

FEDERAL NEXUS REQUIREMENTS

The table below helps define what requirements WSDOT is lawfully required to comply with by the type of nexus shown in columns 1-4, including:

1. FHWA funding – this includes any amount of federal funding, including federal funding for any contracts associated with the project and requirements to be eligible for future federal funding.
2. FHWA approval¹ – examples of FHWA approvals include access revision request, design exception approval², NEPA, use and occupancy (e.g., air space lease and access break).
3. Corps approval¹ – examples of Corps approvals include Individual permits and Nationwide permits issued under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
4. No federal nexus - state funding only with no federal funding or approval¹.

A 'Yes' value means that the process/requirement in column 0 applies to ALL phases of the project's development and delivery (environmental review, right of way, construction, etc.). If the process/requirement only applies to specific project phases, then a 'No' value is listed and the Comments should include an explanation of the phase-specific requirements.

The Comments contain any additional information about best practices, agency policy, caveats, exceptions, applicable phases, etc.

Disclaimer: This information is for planning purposes only and does not constitute legal advice. Projects are unique, and the applicability of legal requirements are subject to change. Please contact the appropriate ATG office for questions regarding the applicability of legal requirements for specific projects. For questions and suggestions, contact Justin Zweifel: 360-705-7492 or zweifej@wsdot.wa.gov.

0. Process/Requirement	1. FHWA funding	2. FHWA approval only (If there is FHWA funding and FHWA approval, refer to column 1).	3. Corps approval only (no other type of federal nexus)	4. No federal nexus (including any nexus created by past environmental documents related to project). SEPA still applies.	Comments
Uniform Relocation Assistance and Real Property Acquisition Act (49 CFR 24) ³	Yes	Yes	Yes Note: The Corps is one of 18 federal agencies that must comply with Uniform if they have funds and/or approval actions on a project. However, it is up to the Corps to interpret the applicability of Uniform to their programs. Therefore, it is the Corps' decision to determine if compliance is required.	No However, you must use state process (WAC 468-100).	WSDOT's Real Estate Office always complies with Uniform Relocation Act – either the state version or the federal version.
Buy America Act ⁴	Yes	No	No	No	
Americans with Disabilities Act ⁵	Yes	Yes	Yes	Yes	ADA applies to all government agencies. ADA is required for any facility that the public is expected to be able to access.
Disadvantaged Business Enterprise (DBE) (49 CFR 26) ⁶	No DBE is not required for ALL phases. HOWEVER, for federal funding, the DBE federal policy (49 CFR 26) <u>is</u> required in the phase that funding was allocated.	No	No However, you must use state process (RCW 39.19)	No However, you must use state process (RCW 39.19)	WSDOT always considers/applies DBE requirements. There are separate federal and state policies.

Section 4(f) of the USDOT Act	Yes	Yes	No	No	Section 4(f) is a USDOT-specific requirement.
Section 106 of the National Historic Preservation Act	Yes Use programmatic agreement.	Yes Use programmatic agreement.	Yes	No Use Governor's Executive Order 05-05,	Programmatic agreement is signed by FHWA, FTA, DAHP, ACHP, and WFLHD (FHWA) for WSDOT projects. There are separate federal and state policies.
ESA	Yes Use programmatic agreement.	Yes Use programmatic agreement.	Yes Use programmatic agreement.	No If 'Not Likely To Adversely Affect' or 'No Effect' Determination, then you can document through Programmatic BA but it is not submitted (nor required). If 'Adversely Affect', then don't allow - cancel project, or federalize project.	Programmatic BA signed by FHWA and Corps for NMFS and USFWS Sec 7 consultation.
Noise Standards (23 CFR 772)	Yes Follow 2020 WSDOT Noise Policy	Yes Follow 2020 WSDOT Noise Policy	No Use State Funds Option in Appendix 1 of 2020 WSDOT Noise Policy	No Use State Funds Option in Appendix 1 of 2020 WSDOT Noise Policy	
Environmental Justice (E.O. 12898)	Yes	Yes	Yes To the extent that a Corps approval affects a Title VI protected group (e.g., Native Americans).	Yes Title VI (the law from which EJ is built on) applies to the entire operations of WSDOT regardless of having a project-specific federal nexus. There are also multiple state policies that support equity/inclusion, e.g., the WA State Diversity, Equity, and Inclusion Act (2019). SEPA identifies the need for agencies to consider how best to "foster and promote the general welfare, ... and fulfill the social, economic, and other requirements of present and future generations" when taking actions.	The foundation for Environmental Justice is Title VI (nondiscrimination on the basis of race, color, or national origin). WSDOT, as a recipient of Federal assistance must ensure that its entire operations (programs, services, and activities - regardless of funding source) comply with Title VI. EJ supports Inclusion, which is one of WSDOT's 3 strategic goals.
Title VI Disparate Impact Analysis	Yes	Yes	Yes	Yes	Title VI compliance is required for everything WSDOT does because the agency receives federal funding. This includes projects that don't have federal funding.
Tribal consultation	Yes	Yes	Yes	Yes	
Farmland Protection Policy Act (7 CFR 658)	Yes	Yes	Yes	No However refer to Directional memo ESO 2010-02 - Guidance on the Avoidance of Agricultural Lands of Long-term Commercial Significance	

NEPA process	Yes 23 CFR 771	Yes 23 CFR 771	Yes 33 CFR 230	No	You can create a FHWA nexus without federal funding if you follow the federal requirements, the project is in the STIP, and you complete the ERS-ECS.
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¹Approval

Approvals include any authorization, certification, license, permit, or other form of permission which a federal agency is empowered to issue to an applicant.

²Design exception approval

Also referred to as 'design analysis'. Refer to Design Manual Chapter 300

³Uniform Relocation Act (and Real Property Acquisition Policies Act of 1970, as amended)

The Uniform Act, passed by Congress in 1970, is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property or displace persons from their homes, businesses or farms. The Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for Federal or federally funded projects. As a recipient of federal financial assistance, all of WSDOT's programs, services and activities (regardless of funding source) are subject to compliance with Title VI. While the federal Uniform Act (49 CFR 24) may not be applicable to state funded projects, the nondiscrimination requirements/civil rights protections under Title VI and other federal nondiscrimination laws (e.g., ADA) still apply.

⁴Buy America

On July 6, 2012, MAP-21 was signed into Federal law. A significant provision to this law is the change in the application of Buy America requirements. The law now stipulates that any project defined in a Federal record of decision under the National Environmental Policy Act (NEPA) must contain Buy America requirements in any contract that is eligible for assistance and falls within the scope of the NEPA document, regardless of funding. If there are multiple projects or a single project within the NEPA document and at least one of those projects receives federal funding, regardless of the phase (R/W, Design, or Construction), then all construction contracts must contain Buy America mandates. This new requirement affects all contracts awarded on and after October 1, 2012. This requirement also includes any public works contract within the Right of Way covered under the original scope of the NEPA document such as utilities, Cities, Counties, etc. If a non-Federal-aid highway contract is included within the scope of a NEPA document and at least one other contract (design or construction) within the scope of the same NEPA document is funded **or will be funded** with Federal-aid highway funds, then Buy America provisions apply. Awarding any such non-Federal-aid highway contract, without applicable Buy America provisions would render all contracts within the scope of the NEPA document ineligible for Federal-aid highway funds.

⁵Americans with Disabilities Act (ADA)

The ADA is a civil rights law that identifies and prohibits discrimination based on disability. Title II of the ADA contains specific requirements of State and Local Governments, and requires public entities to design new pedestrian facilities or alter existing pedestrian facilities to be accessible to and usable by people with disabilities. [42 U.S.C. 12101](#). Additionally, the law applies to all public accommodations (movie theaters, sports arenas, restaurants, hotels, et al) and commercial facilities. Regulating Agencies: U.S. Department of Justice and DHR Who is Responsible for Compliance: Anyone who owns or operates a public accommodation, a commercial facility, or buildings owned or leased by a state or local government agency The ADA requires that new buildings and facilities and altered portions of existing buildings and facilities be readily accessible. For existing buildings and facilities, the ADA requires that all barriers to accessibility be removed when it is "readily achievable" to do so. In the case of historic properties, the ADA provides the following: if making a "qualified historic building" accessible would threaten or destroy the historic significance of that building or facility, certain alternative minimum accessibility standards may be applied. If the alteration is part of a Federal undertaking, the responsible Federal agency should contact both the Advisory Council on Historic Preservation and DHR. If the alterations to the historic property are not federally sponsored, and the responsible party believes that full compliance with the ADA would threaten or destroy the facility's historic significance, he is required to consult with DHR. If the department agrees, the alternative minimum standards may be used.

⁶Disadvantaged Business Enterprise (49 CFR 26)

As a recipient of USDOT funds, WSDOT is required to develop and implement a DBE Program that is consistent with 49 CFR 26. As part of its DBE Program, WSDOT is required to evaluate federally funded contracts/projects and determine which contracts/projects to apply DBE goals. WSDOT strives to meet these goals at a programmatic level, but DBE is not specifically required for each individual project.