

Corps Federal Nexus and Jurisdiction for WSDOT NEPA

This document is intended to provide guidance for projects with a U.S. Army Corps of Engineers (Corps) nexus.

The Federal Highway Administration (FHWA) is the typical federal lead agency for WSDOT projects. However, some projects have no FHWA nexus (i.e., no FHWA funding, FHWA approval or work on FHWA land), yet still have a National Environmental Policy Act (NEPA) nexus. A common non-FHWA federal nexus is through the U.S. Army Corps of Engineers (Corps). The Corps is a federal agency that regulates Waters of the US, including rivers, streams, and wetlands. WSDOT has many projects that impact streams and wetlands and thus require a permit from the Corps. For example, a culvert replacement and [Complete Streets](#) improvements project may have a Corps nexus for the wetland and stream impacts via the 404 permit, but no FHWA nexus for the remaining project elements. The graphic below illustrates federal vs state environmental documentation and permitting considerations for this scenario.

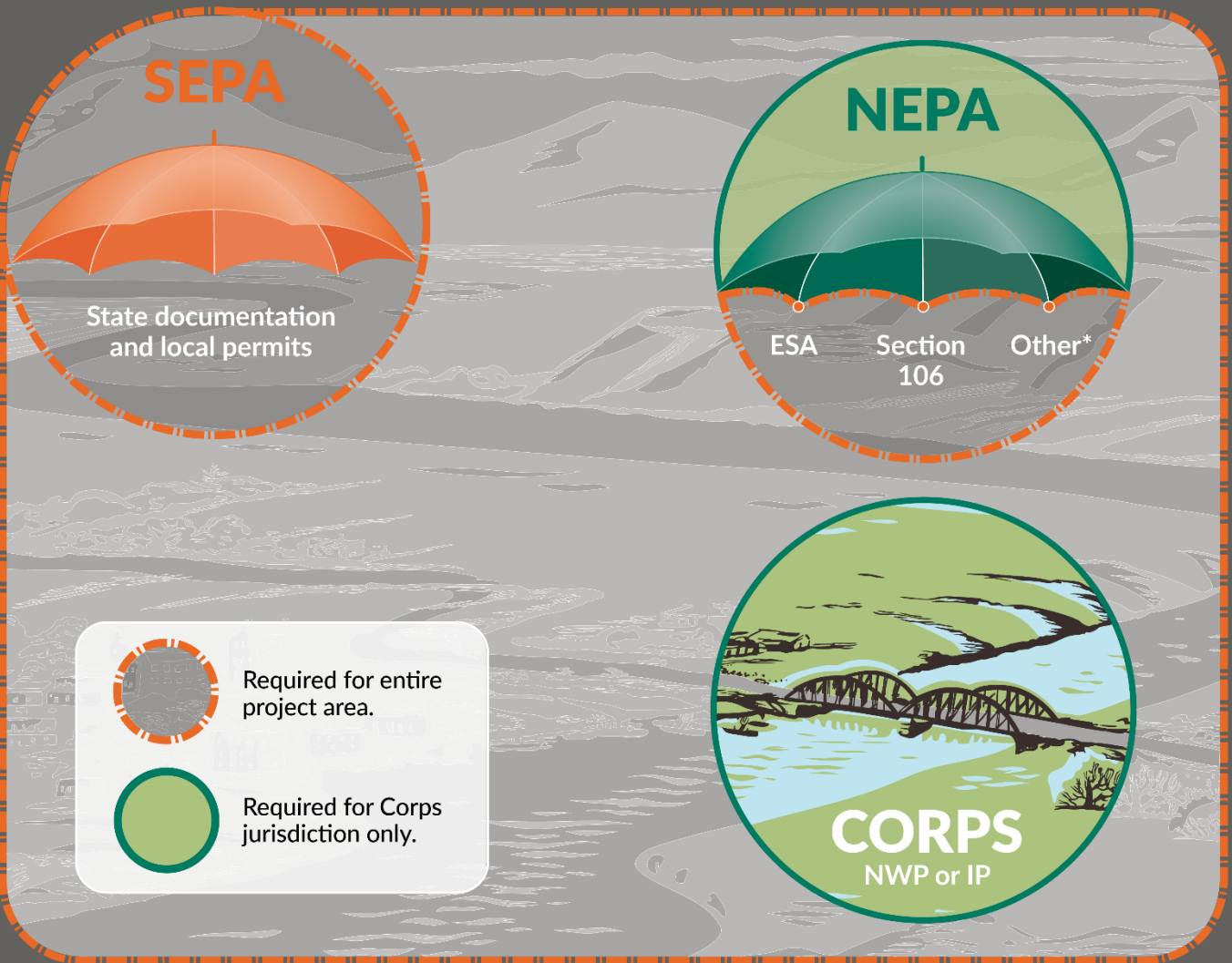
For projects with only a Corps federal nexus, the Corps is the NEPA lead agency for their assumed jurisdiction (extent of what is covered under their permit(s)). Corp NEPA documentation is included within their Nationwide (NWP) or Individual Permits (IP), only for work or regulated activities within their jurisdiction. The remaining project area beyond the Corps jurisdiction should be documented under State Environmental Policy Act (SEPA). Corps permits require Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act. The Corps may also require additional supporting documentation. These documents must cover the entire project area, including outside the Corps jurisdiction. See Figure 1 for illustration of this jurisdiction and Table 1 below for procedures.

If an additional federal nexus exists in the project area (e.g., Federal Aviation Administration (FAA) Right of Way (ROW) acquisition), coordination with that federal agency will be necessary to ensure compliance with their environmental requirements. For example, another federal agency may be able to adopt a WSDOT Categorical Exclusion (CE) or might require WSDOT to complete an Environmental Assessment (EA) covering only that agency's jurisdiction (e.g., projects with Bureau of Indian Affairs (BIA) tribal trust property have required a BIA EA from WSDOT).

Project Support

If you need additional information to determine federal nexus or environmental documentation requirements for your project, please consult *Environmental Manual* Chapters [300](#) and [400](#), and the [NEPA-SEPA](#) webpage. Contact the NEPA-SEPA Program for additional assistance: nepa-sepa@wsdot.wa.gov.

State Funded, Corps Led Nexus Projects



* Includes all documentation requests from the Corps, which may also be added to support SEPA documentation.

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SEPA Documentation Requirements

- 1) Review SEPA Categorical Exemptions to determine if project is exempt.
- 2) If not exempt, use the Environmental Classification Summary (ECS) or a SEPA Checklist to document WSDOT's compliance with SEPA. Discipline reports developed for the Corps NEPA process may be added to support SEPA documentation (see *Environmental Manual Chapter 400.06(3)* for more information).

NEPA Documentation Requirements

| Agency | ESA | Section 106 | Other (includes Federal Environmental Justice) |
|--------|--|---|--|
| WSDOT | <p>For Nationwide Permits (NWP) and Individual Permits (IPs): Programmatic Not Likely to Adversely Affect (NLAA)/ Adversely Affect (AA): WSDOT completes a Programmatic Notification Form (PNF) and sends it to the ESA Liaisons at the Services. WSDOT receives the ESA decision document.</p> <p>Individual NLAA/AA: WSDOT completes a biological assessment (BA) and sends it to the Corps for review.</p> <p>Once the consultation is complete, the ESA liaisons send the decision document to the Corps and WSDOT.</p> | <p>For NWPs and IPs: No Potential to Cause Effects (NPCE): WSDOT will follow Track A in the Memorandum for Record (MFR). For non-reporting NWP, no further action is required. NWPs, should include the NPCE determination in their notification to the Corps.</p> <p>Potential to Cause Effects (PCE): WSDOT initiates consultation with tribes and other affected parties and copies the Corps. WSDOT identifies presence of historic properties and makes recommendations. Historic properties impacted outside of Corps jurisdictional boundaries, are subject to Governor's Executive Order 21-02. See Track B in the MFR when PCE and Corps permit requirement has yet to be determined. See Track C when PCE is known, and Corps permit is required.</p> <p>If a Corps permit is required, WSDOT:</p> <ul style="list-style-type: none"> • Requests State Historic Preservation Officer (SHPO) concurrence of the Area of Potential Effect (APE). • Initiates tribal consultation. • Engages other consulting parties. • Identifies the APE for historic properties. • Sends survey report and recommendation to the Corps' South Puget Sound Section Chief. | <p>For NWPs: No action unless documentation is requested by the Corps.</p> <p>NWPs are not expected to have any discriminatory effect or disproportionate negative impact on any community or group, and therefore are not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.</p> <p>For IPs: No action unless documentation is requested by the Corps. If documentation is requested, the Corps will require an alternatives analysis to complete the NEPA process.</p> |
| Corps | <p>For NWPs and IPs: Programmatic NLAA/AA: No action.</p> <p>Individual NLAA/AA: WSDOT sends BA to the Corps. After review, the Corps will submit the BA to the Services. Once consultation is complete, the ESA liaisons send the decision document to the Corps and WSDOT.</p> | <p>For NWPs and IPs: NPCE: The Corps informs and completes their process using information from the submitted WSDOT Joint Aquatic Resources Permit Application (JARPA). The Corps participates in consultation and signs any project-specific Section 106 Programmatic Agreements.</p> <p>PCE: The Corps is point of contact for questions about the APE. They can change the APE and confirm adequacy of survey and inventory forms prior to submission to the SHPO. The Corps issues an effects determination which may require additional follow-up for WSDOT.</p> <p>The Corps completes analysis in the decision document.</p> | <p>For NWPs: No action.</p> <p>For IPs: No action unless documentation is requested by the Corps. If documentation was requested, the Corps completes the EJ analysis in the decision document.</p> |