT's CE approvals, adequacy and capability of WSDOT staff and consultants, and the effectiveness of WSDOT's administration of its internal CE approvals.

2. FHWA will conduct one or more program reviews as part of its oversight activities. WSDOT shall prepare and implement a corrective action plan as necessary to address any findings or observations identified in the FHWA review. WSDOT should draft the corrective action plan within forty-five (45) days of FHWA finalizing its review. The content of the corrective action plan shall be taken into account at the time this Agreement is considered for renewal.

3. WSDOT and FHWA should cooperate in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the Parties agree to amend this Agreement, then FHWA and WSDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

IX. TERM, RENEWAL AND TERMINATION

A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. WSDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.

B. This Agreement is renewable for additional five (5) year terms if WSDOT requests renewal and FHWA determines WSDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.

C. Either party may terminate this Agreement at any time by giving at least thirty (30) days written notice to the other party.

Execution of this Agreement and implementation of its terms by both Parties provides evidence that both Parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

Daniel M. Mathis 04/21/2015

Daniel M. Mathis
Division Administrator, Washington Division
Federal Highway Administration

Date

05/01/15

Lynn Peterson
Secretary of Transportation
WSDOT

Date

APPENDIX G

Air Quality Exemptions under 40 CFR 93.126

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AIR QUALITY EXEMPTIONS UNDER 40 CFR 93.126

Safety

- Railroad / highway crossing
- Hazard elimination program
- Safer non-Federal-aid system roads
- Shoulder improvements
- Increasing sight distance
- Traffic control devices and operating assistance other than signalization projects
- Railroad / highway crossing warning devices
- Guardrails, median barriers, crash attenuators
- Pavement resurfacing and / or rehabilitation
- Pavement marking demonstration
- Emergency Relief (23 U.S.C. 125)
- Fencing
- Skid treatments
- Safety roadside rest areas
- Adding medians
- Truck climbing lanes outside the urbanized area
- Lighting improvements
- Widening narrow pavements or reconstructing bridges (no additional travel lanes)
- Emergency truck pullovers

Mass Transit

- Operating assistance to transit agencies
- Purchase of support vehicles
- Rehabilitation of transit vehicles[1]
- Purchase of office, shop, and operating equipment for existing facilities
- Purchase of operating equipment for vehicles (for example, radios, fare-boxes, lifts, etc.)
- Construction or renovation of power, signal, and communications systems
- Construction of small passenger shelters and information kiosks
- Reconstruction or renovation of transit buildings and structures (for example, rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
- Rehabilitation or reconstruction of track structures, track, and track-bed in existing right-of-way
- Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet

[1] PM-10 non-attainment or maintenance areas—such projects are exempt only if they are in compliance with control measures in the applicable State Implementation Plan.

- Construction of new bus or rail storage / maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

- Continuation of ride-sharing and vanpooling promotion activities at current levels
- Bicycle and pedestrian facilities

Other

- Specific activities that do not involve or lead directly to construction, such as:
  - ✓ Planning and technical studies
  - ✓ Grants for training and research programs
  - ✓ Planning activities conducted pursuant to Title 23 and 49 U.S.C.
  - ✓ Federal Aid system revisions
- Engineering to assess social, economic, and environmental effects of a proposed action or alternatives to that action
- Noise attenuation
- Emergency or hardship advance land acquisitions (23 CFR 712.204(d))
- Acquisition of scenic easements
- Plantings, landscaping, etc.
- Sign removal
- Directional and information signs
- Transportation enhancement activities (except rehabilitation and operation historic transportation buildings, structures, or facilities)
- Repair of damage caused by natural disasters, civil unrest, or terrorist acts (except projects involving substantial functional, location, or capacity changes)

Regional Exemptions under 40 CFR 93.127

- Intersection channelization projects
- Intersection signalization projects at individual intersections
- Interchange reconfiguration projects
- Changes in vertical and horizontal alignment
- Truck size and weight inspection stations
- Bus terminals and transfer points
- Safety Projects
- Landscaping
- Traffic Control Devices <u>other than signalization projects</u>
- Other projects with neutral or *de minimis* emissions impacts

APPENDIX H

Sole-Source Aquifer MOU between EPA, FHWA and WSDOT

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Memorandum of Understanding

**Between the Federal Highway Administration (FHWA) Washington Division,
the Environmental Protection Agency (EPA) Region 10,
and the Washington State Department of Transportation (WSDOT)**

Regarding

Sole Source Aquifers

in the State of Washington

INTRODUCTION

The purpose of this memorandum is to develop an understanding between the Environmental Protection Agency (EPA) Region 10, the Federal Highway Administration (FHWA), and the Washington State Department of Transportation (WSDOT) concerning the review of Federal-aid highway projects which may affect, by having the potential to contaminate, the water quality of designated Sole Source Aquifers in the state of Washington, hereinafter referred to as the Aquifer(s). (See Attachment A). The area in which this agreement applies is the geographic extent of the designated "Sole Source Aquifer" and it's associated "Recharge Area". The Safe Drinking Water Act of 1974 Section 1424(e) states that after a notice of determination is made (a Sole Source Aquifer is federally designated) that, "After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health".

This memorandum outlines the criteria against which projects will be evaluated and the procedures to be followed by FHWA, WSDOT, and EPA in conducting project evaluation and formal review within the State of Washington. The memorandum also outlines the categories of projects that do not need to be submitted to EPA for review.

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against FHWA, WSDOT, or EPA, their officers or employees, or any other person. This MOU does not apply to any person outside of FHWA, WSDOT, and EPA.

GOAL

The goal of this memorandum is to assure that each highway project that receives FHWA financial assistance is designed and constructed in a manner that will prevent the introduction of contaminants into an Aquifer.

I. DEFINITIONS AND AGREEMENT

Significant Hazard to Public Health: A "significant hazard to public health" occurs if the level of contaminants in an Aquifer would:

1. exceed National Primary Drinking Water Standards, or
2. exceed public health advisory levels for currently unregulated contaminants, or
3. violate the intent of Executive Order 12088, "Federal Compliance With Pollution Control Standards," or
4. otherwise threaten public health.

In determining whether a level of contamination would threaten public health, the following factors, at a minimum, shall be considered:

1. the toxicity and migration/transformation of the contaminants involved;
2. the volume of contaminants which may enter the Aquifer; and
3. Aquifer characteristics, i.e., geochemical, hydrological, geological, etc., and attenuation capability of the Aquifer.

Additional definitions for terms used in this MOU can be found in Attachment B.

Agreement: EPA, FHWA, and WSDOT hereby mutually agree that all Federal-aid highway projects within the designated Aquifers listed in Attachment A, and amendments thereto, will be constructed in a manner that will prevent the introduction of contaminants into an aquifer and in no case create a significant hazard to public health, including not to cause an exceedance of the maximum contaminant levels promulgated by the Washington State Department of Health in WAC 246-290-310 *Group A Public Water Supplies, Wellhead and Source Water Protection*

II. CRITERIA AND PROCEDURES

a. The Current Procedure for Review of Projects by EPA is Described Below:

1. Complete the Region 10 Sole Source Aquifer Checklist (available on the EPA website), and e-mail it to the address found on the EPA website. It will take longer for EPA to respond to requests submitted without a checklist or via hard copy. It is not necessary to submit an Environmental Assessment (EA), Environmental Impact Statement (EIS), or other National Environmental Policy Act (NEPA) documentation with the initial request. EPA may request additional documentation, but usually the checklist is all that is required (this review is separate from EPA's NEPA review).

2. EPA agrees that all requests for Region 10 Sole Source Aquifer Checklist reviews submitted by WSDOT to FHWA and EPA for evaluation or review purposes shall be responded to within thirty (30) calendar days of receipt unless:

   a) There are comments (with substantiating data) arising from review by the public, interested agencies, and tribes, indicating adverse impacts on the Aquifer. WSDOT, through FHWA, will immediately send these comments to EPA who will notify FHWA and WSDOT within thirty (30) days of receipt of the comments regarding EPA's decision. EPA reserves the right to extend this time period when it finds that additional information is needed, that additional administrative review is necessary, or that it will be in the public interest to hold a public meeting. EPA will notify FHWA of any extension of the review time period.

   b) EPA receives a citizen's request at any time during the review or at any time before FHWA has approved the project's final environmental document. EPA will immediately notify FHWA and WSDOT (in writing, if time permits or by telephone if the end of the comment period is near). EPA will reevaluate the project with respect to the concern[s] contained in the request, and will notify FHWA and WSDOT within thirty (30) days of receiving such request information of EPA's decision.

   c) EPA requests additional review time either by telephone or in writing. If EPA requests additional time, EPA will inform FHWA and WSDOT within thirty (30) additional days of the results of this evaluation.

3. The response from EPA should be included in the project's NEPA document or administrative record.

b. Project Categories Exempt from Review.

Generally, EPA does not need to see projects that typically will not impact the aquifer in any way. The following project types do not need review: Pavement resurfacing, repair or reconstruction; routine repair of existing facilities; lighting; signalization; signing; pavement marking; rumble strips; guardrail; safety barriers; pathways; sidewalks; bicycle lanes; freeway surveillance and control systems; railroad protective devices; glare screening; energy attenuators; noise walls; routine roadway maintenance activities; landscape activities including seeding and planting

using native species and organic amendments; riparian and wetland mitigation activities; utility installations; rock slope stabilization; intersection improvements, Culvert replacements, and the temporary replacement of highway facilities damaged by natural disasters or catastrophic failures.

When roadways and or bridges need immediate emergency repair per RCW 47.28.170 *Emergency protection and restoration of highways* and a Declaration of Emergency pursuant to WSDOT's Emergency Relief Procedures Manual (M3014.02), and the repair would otherwise be subject to EPA review under Steps 1 and 3 in Attachment C, the review will occur either per this MOU or post-repair if the repair must proceed sooner that the timelines in this MOU would allow. As staff resources and workload allow, EPA will strive to expedite their review in emergency situations. WSDOT will not conduct emergency repairs that have the potential to contaminate a Sole Source Aquifer.

See attachment C for steps to determine if your project requires EPA SSA review.

III. STORMWATER AND OTHER PROGRAMS IMPACTING AQUIFERS

Information about regulatory requirements governing stormwater on WSDOT development and redevelopment projects can be found in Attachment D. Also included in Attachment D are links to other helpful sites for project agency information. For example, these sites provide information on requirements for groundwater and surface water programs, NPDES program, Underground Storage Tank programs, as well as others.

IV. COORDINATION AND CONTACTS

Materials furnished to EPA by WSDOT, with a copy to FHWA, under this Memorandum of Understanding will be addressed to the attention of the Drinking Water Unit in the Office of Water and Watersheds in EPA's Region 10 Office in Seattle. EPA will respond to the submittal with project review comments or findings.

FHWA, WSDOT, and EPA will assign a liaison officer to serve as a central contact point to be responsible for maintaining communications as to procedures and activities of their respective Agency. The liaison officers are:

FHWA: Environmental Program Manager, FHWA Washington Division
Suite 501, Evergreen Plaza Building
711 South Capitol Way
Olympia, Washington 98501
(360) 753-9480

WSDOT: Resource Programs Branch Manager, Environmental Services Office
Washington State Department of Transportation
P.O. Box 47332
Olympia, WA 98504-7332
(360) 570-6642

EPA: Unit Manager, Drinking Water Unit
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop 136
Seattle, Washington 98101
(206) 553 1893

The liaison officers accompanied by appropriate staff will hold meetings as needed to discuss matters of concern related to the Aquifers and this Memorandum of Understanding.

This Memorandum of Understanding is subject to revision upon agreement of all of the following agencies.

Megan White, P.E.
Director, Environmental Services Office
Washington State Department of Transportation

Date: 9/30/2014

Daniel M. Mathis, P.E.
Division Administrator, Washington Division
Federal Highway Administration

Date: 10/01/2014

Daniel D. Opalski, Director
Office of Water and Watersheds, Region 10
Environmental Protection Agency

Date: 25 Sept. 2014

ATTACHMENT A - AQUIFERS

Pursuant to the Safe Drinking Water Act (42 USC §300h-6), EPA has determined that the aquifers listed below are the sole or principal drinking water source for their respective designated areas. As such, no commitment for federal financial assistance may be entered into within the boundaries of these designated Sole Source Aquifers (and any other sole source aquifer review areas designated after the date of this MOU) for any project which EPA determines may contaminate any of these aquifers through their Recharge Areas (watershed map shown for each aquifer) so as to create a significant hazard to public health or the environment. Maps of these aquifers can be found on the EPA Region 10 website.

Aquifer Name	Location	Federal Register Notice	Date
Spokane Valley Rathdrum Prairie	Spokane County, WA	Vol. 43, No. 28 5566 *et. seq.*	2/9/78
Whidbey Island	Island County, WA	Vol. 47, No. 66 14779 *et. seq.*	4/6/82
Camano Island	Island County, WA	Vol. 47, No. 66 14779 *et. seq.*	4/6/82
Cross Valley	Snohomish County, WA King County, WA	Vol. 52, No. 95 18606 *et. seq.*	5/18/87
Newberg Area	Snohomish, County, WA	Vol. 52, No. 192 37215 *et. seq.*	10/5/82
Cedar Valley	City of Renton King County, WA	Vol. 53, No. 191 38779 *et. seq.*	10/3/88
Lewiston Basin	Asotin and Garfield Counties, WA	Vol. 53, No. 191 38782 *et. seq.*	10/3/88
Central Pierce County	City of Tacoma Pierce County, WA	Vol.59, No.1 224 *et. seq.*	1/3/94
Marrowstone Island	Island County, WA	Vol.59, No.105 28752 *et. seq.*	6/2/94
Vashon-Maury Island	King County, WA	Vol.59, No.127 34468 *et. seq.*	7/5/94
Guemes Island	Island County, WA	Vol. 62, No.230 63545 *et. seq.*	12/1/97
Troutdale	City of Vancouver, WA Clark County, WA	Vol. 71, No. 172 52541 *et. seq.*	10/5/06
Bainbridge Island	Kitsap County, WA	Vol 78, No. 07409 19262 *et seq.*	3/29/13

ATTACHMENT C – STEPS TO DETERMINE IF YOUR PROJECT REQUIRES EPA SSA REVIEW

1. **Is your project located within a Designated Sole Source Aquifer and/or its associated Recharge Area?**
   If it is not, EPA SSA review is not required, if it is, continue to question 2.

2. **Will your project require the preparation of an Environmental Assessment or Environmental Impact Statement to comply with the National Environmental Policy Act?**
   If it does, and you answered yes to #1, then you will need to submit your project to EPA for review.

3. **Does your project involve any of the following aspects? If so, and you answered yes to #1, then submit the project to EPA for review.**

   a. Addition of drainage wells, or stormwater infiltration facilities that do not meet treatment requirements of the Washington State Department of Transportation Highway Runoff Manual (WSDOT HRM).
   b. Added Pollution Generating Impervious Surface (PGIS) more than 5000 ft^2 that does not meet the stormwater treatment requirements of the WSDOT HRM.
   c. Opening of new material sources which could result in potential contamination.
   d. Replacement drywells or other Injection Wells that do not meet treatment requirements of the WSDOT HRM or Underground Injection Control regulations (Chapter 173-218 WAC).
   e. Removal of known Leaking Underground Storage Tanks.
   f. Drilled Shafts or pile-driving, for bridge or other foundations that penetrate, or come close to penetrating the sole source aquifer.
   g. Abandonment of water supply wells that penetrate the sole source aquifer.
   h. Construction or upgrading of sewage disposal stations at rest areas, weigh stations or scenic overlooks.
   i. Landscape construction projects if pesticides, herbicides, and fertilizers are used that contain any of the compounds listed in the National Primary Drinking Water Regulations, 40 CFR Part 141.
   j. Located within the boundaries of a site listed on the EPA National Priorities List (i.e., a Superfund site), or the Department of Ecology Confirmed or Suspected Contaminated Sites List (CSCSL).

ATTACHMENT D – STORMWATER AND OTHER CONSTRUCTION REGULATORY LINKS

1. Regulatory requirements governing stormwater on WSDOT development and redevelopment projects: Washington State Department of Transportation Highway Runoff Manual (equivalent to Washington State Department of Ecology's Stormwater Management Manuals for both Eastern and Western Washington) applies statewide, in and outside of National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit coverage areas. Use of the manual's guidelines represents the presumptive approach to meeting state and federal stormwater discharge requirements.
    a. WSDOT NPDES Municipal Stormwater and State Waste Discharge Permit in compliance with provisions of the Washington State Water Pollution Control Act (RCW 90.48) and the Clean Water Act (33 USC 1251 *et seq*.) and The NPDES Permit Program (WAC 173-220).
        i. Requires the reduction of the discharge of pollutants to the maximum extent practicable (MEP)
        ii. Requires All Known Available and Reasonable methods of prevention and Treatment (AKART)
        iii. Does not authorize discharges which would be in violation of:
            1. WAC 173-200 Water Quality Standards for Groundwater;
            2. WAC 173-201A Water Quality Standards for Surface Water;
            3. WAC 173-204 Sediment Management; or
            4. Human health-based criteria in the national Toxics Rule (Federal Register, Vol. 57, NO. 246, Dec. 22, 1992, pages 60848-60923)
    b. NPDES Construction Stormwater General Permit (Water Pollution Control RCW 90.48 and Clean Water Act 33 USC 1251 *et seq*.) Both NPDES stormwater permits WSDOT is regulated by are also issued by the Department of Ecology as State Waste Discharge Permits, and as such regulate discharges to ground as well as surface waters.
    c. Federal Safe Drinking Water Act (Public Health and Welfare 42 USC 6A, sub 12, Part C)
        i. WAC 173-218 Underground Injection Control Program
        ii. RCW 90.48 Water Pollution Control
2. WSDOT Agreement with Washington State Department of Health "WSDOT Highways & Drinking Water Well Sanitary Control Areas – Screening Criteria" requires WSDOT meet screening criteria to protect public water supply wells. This agreement relies on:
    a. RCW 70.116 Public Water System Coordination Act of 1977;
    b. WAC 246-290 Group A Public Water Supplies;
    c. WAC 246-291 Group B Public Water Supplies;
    d. WSDOT Highway Runoff Manual;
    e. WSDOT Integrated Vegetation Management Plan (requires practices are compliant with health and environmental standards);
    f. Clean Water Act (33 USC 1251); and
    g. Puget Sound Highway Runoff Program (WAC 173-270).
3. Local Jurisdictions Critical Areas Ordinances (RCW 36.70A - Growth Management Act)
    WAC 365-195 - Growth Management Act - Best Available Science WAC 365-196-830 - Protection of critical areas (which include Critical Aquifer Recharge Areas)
4. Removal of Underground Storage Tanks (Resource Conservation and Recovery Act of 1976 42 USC 6109, *et seq*. and Underground Storage Tank Compliance Act of 2005 42 USC 15801 *et. seq*., and Energy Policy Act of 3006 P.L. 109-58, Title XV, Subtitle B)
    a. RCW 90.76 Underground Storage Tanks
    b. WAC 173-360 Underground Storage Tank Regulations

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APPENDIX J

Section 106 Exemptions

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Section 106 Exemptions

Screened Highway, Bridge, and Transit Infrastructure Activities Presumed to Have Minimal Potential to Cause Effects:

An undertaking of one or more of the types listed below will not require further Section 106 review with SHPO, FHWA, or FTA once the undertaking has been reviewed by a WSDOT or WFLHD Cultural Resources Specialist to ensure that the location or nature of the activity is such that it is unlikely to affect an historic property. The list below may apply to either FTA or FHWA activities. If at any time during the undertaking information becomes available that would make this procedure inapplicable, including but not limited to the discovery of historic properties or human remains, Section 106 review shall be initiated by WSDOT on behalf of FHWA or FTA, or by WFLHD in accordance with Stipulation VII of this Programmatic Agreement.

A-1 Roadway surface replacement, overlays, shoulder treatments, rumble strips, pavement repair, seal coating, pavement grinding, and pavement marking that do not include ground disturbance or is within the demonstrated vertical and horizontal limits of previous disturbance.

A-2 Installation, replacement, or repair of maintenance equipment, safety appurtenances, and traffic control devices, including but not limited to guardrails, barriers, glare screens, snow and ice detectors, energy attenuators, cameras, lighting, signs, signals, and informational signage/kiosks, provided the activity is in-kind replacement or does not include ground disturbance or is within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-3 Fencing within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-4 Landscaping or revegetation within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-5 In-kind emergency repairs to maintain the structural integrity of abridge, structure, or roadway, and to remove landslide and rockslide material from travel lanes and shoulders.

A-6 Hazardous waste removal and disposal that requires immediate removal within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-7 Work within existing permitted material source pits, quarries or other borrow sources; or borrow pits that have been previously inventoried by WSDOT and where no cultural resources were identified.

A-8 Stripping and painting of bridges.

A-9 Replacement of bridge expansion joints.

A-10 Bridge deck pavers and striping projects.

A-11 In-kind repair or replacement of curb and gutter, sidewalks and catch basins, and other components of NRHP bridges not considered character defining.

A-12 Removal of vegetation or fallen rock in the clear zone along a roadway.

A-13 Work within interchanges, medians of divided highways, or between a highway and an adjacent frontage road within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-14 Replacement or extension of culverts and other drainage structures which do not extend beyond the vertical and horizontal limits of previous construction or disturbance for the existing culvert or drainage structure.

A-15 Construction of turning lanes and pockets, auxiliary lanes, sidewalks, and shoulder widening within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-16 Slope flattening done within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-17 Placement of riprap or other erosion control method to prevent erosion within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-18 Construction activities in areas of continuous slides, other mass wasting, or unstable landforms as evidenced by geotechnical core samples or other geotechnical evaluation.

A-19 Roadway widening within the demonstrated vertical and horizontal limits of previous construction or disturbance

A-20 Installation, maintenance, repair, or rehabilitation of bicycle and pedestrian lanes, paths, and related facilities within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-21 Trenching or other excavation to install, replace, or repair electrical, water, sewer lines, fiber optics, telephone cable, or other utilities within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-22 Construction staging areas or other locations proposed for temporary use during construction within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-23 Geotechnical borings, data collection, and non-invasive environmental sampling required to support the planning or design of an undertaking.

A-24 Soil pits dug by hand using shovels or augers for delineating wetland boundaries, characterizing wetland soils, or characterizing potential hazardous materials.

A-25 Borrowing of rock and rock removal and stabilization activities (e.g. rock scaling, bolting) within existing rights-of-way.

A-26 Real estate leases and surpluses.

A-27 Stormwater retrofit activities designed to divert and treat highway runoff, including but not limited to installation of curbing, spillways, filter strips, and biofiltration swales, within the demonstrated vertical and horizontal limits of previous construction or disturbance.

A-28 All bridges constructed after 1945 that meet the definition of "common bridge types" in Sec. V (A-D), Federal Register Vol. 77, No. 222, p. 68794 and that 1) have not been previously NRHP listed in or determined eligible; 2) are not truss, arch, movable, suspension, cablestayed, or covered bridges; or 3) are not included in WSDOT's Common Bridges in WA Excluded from ACHP's Program Comment for Common Post-1945 Concrete and Steel Bridges Exemption (https://www.environment.fhwa.dot.gov/histpres/bridges_list.asp)

A-29 All Interstate components not included in FHWA's Final List of National and Exceptionally Significant Features of the Interstate Highway System (https://www.environment.fhwa.dot.gov/histpres/highways_list.asp).

A-30 Repair and/or maintenance activities at bus stop sites on existing shelters, signs, pads, sidewalks, lights, and other passenger amenities, including ADA improvements.

A-31 Replacement at bus stop sites of existing shelters, signs, pads, sidewalks, lights, and other passenger amenities, provided the replacements are in-kind (i.e., the same or comparable in size, appearance, and function) and they are within the existing horizontal and vertical footprint, or extend the footprint only minimally to accommodate improvements, and any ground disturbance is minimal and is in previously disturbed areas.

A-32 Improvements inside an existing bus shelter that have no visual impact or minimal visual impact to those outside the shelter(e.g., adding light or transit information signage in an existing shelter).

A-33 Placing a bus stop and bus stop/information sign, but not a shelter, at a new location.

A-34 Acquisition, installation, rehabilitation, replacement, and maintenance of equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts.

A-35 Maintenance and/or rehabilitation of stand-alone recreation, pedestrian, or bicycle facilities, such as: a multi-use pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

A-36 Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals.

Screened Washington State Ferries Terminal Activities Presumed to Have Minimal Potential to Cause Effects:

B-1 Minor repair and maintenance activities necessary for continued safe operation of terminal facilities including, but not limited to: repair and maintenance of wingwall rub timbers and polyethylene fender panels; wood, steel, and polyethylene dolphin fender panels; cross bracing; hanger bars; transfer spans; bolting and lashing on dolphins and other offshore structures; counterweight cables; repair and replacement of existing anchor chains and anchors associated with floating dolphins and wing dolphins; and repair to existing structures that are not NRHP eligible.

B-2 Replacement of existing structures including, but not limited to, bridge seat, towers, wingwalls, dolphins, and overhead loading and passenger walkway facilities.

B-3 Repair and replacement of trestles including decking, stringers, pile caps, and piling supporting the trestle, provided there is no expansion of the trestle.

B-4 Repair and replacement of bulkheads of the same size and location.

B-5 Roadway surface replacement, overlays, shoulder treatments, rumble strips, pavement repair, seal coating, pavement grinding, and pavement marking that do not include ground disturbance or is within the demonstrated vertical and horizontal limits of previous disturbance.

B-6 Fencing within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-7 Landscaping or revegetation within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-8 Installation, replacement, or repair of safety appurtenances and traffic control devices, including but not limited to guardrails, barriers, glare screens, snow and ice detectors, energy attenuators, cameras, lighting, signs, signals, and informational signage/kiosks; provided the activity does not include ground disturbance or is within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-9 Repair or replacement of curb and gutter, catch basins, and other drainage structures within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-10 Emergency repairs to maintain the structural integrity of a structure.

B-11 Geotechnical borings, data collection, and non-invasive environmental sampling required to support the planning or design of an undertaking.

B-12 Trenching or other excavation to install, replace, or repair electrical, water, sewer lines, fiber optics, telephone cable, or other utilities within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-13 Installation of bicycle and pedestrian lanes, paths, and related facilities within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-14 Placement of riprap or other erosion control method to prevent erosion within the demonstrated vertical and horizontal limits of previous construction or disturbance.

B-15 Installation, replacement, repair, or maintenance activities conducted on existing vessels, provided that the vessels are not NRHP eligible, or if NRHP eligible, the activities do not have a potential to affect the integrity of the character-defining elements that make the vessel eligible to the NRHP.

APPENDIX K

FHWA's Section 4(f) Documentation Procedure and Templates

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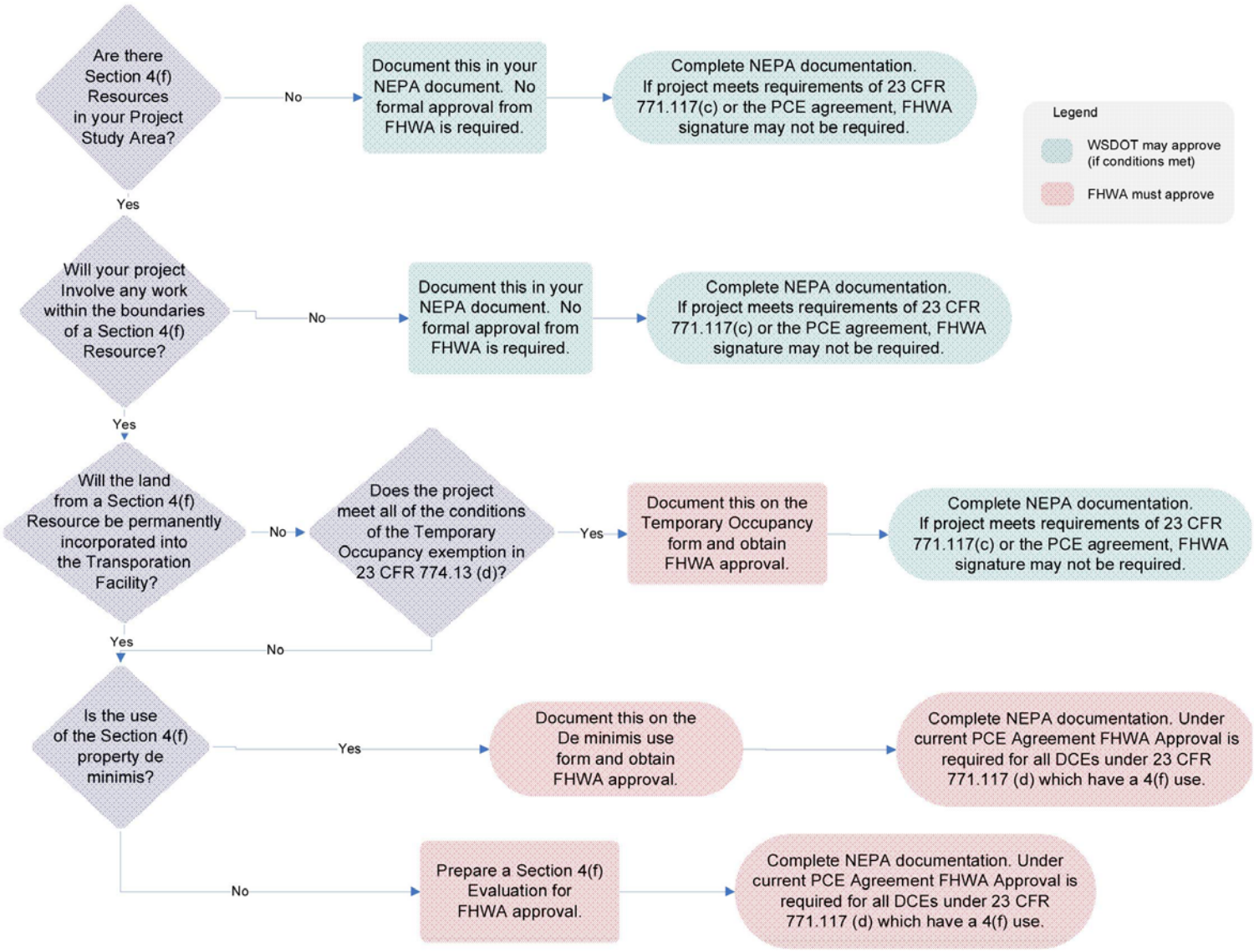
Documenting Section 4(f) Approvals from FHWA

Purpose of this Guidance

In the past FHWA met our obligations for documenting compliance with 23 CFR 774 (a.k.a. "Section 4(f)") primarily through our NEPA documents. When there is a use of a Section 4(f) resource that is more than *de minimis*, the process is clear – a Section 4(f) Evaluation must be prepared and approved by FHWA. The Section 4(f) Evaluation can be incorporated into a NEPA EIS or EA, or it may be a stand-alone document.

For projects which involve temporary occupancies or *de minimis* uses of section 4(f) resources, we have typically made the approval as part of the NEPA document. Documentation is prepared, but the formal approval happened with the FHWA signature on the NEPA document. With new CEs 23 CFR 771.117 (c) (22) and (23) WSDOT will be signing more NEPA documents on behalf of FHWA. We need a new process for documenting FHWA approval of Section 4(f) determinations.

Flow Chart – When to use the attached forms and who has approval authority.



Section 4(f) Temporary Occupancy Approval (per 23 CFR 774.13(d))

Date:	Enter date
Lead Agency:	Enter Agency (City/County/other)
Project:	Enter Project Title
Project Description:	Enter Project Description
Section 4(f) Resource:	Enter name of resource - one resource per form
Type of 4(f) Resource:	☐ Public Park or Recreational Area ☐ National-Register Eligible Historic Site ☐ Publicly-owned Wildlife or Waterfowl Sanctuary
Impact on the 4(f) Resource:	Briefly describe the nature of the impact to the 4(f) resource.
Official with Jurisdiction:	Enter Official with Jurisdiction (will be SHPO or THPO for historic properties)

Description of how the conditions for Temporary Occupancy are met

1. ***Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;***

   Include information about the duration of the project and the duration of the temporary occupancy - the temporary occupancy must be less than the overall duration of the project - if it is not, there may be a use.

2. ***Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;***

   Describe the scope of the work, and how it impacts the Section 4(f) property.

3. ***There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;***

   Explain how the project will ensure that there are no permanent adverse physical impacts and how interference with protected activities, features, and attributes will be prevented.

4. ***The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and***

   Describe how the land will be restored.

5. ***There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.***

   Include the date of the documented agreement (usually a letter or e-mail) from the official with jurisdiction, and attach the documentation to this agreement..

Request for Approval

Based upon this analysis we request FHWA concurrence that this project's temporary occupancy of the Section 4(f) resource described above satisfies the conditions set forth in 23 CFR 774.13 (d) and is so minimal as to not constitute a use within the meaning of Section 4(f).

Name, Environmental Engineer WSDOT Local Programs	Date

FHWA Approval

Name, Title (typically the Area Engineer will sign) FHWA Washington Division	Date

Section 4(f) *De Minimis* Impact Determination (per 23 CFR 774)

Date:	Enter date
Lead Agency:	Enter Agency (City/County/other)
Project Number:	Enter Federal-aid number if known
Project:	Enter Project Title
Project Description:	Enter Project Description
Section 4(f) Resource:	Enter name of resource - one resource per form
Type of 4(f) Resource:	☐ Public Park or Recreational Area ☐ National-Register Eligible Historic Site ☐ Publicly-owned Wildlife or Waterfowl Sanctuary
Size of the *de minimis* use of the 4(f) Resource (in acres):	Include the size of the impact, and if possible also the size of the park (e.g. "0.5 acres of a 10.9 acre park")
Primary Purpose/Function:	Just a short statement - such as "historic building", "sports fields", "trails", "picnic areas", "open space". Details should be included in the answer to question 1 below.
Official with Jurisdiction:	Enter Official with Jurisdiction (will be SHPO or THPO for historic properties)

De minimis Documentation

1. ***Describe the Section 4(f) property and the attributes and features that qualify it for Section 4(f) protection, attach a map with shows the boundary of the resource, the locations of key features (e.g. ball fields, structures) and shows the area to be used;***

   Enter Description of Section 4(f) Resource

2. ***Describe the impacts to the Section 4(f) property, and any avoidance, minimization and mitigation or enhancement measures, and why they are considered de minimis as defined in 23 CFR 774.17;***

   This subsection should make the case for why the impact is de minimis (taking into account any avoidance, minimization, and mitigation measures. Be specific.

3. ***For parks, recreational facilities, and wildlife and waterfowl sanctuaries:***

   a. ***Describe the Public Outreach that has been or is being conducted (leave blank for historic sites);***

      If this form is being prepared for use in a public meeting include when the meetng will be held. If there has been an Open House, mailing, or other public outreach descibe it here.

   b. ***Include written concurrence of the official with jurisdiction over to 4(f) resource with the* de minimis *determination.;***

      Include the date of the documented agreement (usually a letter or e-mail) from the official with jurisdiction, and attach the documentation to this agreement.

4. ***For historic resources, attach Section 106 Documentation (Include SHPO concurrence in project-level findings (DOEs and or FOEs) and Programmatic Agreement Memos for archaeological resources); and***

   Give dates of determinations here and attach copies. The request for an eligibility concurrence should include disclosure that FHWA intends to make a de minimis determination.

Request for Approval

Based upon this analysis we request FHWA approval that the use of the Section 4(f) resource described above is *de minimis* as defined in 23 CFR 774.17.

Name, Environmental Engineer WSDOT Local Programs	Date

FHWA Approval

Name, Title (typically the Area Engineer will sign) FHWA Washington Division	Date

APPENDIX L

Environmental Justice Exemptions

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ENVIRONMENTAL JUSTICE EXEMPTIONS

The following list identifies project activities that are unlikely to result in adverse impacts to protected populations, regardless of the location of the project or populations present.

If all aspects of a proposed project's activities must be covered by one or more of the following exemptions, no further analysis is required. The local agency must document which exemptions are applicable on the CE documentation form.

Exemptions:

1) Roadway surface replacement, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking, that do not expand the existing wearing surface that do not require detours.

2) New installation, replacement or repair of lighting, signs, signals, and other traffic control devices, informational signage/kiosks, and street furniture within existing right-of-way limits that do not require detours.

3) Installation, replacement or repair of safety appurtenances including but not limited to guardrails, barriers, glare screens, rumble strips, snow and ice detectors and energy attenuators that do not require detours.

4) Repair or replacement of curb and gutter, sidewalks and catch basins within the same location that do not require detours.

5) Emergency repairs to maintain the structural integrity of a bridge or roadway, and/or to remove landslide and rockslide material from travel lanes and shoulders.

6) Construction of turning lanes and pockets, auxiliary lanes (for example, truck climbing, acceleration and deceleration lanes), sidewalks and shoulder widening within existing right-of-way limits that do not require detours.

7) Installation of bicycle and pedestrian lanes, paths and facilities within existing right-of-way limits that do not require detours.

8) Utility installations and/or replacements within the existing right-of-way limits that do not require detours.

9) Bridge-painters and/or bridge and culvert maintenance, repair, or replacement within the existing right-of-way limits that do not require detours.

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APPENDIX M

Social and Community Impacts Decision Matrix

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SOCIAL & COMMUNITY IMPACTS DECISION MATRIX

The following decision matrix is an approach that uses a series of questions with Yes/No answers to provide direction on when additional analysis and documentation is appropriate for a proposed project. If additional documentation is necessary, consider all potential sources of impacts to protected populations in the analysis.

1) Are any protected populations present within the proposed limits of the project's impacts?

   No – Document findings on CE documentation form and include demographic data; findings should be confirmed by using at least two information sources. No further analysis is required.

   Yes – Proceed to question 2.

2) Does the project require permanent right-of-way acquisition?

   No – Document findings on CE documentation form and include demographic data; findings should be confirmed by using at least two information sources. No further analysis is required.

   Yes – Proceed to question 3.

3) Does the proposed project require any relocation of real and/or personal property?

   No – Document findings on CE documentation form and include demographic data; findings should be confirmed by using at least two information sources. Proceed to question 4.

   Yes – An EJ memo is likely required. If so, the local agency must describe the project impacts and analyze their severity. Proceed to question 5.

4) Does the permanent right of way acquisition require more than 10 percent of any parcel?

   No – Document findings on CE documentation form and include demographic data; findings should be confirmed by using at least two information sources. No further analysis is required.

   Yes – Proceed to question 5.

5) Does the proposed project require displacement of more than 10 residences or businesses?

   No – An EJ memo is required. The local agency must describe and analyze the proposed project's potential impacts in the form of an EJ Memo.

   Yes – This project will require a discipline report and public outreach to make an environmental justice determination.

APPENDIX N

Guidance on Habitat for Selected ESA-Listed Species

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GUIDANCE ON HABITAT FOR SELECTED ESA-LISTED SPECIES

Oregon Spotted Frog – This medium-sized frog occurs in Whatcom, Skagit, Pierce, Thurston, and Klickitat counties. Known populations are closely associated with relatively large wetland complexes with shallow-water habitats, which are well exposed to the sun. Mating and egg-laying occur February–April, with embryonic and larval development occurring over the subsequent few months in close proximity to the breeding pools. Upon termination of breeding, adult frogs move to more perennial waters found in adjacent wetlands, sloughs, ditches, stock ponds and other water bodies with little to no current. Adults are known to move up to 1.5 miles from shallow, often ephemeral breeding ponds but always remain in or in the immediate vicinity of lentic habitats.

Yellow-Billed Cuckoo – In the 1830s the Yellow-billed Cuckoo was reported to be abundant along the lower Columbia River at present-day Vancouver. Subsequent observations indicate that cuckoos were an uncommon nester in the Puget Trough in the early 20th century, but the scientific literature indicates that the species was rare in the state by 1930. Reports of individual cuckoos have been rare in recent decades. Since 1990 there have been just 14 sightings statewide. The two most recent sightings were in 2015 near the town of Twisp (Chelan County) and in 2012 on the Little Pend Oreille National Wildlife Refuge (Pend Oreille Co.). Of the 14 recent sightings, 11 occurred east of the Cascades and two in the Puget lowlands. All evidence points to recent cuckoo sightings as being of non-breeding birds. USFWS' draft guidance for Washington describes suitable breeding habitat for the cuckoo as patches of mature willow and cottonwood riparian vegetation that are greater than 50 acres in size.

Streaked Horned Lark – This small, ground-dwelling bird occurs in wide open spaces with no trees and few or no shrubs. It nests on the ground in sparsely vegetated sites dominated by grasses, forbs, and bare soil. It is known to occur in three distinct parts of Washington: the Puget lowlands in Thurston, Pierce, and Mason counties, the Washington coast in Grays Harbor and Pacific counties, and islands and shorelines (often dredge spoil deposition sites) of the lower Columbia River in Cowlitz, Clark, Wahkiakum counties.

Western Snowy Plover – This small shorebird is found along the Washington Coast. Designated critical habitat for the Pacific Coast Western Snowy Plover occurs in at Damon Point and Leadbetter Point in Pacific County and Midway Beach in Grays Harbor County. In 1995 the breeding population in Washington State was restricted to two sites, Leadbetter Point in Willapa National Wildlife Refuge and the Damon Point and Oyhut Wildlife Area at Ocean Shores. However, in 1998 five nests were observed at South Beach

Northern Spotted Owl – Northern Spotted Owl nest tree: A large tree or snag, located within a stand of suitable habitat, with any of the following features: a broken top, a cavity, mistletoe brooms, or a raptor nest. Northern Spotted Owls will nest in cavities in snags, but the snag or live tree must be located in a stand of suitable habitat. No

minimum stand size for Northern Spotted Owl habitat has been defined, but 5 acres may be considered a reasonable minimum. A nest patch has been defined as 70 acres of the best suitable habitat surrounding a known nest tree.
Northern Spotted Owl suitable habitat: Forest stands that meet the description of old forest habitat, sub-mature habitat or young forest marginal habitat. Old forest habitat is the highest quality, followed in descending order by sub-mature habitat and young forest marginal habitat.

Old forest habitat: Habitat that provides for all the characteristics needed by northern spotted owls for natural fire rotation and dispersal, described as stands with:

- A canopy closure of 60 percent or more and a layered, multispecies canopy where 50 percent or more of the canopy closure is provided by large overstory trees (typically, there should be at least 75 trees greater than 20-inches diameter at breast height (dbh) per acre, or at least 35 trees 30-inches dbh or larger per acre); and
- Three or more snags or trees 20-inches dbh or larger and 16 feet or more in height per acre with various deformities such as large cavities, broken tops, dwarf mistletoe infections, and other indications of decadence; and
- More than two fallen trees 20-inches dbh or greater per acre and other woody debris on the ground.

Sub-mature habitat and young forest marginal habitat**:** Sub-mature habitat provides all of the characteristics needed by Northern Spotted Owls for roosting, foraging, and dispersal. Young forest marginal habitat provides some of the characteristics needed by Northern Spotted Owls for roosting, foraging, and dispersal. Sub-mature habitat and young forest marginal habitat stands can be characterized based on the forest community, canopy closure, tree density and height, vertical diversity, snags and cavity trees, dead and down wood, and shrubs or mistletoe infection. They are described in Table 1.

Dispersal-only habitat may include the stand structure described above, but does not have adequate understory vegetation to support prey species or has understory features (overgrown vegetation or high twig densities) that inhibits foraging by Northern Spotted Owls.

Table 1: Western Washington Northern Spotted Owl Sub-Mature and Young Forest Marginal Habitat Characteristics from the Washington Forest Practices Rules (WAC 222-16-085).

Characteristic	**Habitat Type**	
	Sub-Mature	**Young Forest Marginal**
Forest Community	conifer-dominated or conifer hardwood (greater than or equal to 30% conifer)	conifer-dominated or conifer hardwood (greater than or equal to 30% conifer)
Canopy Closure	greater than or equal to 70% canopy closure	greater than or equal to 70% canopy closure

Tree Density and Height Vertical Diversity	115-280 trees/acre (greater than or equal to 4 inches dbh) with dominants/co-dominants greater than or equal to 85 feet high OR dominant/co-dominants greater than or equal to 85 feet high with 2 or more layers and 25-50% intermediate trees	115-280 trees/acre (greater than or equal to 4 inches dbh) with dominants/co-dominants greater than or equal to 85 feet high OR dominant/co-dominants greater than or equal to 85 feet high with 2 or more layers and 25-50% intermediate trees
Snags/Cavity Trees	Greater than or equal to 3 trees/acre (greater than or equal to 20-inches dbh and 16 feet in height)	greater than or equal to 2 trees/acre (greater than or equal to 20-inches dbh and 16 feet in height) OR greater than or equal to 10% of the ground covered with 4-inch diameter or larger wood, with 25-60% shrub cover
Dead, Down Wood	N/A	
Shrubs	N/A	
The values indicated for canopy closure and tree density may be replaced with a quadratic mean diameter of greater than 13 inches and a basal area of greater than 100 square feet.		

Marbled Murrelet – Marbled Murrelet potential nest tree: Potential nest trees are defined by USFWS as conifers with live crowns containing suitable nesting platforms. Platforms are defined as large, moss-covered branches ≥4 inches diameter located ≥ 33 feet above ground.

Marbled Murrelet suitable nesting habitat: Marbled Murrelet suitable habitat occurs within 55 miles of marine waters and is defined as having the following components.

Platform: Platforms are defined as limbs greater or equal to 4 inches diameter (10 centimeters [cm]) and greater or equal to 33 feet (10 meters [m]) above ground. Younger forests with dwarf mistletoe or other deformations or structures can also provide nesting platforms. Other important attributes of the platform are vertical and horizontal cover and substrate. Known nest sites have platforms that are generally protected by branches above (vertical cover) or to the side (horizontal cover).

Number of platforms per acre: The stand should have at least two platforms per acre. The platforms may be clumped in one area or dispersed throughout the stand, but the average number of platforms/acre should be at least two.

This is a very basic description of suitable habitat which may be changed on a case-by-case basis dependent upon site-specific information. The USFWS does not identify a minimum patch size for suitable nesting habitat.

Western Snowy Plover – This small shorebird is found along the Washington Coast. Designated critical habitat for the Pacific Coast Snowy Plover occurs on Damon Point and Ledbetter Point in Pacific County and Midway Beach in Grays Harbor County. In 1995 the breeding population in Washington State was restricted to two sites, Ledbetter Point in Willapa National Wildlife Refuge and Damon Point and Oyhut Wildlife Area at Ocean Shores. However, in 1998 five nests were observed at South Beach on the north end of

Willapa Bay. Since 1998, breeding birds have also re-established a population at Midway Beach on the north end of Willapa Bay.

Mazama Pocket Gopher – The distribution of the Mazama Pocket Gopher is limited to prairies and prairie-like habitats (often grassy/weedy sites with prairie soil types) in Thurston and Pierce counties. Individuals live in a system of underground tunnels and their presence is determined largely on the shape of soil mounds that mark the entrances to the burrows. Mazama Pocket Gophers are known to occupy the maintained right-of-way adjacent to county roads and Interstate 5.

Grizzly Bear – The distribution of the Grizzly Bear and suitable Grizzly Bear habitat is limited to the Cascade and Selkirk mountains. However, documented occurrences are limited to the northern Cascades and northern Selkirk mountains.

Gray Wolf – In Washington the Gray Wolf is listed as Endangered under the Endangered Species Act. However, documented observations in the state are generally limited to the northern Cascade Mountains and mountainous regions of Pend Oreille and Stevens counties.

Canada Lynx – The distribution of Canada Lynx and suitable lynx habitat in Washington is primarily limited to the north Cascades east of the Cascade crest and portions of mountainous regions in northeastern Washington. Sub-alpine fir zone is considered potential den habitat for the Canada Lynx. Primary vegetation that contributes to lynx habitat is Lodgepole Pine (*Pinus contorta*), Subalpine Fir (*P. lasiocarpa*), and Engelmann spruce (*Picea engelmannii*). Cool, moist Douglas-fir (*Psuedotsuga menzisii*), Grand Fir (*Abies grandis*), Western Larch (*Larix occidentalis*), and aspen forests may provide secondary vegetation for Canada Lynx when it is interspersed within subalpine forests. Dry forest types (for example, Ponderosa Pine, climax Lodgepole Pine) do not provide lynx habitat.

Columbian White-tailed Deer – Currently, the known populations in and near Washington are located in the Julia Butler Hansen National Wildlife Refuge and on Puget Island within the Columbia River corridor in Wahkiakum County, as well as along the Columbia River in Clark and Cowlitz counties.

Woodland Caribou – The Selkirk Mountains in northeastern Washington and northern Idaho harbor the last population of Woodland Caribou in the United States. A total of 15 caribou occurrences are documented—14 from Pend Oreille County and one from the eastern edge of Stevens County.

APPENDIX O

Local Programs' Procedure for Sharing Local Agency Discipline Reports with Tribes

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LOCAL PROGRAMS' PROCEDURE FOR SHARING
LOCAL AGENCY DISCIPLINE REPORTS WITH TRIBES

February 9, 2010

Introduction

The *WSDOT Model Comprehensive Tribal Consultation Process for the National Environmental Policy Act* (July 2008) provides the framework for project consultation between WSDOT and tribes. One of the principal tenets of this document is a commitment to provide interested tribes with the desired project information as early as it is feasible to do so. To help to achieve early and effective coordination on local agency projects, each January Local Programs provides tribes with a list of upcoming projects and offers to meet to discuss any tribal concerns.

Local Programs is committed to fulfilling the commitments laid out in the model tribal consultation policy, but in some cases must vary its approach due to the substantively different environmental process used on local agency projects. One very notable difference is that for state projects WSDOT Regions and Modes take an integrated approach to NEPA, SEPA and permitting for state transportation projects. On local agency projects, however, Local Programs addresses only NEPA—both SEPA and permitting are handled by the responsible local agencies months to sometimes years after NEPA is completed.

With the exception of ESA, which must be completed prior to concluding NEPA, the majority of the decision making on natural-resource issues on local agency projects does not occur until permitting. For this reason it is highly challenging to engage in meaningful early consultation on many of the environmental issues of interest to tribes. For example, Local Programs reviews wetland mitigation plans to ensure that the overall approach is within the bounds of the U.S. Army Corps' and Ecology's joint mitigation guidelines. However, both the project's impact area and the actual mitigation plan frequently change as a result of post-NEPA negotiations between the local agency and staff at the Corps and Ecology during the 404/401 permitting process. Mitigation for streams follows a similar course, but the actual final mitigation is determined during permitting with the Corps and Department of Fish & Wildlife.

The rest of this paper lays out FHWA's and Local Programs' practice for the sharing with tribes environmental discipline reports prepared for NEPA Documented Categorical Exclusions on local agency projects.

When can discipline reports be shared?

If a tribe lets us know that they are interested in a specific environmental discipline report for a project, Local Programs will make it available after two things have occurred:

(1) The quality-assurance/quality-control reviews have been completed by the WSDOT discipline experts. Environmental justice and Section 4(f) reports can be released only after quality-assurance/quality-control reviews have been completed by FHWA.
(2) An email is sent from the EE to the FHWA Area Engineer requesting permission to release the document. The document may be sent to a tribe as soon as permission is granted; the report may be sent after 7 days if no response is received from FHWA.

Who will send discipline reports?

The EE will typically be the person responsible for providing discipline reports to tribes.

How will the reports be provided?

In the interest of conserving resources, Local Programs prefers to send PDFs of discipline reports by email or by uploading them onto an FTP site. However, in cases where electronic documents are unavailable or in instances where the tribe does not have access to the internet, Local Programs and FHWA will send printed paper copies.

Is there a formal comment period?

There is no legal comment period for CE-level NEPA documents. However, NEPA always allows for new information to be considered and for the process to be reopened if deemed appropriate.

ACRONYMS USED IN THIS GUIDEBOOK

AASHTO: American Association of State Highway & Transportation Officials
ACHP: Advisory Council on Historic Preservation
APE: Area of Potential Effect
ARPA: Archaeological Resource Protection Act
BA: Biological Assessment
BMP: Best management practice
BO: Biological Opinion
CE: Categorical Exclusion
CEQ: Council on Environmental Quality
CFR: Code of Federal Regulations
Corps: U.S. Army Corps of Engineers
DAHP: Department of Archaeology and Historic Preservation
DBH: Diameter at breast height
DEIS: Draft EIS
DNR: Department of Natural Resources
EA: Environmental Assessment
EE: Environmental Engineer
EFH: Essential Fish Habitat
EIS: Environmental Impact Statement
EJ: Environmental Justice
EM: WSDOT Environmental Manual
EO: Executive Order
EPA: Environmental Protection Agency
ESA: Endangered Species Act
ESO: WSDOT Environmental Services Office
FEIS: Final EIS
FEMA: Federal Emergency Management Agency
FONSI: Finding of No Significant Impact
FRA: Federal Railroad Administration
FHWA: Federal Highway Administration
FTA: Federal Transit Administration
GMA: Growth Management Act
HRM: Highway Runoff Manual
IPaC: Information for Planning and Consultation
LAG: Local Agency Guidelines
LEP: Limited English Proficiency
LOC: Letter of Concurrence
LOS: Level of Service
LPE: Local Programs Engineer
LTAA: Likely to Adversely Affect
MAP 21: Moving Ahead for Progress in the 21st Century
MOA/MOU: memorandum of agreement/understanding
MPO: Metropolitan Planning Organization
MSA: Magnuson-Stevens Fishery Conservation and Management Act
NAAQS: National Ambient Air Quality Standards
NEPA: National Environmental Policy Act
NLTAA: Not Likely to Adversely Affect
NMFS: National Marine Fisheries Service
NOAA: National Oceanic & Atmospheric Administration
NOI: Notice of Intent
NPDES: National Pollution Discharge Elimination System
NRCS: Natural Resource Conservation Service
OFD: One Federal Decision
ORA: Office of Regulatory Assistance
PA: Programmatic Agreement
RCO: Recreation and Conservation Office
ROD: Record of Decision
ROW: Right-of-way
RRMP: Regional Road Maintenance Program
RTPO: Regional Transportation Planning Organization
SHPO: State Historic Preservation Officer
SIP: State Implementation Plan
SOI: Secretary of Interior
STIP: Statewide Transportation Improvement Program
TCP: Traditional Cultural Property
THPO: Tribal Historic Preservation Officer
TIP: Transportation Improvement Program
TNM: Traffic Noise Model
USFS: U.S. Forest Service
USGS: U.S. Geological Survey
USFWS: U.S. Fish & Wildlife Service
WDFW: Washington Department of Fish & Wildlife