



# State Environmental Review Process Environmental Information Document

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## Guidance for Clean Water State Revolving Fund Agreements

Prepared by

Liz Ellis, Environmental Review Coordinator

For the

**Financial Management Section, Water Quality Program**

Washington State Department of Ecology

Olympia, Washington

June 2023, Publication (Pub no. 16-10-003rev)

# Department of Ecology's Regional Offices

## Map of Counties Served



**Southwest Region**  
360-407-6300

**Northwest Region**  
206-594-0000

**Central Region**  
509-575-2490

**Eastern Region**  
509-329-3400

Region	Counties served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	P.O. Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 West Alder Street Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 North Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

## Publication Information

This document is available on the Department of Ecology's website at:

[Publications & forms - Washington State Department of Ecology](#)

### Related Information

[SERP SEPA Finding of Categorical Exemption](#)

[SERP request for NEPA Categorical Exclusion](#)

[Cultural Resources Review Form](#)

[Public Inadvertent Discovery Plan](#)

[Inadvertent Discovery training video](#)

Do not upload any Cultural Resources forms, reports, or surveys to Ecology's Administration of Grants and Loans (EAGL) database. Upload the Inadvertent Discovery Plan (IDP) to EAGL.

## Contact Information

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Financial Management Section

P.O. Box 47600

Olympia, WA 98504-7600

Phone: 360-407-6000

**Website**<sup>1</sup>: [Financial Management Section Environmental and Cultural Resources Review](#)

## ADA Accessibility

To request an ADA accommodation, contact Ecology by phone at 360-407-6000 or email at [liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov), or visit <https://ecology.wa.gov/accessibility>. For Relay Service or TTY call 711 or 877-833-6341.

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<sup>1</sup> <https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Find-a-grant-or-loan/Water-Quality-grants-and-loans/Environmental-review>

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Water Quality Program  
Washington State Department of Ecology  
Headquarters  
Olympia, WA

**June 2023 | Publication 16-10-003 revised**



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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### **Water Quality Program**

Shelly McMurry, CWSRF Fund Coordinator

## Acronyms

BGEPA - Bald and Golden Eagle Protection Act  
BHP - brake horsepower CatEx -Categorical Exclusion  
BiOp - Biological Opinion  
CDBG - Community Development Block Grant  
Corps or USACE - U.S. Army Corps of Engineers  
CWA - Clean Water Act  
CWSRF - Clean Water State Revolving Fund SERP  
CZM - Coastal Zone Management  
DAHP - Department of Archaeology and Historic Preservation  
DEP – Designated Equivalency Plan  
EA -Environmental Assessment  
EAGL – Ecology Administration of Grant and Loans database  
EFH - Essential Fish Habitat  
EIS - Environmental Impact Statement  
EJ - Environmental Justice  
EO – Executive Order  
EPA - Environmental Protection Agency  
ESA - Endangered Species Act  
DEEP - Diesel engine exhaust, particulate  
FCAA - Federal Clean Air Act  
FFRMS - Federal Flood Risk Management Standard  
FNSI - Finding of No Significant Impact  
FPPA - Farmland Protection Policy Act  
HPA - Hydraulic Project Approval  
IDP - Inadvertent Discovery Plan  
IUP – Intended Use Plan  
ITP - Incidental Take Permit  
JARPA - Joint Aquatic Resource Permit Application  
MBTA - Migratory Bird Treaty Reform Act  
NEPA - National Environmental Policy Act  
NFIP - National Flood Insurance Program  
NHPA - National Historic Preservation Act  
NOAA - National Oceanic Atmospheric Administration  
NMFS - National Marine Fisheries Services  
NRCS - Natural Resource Conservation Service  
NSR - New Source Review  
NWI - National Wetland Inventory  
PSD - Prevention of Significant Deterioration  
PHS - Priority Habitats and Species  
R&D - Rural Development  
SDWA - Safe Drinking Water Act

SEPA - State Environmental Policy Act  
SERP – State Environmental Review Process  
SIP - State Implementation Plan  
SFHA - special flood hazard areas  
SOW - Scope of Work  
SSA - Sole Source Aquifer  
TEPA - Tribal Environmental Policy Act  
UIC - Underground Injection Control  
USDA - United States Department of Agriculture  
USFWS - United States Fish and Wildlife Services  
WAC- Washington Administrative Code  
WISAARD - Washington Information System for Architectural and Archaeological Records and Data  
WSR - Wild and Scenic Rivers Act



# State Environmental Review Process (SERP) Environmental Information Document (EID) Guidance

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## Directions

State Revolving Funds (SRFs) have been the successful foundation of water infrastructure investments, with states, tribes, and territories working to steward more than \$200 billion in SRF funds since 1988. In the State of Washington, the Department of Ecology (Ecology) awards and administers state and federal grant funds under the Clean Water State Revolving Fund (CWSRF). As part of the financial administration process, Ecology must consider social, economic, and environmental impacts of financing these infrastructure projects. The CWSRF environmental review process may use the National Environmental Policy Act (NEPA), or a process called the State Environmental Review Process (SERP) to conduct such reviews. This document contains guidance that assists CWSRF applicants and recipients through the SERP Environmental Information Document (EID) that Ecology uses to make SERP determinations.

This guidance replaces instructions in the Combined Funding Guidelines. It is intended to be used as a guide while completing the revised [State Environmental Review Process \(SERP\) Coversheet](#) – now called the State Environmental Review Process (SERP) Environmental Information Document (EID) – for CWSRF agreements. This guidance assists with the compilation of a SERP (EID) for Ecology to use in making our SERP determinations.

Please review this guidance for all CWSRF agreements that cover treatment work projects when you are ready to start environmental review, no matter what year or type of funding (state or federal).

This document does NOT replace other forms which may be required for your agreement. This includes but is not limited to:

Ecology [Cultural Resources Review Form](#)

Ecology [Inadvertent Discovery Template](#)

If applicable, [SERP SEPA Finding of Categorical Exemption](#)

If applicable, [SERP Request for a NEPA Categorical Exclusion](#)

The first section of this document (Section A) must be completed for all CWSRF agreements covering the basic requirements for SERP. Complete the corresponding Section A found on the [SERP EID](#).

Section B covers state and federal regulations that may apply to the agreement. Section B is mandatory for federally funded agreements and for agreements with a protected resource within the project footprint. Review Section B and complete this section on the [SERP EID](#).

When completed, return the [SERP EID](#) with any additional documents to the Ecology Project Manager and Environmental Review Coordinator. For questions, please contact the Environmental Review Coordinator, Liz Ellis, at (360) 628-4410 or [liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov)

## History

Congress authorized financial assistance for municipal treatment works projects in 1948, with funds available after the creation of the Federal Water Pollution Control Act of 1956 (Public Law 84-660), the Clean Water Act (CWA). The CWA included the first authorization of Federal grants to assist in the construction of waste treatment works (Grants for Construction of Treatment Works Program see 33 U.S.C. 1281 – 1302). Subsequent amendments to the financial assistance grants have evolved this funding program as we know it, including introduction of the Step grant process, facilities planning requirements, infiltration/inflow analysis, cost-effectiveness, and requiring a National Environmental Policy Act (NEPA) environmental assessment (EA). The latter was required by Environmental Protection Agency (EPA) and included a full analysis of all potential impacts to resources triggered by *cross cutting* authorities<sup>2</sup> (Reference: Handbook of Procedures: Construction Grants Program 1980 ).

In 1987, the Clean Water State Revolving Fund was created, replacing the Construction Grants Program (33 USC 1381). Under the CWSRF, the states administer and award these federal dollars and take the lead on environmental review. States may either complete a NEPA environmental review or undertake a [State Environmental Review Process](#) (SERP), a NEPA-like equivalent process, provided EPA approves the choice. Washington's SERP was approved in 2017.

A completed and approved SERP signals compliance with state and/or federal social, economic, and environmental cross-cutting laws and regulations and is required before a project can receive financial assistance through the CWSRF. Ecology's trigger for engaging SERP is their

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<sup>2</sup> Cross cutting authorities are the underlying federal requirements and regulations applying to agreements funded under the CWSRF program. <https://www.lawinsider.com/dictionary/cross-cutting-authorities>

decision to enter into a financial assistance agreement with a recipient or applicant. Ecology requires a thorough review to make an informed decision prior to either signing the funding agreement or allowing ground disturbance to occur. **It is important to note that Ecology's trigger for SERP is the decision to enter into a financial assistance agreement.** SERP is required every time a financial assistance agreement is developed. This does not mean that a recipient needs to re-submit the same documentation every time they apply for financial assistance. If the Scope of Work (SOW) has changed significantly, best practices are to revisit the environmental review. Permits may need to be updated if required as part of the agreement.

Adoption of another agency's environmental review, re-affirmation of a previous environmental review, and incorporation by reference of a previous environmental review for phased reviews are all options to achieve SERP compliance.

## Responsibilities

In Washington State, Ecology has approval from the EPA to use the environmental information collected during the local government's State Environmental Policy Act (SEPA) process to partially fulfill the environmental review requirements of SERP. Recipients may also provide National Environmental Policy Act (NEPA) or Tribal Environmental Policy Act<sup>3</sup> (TEPA) documents to help satisfy Ecology's SERP requirements. Once SEPA/NEPA is complete, combining the additional information gathered from any local, state, Tribal or federal permit requirements, including cultural resources compliance, and this information makes up the Environmental Information Ecology requires for a SERP Determination.

Whatever the process used (SEPA, NEPA or TEPA), it is the recipient's responsibility to provide the required environmental review information and documentation for the correct phase of an agreement when submitting the [SERP EID](#). It is Ecology's responsibility to ensure that a complete environmental review occurs, SERP requirements are met, the EID is current when an agreement is funded, and a SERP Determination is issued for each agreement.

## Purpose of this Document

This guidance is a companion to updates to the [SERP Coversheet](#) in response to continued comments and questions from recipients and their consultants. The updates provide a robust environmental review document easier for other financial assistance agencies to incorporate, further streamlining inter-agency environmental review coordination. The updates provide an improved format for the Ecology Environmental Review Coordinator, to communicate with

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<sup>3</sup> Tribes are not subject to SEPA. Please submit a NEPA document or Tribal equivalent (TEPA). For assistance, see NEPA/TEPA Guide for American Indian and Alaska Native Communities, 2000. Mittelstaedt, G. Suagee, D. and L. H. Nelson.

recipients the necessary environmental documentation to make an informed SERP determination on an agreement.

## To complete this Document

- This document has two sections that match updates to the [SERP Coversheet \(now the EID\)](#). Section A of this guidance describes the minimum requirement for all CWSRF treatment works agreements, and other agreements requiring environmental review as applicable.
- Section B provides guidance on potential requirements dependent upon project type, design, location, type of financial assistance, required permits, and other factors (such as land ownership). Review Section B guidance to determine what is appropriate to the agreement.
- Move through this guidance while completing the corresponding section on the [SERP EID](#).
- Attach any documents to the [SERP EID](#) or provide separately through electronic or digital communication. Ecology can provide a secure file transfer link if needed. Do not upload sensitive documents to Ecology's Administration of Grant and Loans (EAGL) database.

Ensure all applicable sections and questions are addressed before submitting the [SERP EID](#) for review. Ecology can assist with understanding which regulations may apply to the agreement – however, you may need to consult with external authorities, as necessary. If you have questions, contact the CWSRF Environmental Review Coordinator, Liz Ellis, at (360) 628-4410 or [liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov)



Figure 1 - Minimum Requirements for SERP EID

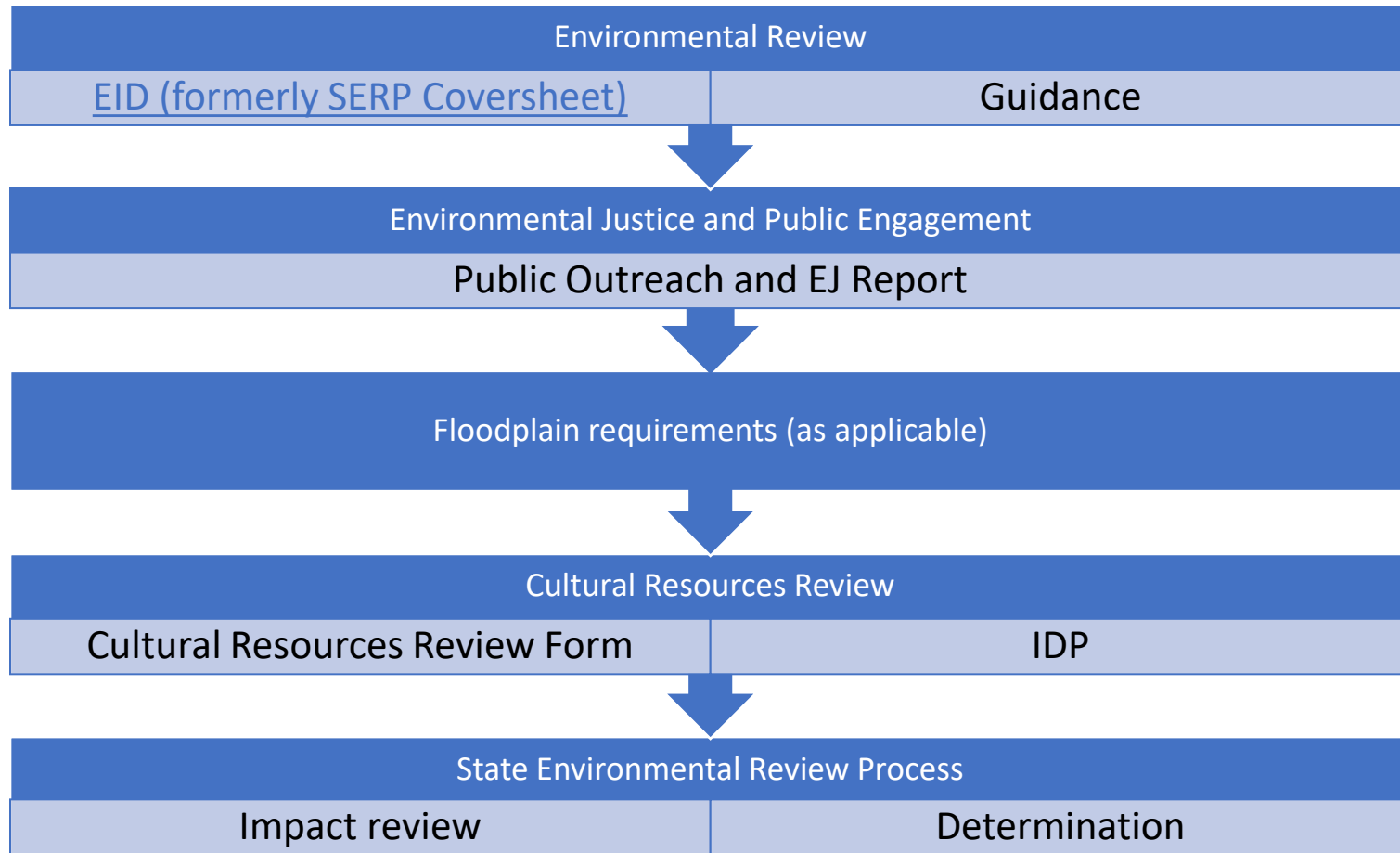
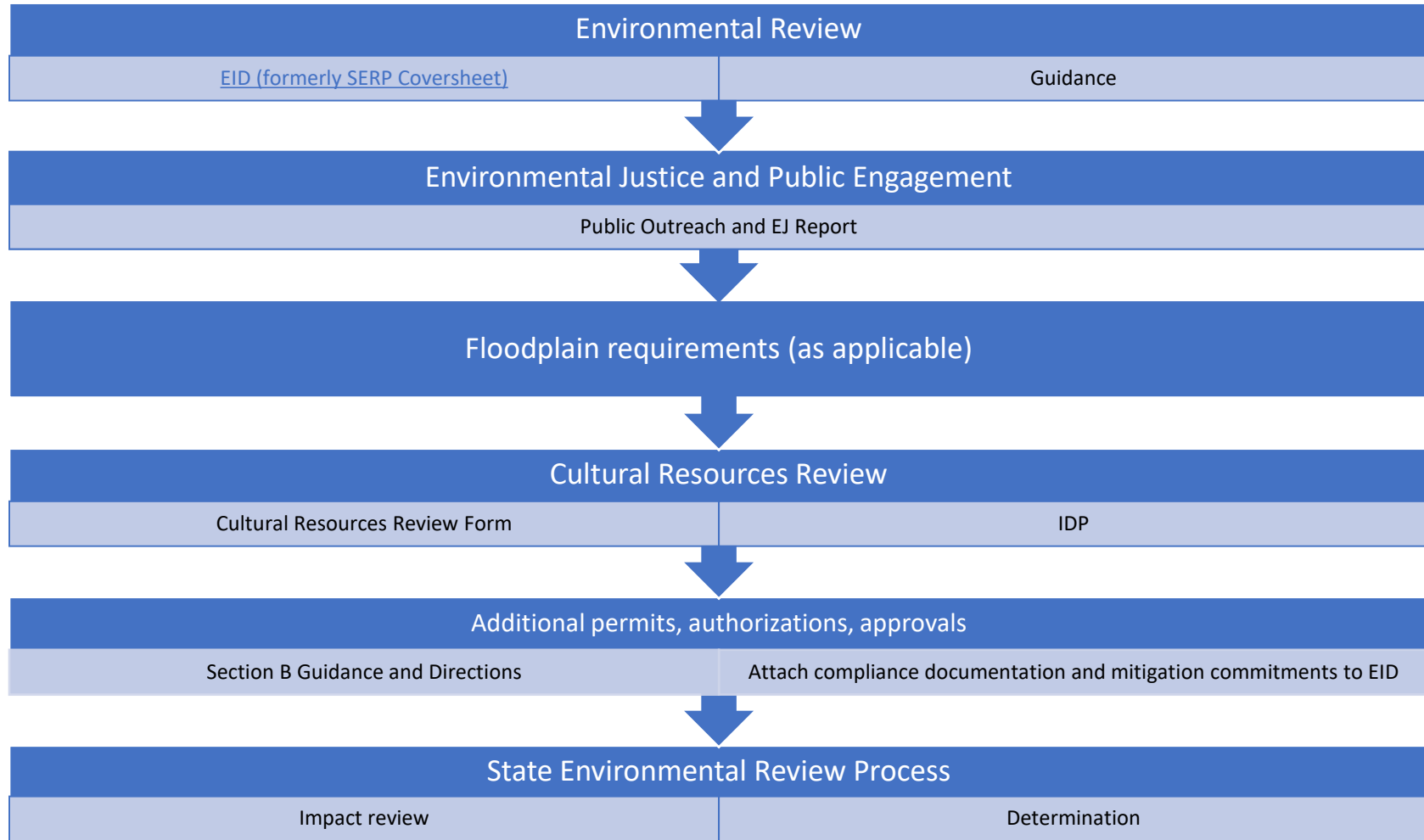


Figure 2 - SERP with additional permits, authorizations, approvals



## Section A. Minimum Required Information for all CWSRF Treatment Work Agreements

This Section provides guidance on how to meet minimum requirements for all CWSRF agreements under the Washington Clean Water SERP.

The basis for SERP is an environmental information document (EID). Documentation from the project's State Environmental Policy Act (SEPA), National Environmental Policy Act (NEPA) or Tribal Environmental Policy Act (TEPA) can help fulfill, in part, the requirements of SERP. If certain requirements are not met, it is possible to provide an additional memo or other report. The minimum required components in the [SERP EID](#) for a standard agreement are as follows:

- The documentation and threshold determination (SEPA) defining the proposal as non-project (programmatic) for planning, or project level review (design, construction, or design and construction).
- Summary of potential resources impacts, including cumulative impacts.
- Documentation on public engagement.
- Documentation showing how the requirements of Executive Order 12898, Executive Order 14008, and Executive Order 14096, Environmental Justice requirements, are met.
- Documentation to show compliance with Section 106 of the National Historic Preservation Act, as amended.
- Documentation to show compliance with Executive Order 11988, Floodplain Management and Executive Order 13690, Establishing a Federal Flood Risk Management Standard.

If unable to provide the requested information Ecology needs to complete their review, contact the CWSRF Environmental Review Coordinator, Liz Ellis, at (360) 628-4410 or [liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov)

## Type of Review

What type of review process is appropriate for the agreement? Non-project reviews are appropriate for planning agreements and certain design agreements. Project level reviews are appropriate for design, design and construct, and construction agreements. Agreements may have phases - if this is a Phased Review under SEPA, state so in the SEPA and in SERP and be specific about which phase the review should cover.

For SEPA, required documentation includes the legal notice of publication, SEPA checklist, Threshold Determination, and if an EIS, the Scoping Notice. For a significant action, set up a meeting with the Environmental Review Coordinator, as additional public involvement may be required on Ecology's part. Access SEPA template documents [here](#)<sup>4</sup>.

For NEPA/TEPA, required documentation includes a copy of the Environmental Assessment (EA) and Finding of No Significant Impact (FNSI). If a Categorical Exclusion (CatEx) is being requested, complete the appropriate form. Only EPA approved CatEx's are allowed for adoption.

For a pending SEPA or NEPA Environmental Impact Statement (EIS), provide the Scoping Notice and allow the Environmental Review Coordinator sufficient time (minimum of 30 days) to ensure to informed review. Ecology will need to make an informed decision prior to agreeing to fund a project that may have significant impacts on the human environment.

## Resource Impacts

The SEPA/NEPA/TEPA documentation provided must include adequate information so Ecology can review the project for potential impacts to environmental elements, flora and fauna, historic properties, traffic, utilities, and the surrounding community.

## Directions:

- Please explain any identified impacts and include documentation on how they will be addressed. Upload any permits, consultation and required mitigation documents in EAGL's environmental and cultural resources review form. Do not upload sensitive information, such as cultural resources assessments.
- Include permits, mitigation, reports other attachments, as necessary, or upload to EAGL.
- For Designated Equivalency Projects (DEPs) identified as such in the Final Intended Use Plan (IUP), and for other Federally Funded agreements, the identified federal

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<sup>4</sup> [SEPA document templates - Washington State Department of Ecology](#)

environmental laws and authorities must be addressed as part of the SERP EID. Include any required mitigation. This is considered a minimum requirement. Note that not every one of these laws or authorities may apply to the agreement.

- For non-federal agreements report any local, state, federal or tribal environmental review requirements, the resources protected, and any mitigation required.
- If you have questions, contact the Ecology Environmental Review Coordinator, Liz Ellis at 360-628-4410 or [liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov)

## Mitigation

It is important to document mitigation. If the project triggers any environmental law, permit, required consultation, or investigation into a potential impact, include the outcome as part of the [SERP EID](#). All mitigation commitments in documents developed during or part of the SERP process become revolving fund loan agreement conditions. Failure to comply with these conditions will result in withholding of payments and may require immediate repayment of the loan ([WAC 173-98-720\(3\)](#))<sup>5</sup>. **Question** - Did the project trigger mitigation commitments necessary for the agreement to be successful? If so, these should be addressed in the loan agreement.

Assistance with many permits can be found in Section B of this guidance (**Section B: EID Supplemental Guidance**). Ensure the impacts are in the correct section and clearly identified. Attach any necessary documentation, such as watershed reports, Hydraulic Project Approval (HPA) permits, 401 Clean Water Act, Section 10 River and Harbors Act permits or other authorizations. If needed, upload the documents to EAGL and make note the documentation is in the Environmental Review Form within EAGL.

## Additional Requirements for Federally Funded Agreements

Cross-cutting federal environmental authorities (also known as *federal assurances*) are the requirements of other federal laws, authorities and Executive Orders that apply in federal financial assistance programs. These laws are triggered various ways.

Three laws are required with SERP no matter whether the agreement is state or federally funded – Environmental Justice, compliance with the National Historic Preservation Act, and ensuring compliance with updated Floodplain Executive Orders, as applicable. Other federal

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<sup>5</sup> [WAC 173-98-720 State Environmental Review Process](#)

laws may be triggered based upon the project’s location, landowner information, other federal nexus, or design.

In the CWSRF programs, these other laws include, but are not limited to, social and environmental laws such as the Endangered Species Act (ESA), the Federal Clean Air Act (FCAA), Coastal Zone Management Act (CZMA), the Migratory Bird Treaty Act (MBTA) and executive orders on the protection of wetlands. The Environmental Protection Agency (EPA) retains ultimate responsibility for ensuring that states and assistance recipients comply with the cross-cutting federal authorities. EPA has designated Ecology with non-federal authority for coordinating compliance with a number of these laws and ensuring compliance.

**Instructions:** Review Section B for potential regulations applicable to the CWSRF agreement. If you have questions, see the guidance. If it applies, follow the steps, and answer the questions. Provide requested documentation.

If a specific regulation does not apply, do not answer “Not Applicable” or “N/A” or leave blank. The EPA requires a description of why the regulation does not apply to the project.

## SEPA Exemptions and NEPA Categorical Exclusions

**A note on exemptions** – if Ecology approves an exemption, we are not providing the recipient with an approved exemption from environmental review. Ecology is approving an exemption from SERP. The underlying action is financing, not planning, design or construction. That said, there may be a lack of detailed environmental information for smaller projects or planning agreements. Certain actions such as cured-in-place pipe repair, certain planning agreements and refinancing, may be consistent with a SEPA Exemption or a NEPA Categorical Exclusion. The exemption must apply to the whole project, not just in part, ensure no resources are impacted and no ground disturbance will occur. Refer to Part Three of the SEPA Rules - [WAC 197-11-300](#) for additional assistance for SEPA exemption guidance.

### Directions

In addition to the SEPA/NEPA documentation for the exemption/exclusion, complete the applicable form and submit to the Ecology Project Manager for approval. There are restrictions on applying federal “programmatic” CatEx’s to SERP. Contact the Ecology’s Environmental Review Coordinator if you have questions.

If applying for a SEPA exemption, complete the [SERP SEPA Finding of Categorical Exemption Form](#), and submit to the Ecology Project Manager and the Environmental Review Coordinator.

Only EPA funded agreements are approved for federal CatEx. Even then, the same criteria for SERP apply – the agreement details approved under the CatEx must be the same as Ecology’s agreement, or the CatEx does not apply and will not be approved. No extraordinary circumstances may apply. If applying for a NEPA CatEx, complete the first section of the [NEPA Categorical Exclusion Form](#) and submit to the Ecology Project Manager and the Environmental Review Coordinator. Tribes may also apply for NEPA CatEx.

## **External Funding (USDA Rural Development, Commerce, etc.)**

If the agreement has additional funding from another partner, the lead agency for environmental review must be identified. The lead agency is dependent upon several factors, including federal versus state investment, amount of investment, workload, and jurisdiction. Agencies may even work together as co-leads to expedite review for projects with multiple funding sources and permits. Typically, the agencies involved meet to discuss the situation and arrive at an agreement as to which agency will be lead agency for environmental review.

Another question is whether both SERP and NEPA are required – or if one substitutes for the other. Ecology can adopt another agency’s NEPA review provided it meets our SERP requirements. Work with the Ecology Environmental Review Coordinator to ensure the requirements are met.

Recipients can help the process by notifying all agencies early, such as during the kick-off meeting.

## **Refinancing**

Refinancing occurs when Ecology takes over the financial management of agreements previously funded by another agency (e.g., U.S. Rural Development, Commerce, etc.). Environmental review has often been completed for those agencies on these agreements. For previously completed environmental reviews on a refinanced agreement, Ecology can adopt the review if the documentation meets SERP standards and no changes are occurring to the Scope of Work as described. Provided Ecology receives the necessary determination from the previous financial assistance agency, and it was signed within the past five years, Ecology will consider such agreements exempt from needing further environmental review, and will ensure the appropriate [exemption form](#) is completed.

If Ecology refinances an agreement and the recipient cannot provide previously completed environmental documentation, Ecology has the flexibility to ensure that environmental review occurs without placing undue hardship upon the recipient.

**Point of Clarification:** Ecology's responsibility is to review our financial assistance activities, not the project itself. The trigger for review is *financial assistance*, not planning, design or construction of a wastewater treatment plant. With that, even refinancing is subject to the due diligence of a review.

## SERP Re-affirmation Process

If the environmental review threshold determination was signed over five years from the current agreement, the EPA requires that Ecology re-affirm the environmental review (40 CFR§ 35.3140 *Environmental review requirements (3) Decision Documentation*). This simple step compares the previous environmental review documentation to the current agreement to see if anything substantive has changed. This includes the environmental baseline, permits, and decision. Reaffirm simply means Ecology reviews the documentation, determines if anything has changed, and if nothing has changed, "reaffirms" the previous determination.

### Reaffirmation applies if:

- The project was previously funded by Ecology.
- Ecology agrees to fund the current project/phase.
- There are no substantial changes to the current project/phase.
- SEPA or NEPA environmental documents are available from the previous phase.
- The SERP review and determination was completed within 5 years of signing the SEPA threshold determination.

Recipient with agreements over five years old wishing to submit documentation from a previous phase must ensure that all these requirements are met. The Scope of Work should not have changed since the initial environmental review. If these requirements are not met, consider applying for a NEPA CatEx or SEPA exemption, as applicable. Otherwise, you may need to complete a new SERP.

**Point of Clarification on Terminology:** *Adoption* is not the same as *Reaffirmation*. Adoption means another agency has completed the project's environmental review and the review is



applicable to this agreement. Ecology can adopt the review to fulfill all or a portion of SERP requirements.

Under certain circumstances, Ecology will **defer** to another agency, and adopt their environmental (including cultural) review. These circumstances include but are not limited to:

- The other agency must be funding the same agreement and have a larger investment.
- The other agency would generally be a federal agency.
- The other agency's standards for both environmental and cultural resources review meet or exceed Ecology's SERP and cultural resources review standards.
- The other agency must share all the documentation for environmental review, including cultural resources compliance, environmental justice and review for floodplain mitigation if needed, so Ecology can defer and adopt the information.

Adoption is not the same as **Incorporate by Reference** which is used when his term is used when a recipient integrates external or internal environmental review documents into a current application. For example, *"The City of XYZ incorporates by reference its public outreach report from the Design Phase into the Construction Phase agreement as no changes are necessary."*

## Requirement: Environmental Justice and Public Engagement

**Applies to:** State and federally funded CWSRF agreements.

**Trigger:** Integrated with State Environmental Review Process (SERP)

**Authorities with Expertise:** [EPA Office of Environmental Justice](#), Washington State Department of Ecology [Office of Equity and Environmental Justice](#)

This requirement combines two requirements and combines them into one, for purposes of streamlining.

- (1) Environmental Justice (EJ) is a requirement as part of the part of the SERP process. Environmental Justice also requires public outreach, particularly to any identified community members with EJ concerns.
- (2) Additional public outreach is a specific requirement by Region 10, EPA, to ensure that members of the community have adequate notice and access to information on this agreement.

The following [diagram](#) illustrates the integration of public outreach/engagement by phase of agreement into environmental review:

- For *Planning agreements*, this is the appropriate time to *begin* public engagement process, when alternatives are discussed with the public.
- For *Design agreements*, if public engagement began during non-project planning, this phase may move to project level discussions, with public updates providing detail on the draft design and associated permits. Update ratepayer impacts if needed.
- For *Construction agreements*, unless there are changes to the SOW, or additional impacts to ratepayers, public outreach should be complete.

### **The best time to start public outreach is during the planning phase of an agreement/project:**

The best time to hold a public meeting during a time when “no action is allowed” - when information on the alternatives, potential impacts, and potential rate increases can be presented to the public. This time is during planning. If the Scope of Work changes significantly, another meeting will be required to provide the public with updates.

## Public Outreach and Engagement Requirements

For all projects, public participation and review are essential to SERP. An earnest public participation program can improve the planning process and reduce the chance of delays due to public controversy. Incorporating the EJ public engagement requirements can streamline the questions on engaging any identified, disproportionately impacted sectors within the community.

Each lead agency, consistent with its existing activities and procedures, should include formal and informal public involvement and receive and evaluate public reactions to environmental issues related to its project. Public comments or controversies not addressed could result in the need for a subsequent environmental document at a later stage or lead to legal challenges, delaying the project and raising the cost significantly.

SERP **requires** applicants provide an additional opportunity for the public to comment on the proposal for all projects, regardless of the SEPA decision. CWSRF applicants must hold a public meeting to describe the preferred alternative and provide public opportunity to comment. This meeting should address all environmental, technical, and financial issues of the project. Additionally, identify and remove barriers to participation. Meaningful involvement and transparent participation are required for the project.

Recipients of CWSRF funding must provide documentation of the public participation process with the SERP Information Packet.

### Public Outreach Requirements

**A public hearing or meeting is required (40 CFR 35.3140(b)(4)(iii)):** The public meeting gives the community the opportunity to learn more about the project, the preferred alternative, and any potential impacts, including impacts to existing utility rates. During the public meeting, the following must be discussed, and a presentation is highly recommended:

- An explanation of all alternatives that were considered and why the preferred one was or will be selected.
- Potential impact of project to existing rate payers.
- Any environmental impacts the project may have – including **cumulative impacts**.
- Mitigation to offset any environmental impacts.
- Real estate transactions, such as land acquisitions.

Provide an opportunity for the public to ask questions and provide comment on the project proposal. No action may be taken during the subsequent comment period.

**Public comment period must occur during which no action allowed** (40 CFR 35.3140(b)(4)(ii)): Except for NEPA CAT Ex's, SEPA exemptions and re-affirmations, a formal public comment period must be provided, during which the recipient cannot take any action on the agreement. This ensures no decisions are made without allowing for the public and other stakeholders to consider the details, provide input, and allow the decisionmaker to make an informed decision.

**Multiple methods of public advertisement** for the meeting and comment period are required. Advertisement can be in a variety of forms, including virtual. What is important is that the service area received notice, and that it was accessible, as necessary. Notice in a newspaper (referred to as an Affidavit) is required **in addition** to two or more of the following provided it is successful in reaching the target audience:

Affidavit in addition to two or more of the following:

- Agenda item for upcoming council meeting (verify where posted for public viewing).
- Posting in the Library.
- Posting at the Post office.
- Mailings in the utility bill.
- Direct mailing in the service area.
- Postings in other publicly accessible area(s).
- Website.
- Signage.

Include the method of outreach in the public outreach/engagement plan. Ecology supports signage and webpages, but these alone may not be adequate to contact the community. Although required, Ecology no longer consider posting one advertisement in a newspaper a sufficient method of notifying the public when used by itself. Consider combining these methods with other outreach efforts.

Identify what documentation is included or has been uploaded to EAGL. For identified minority and underserved communities, see the section on Executive Order 12898, Environmental Justice, for guidance on additional public engagement. Executive Order 14096 has multiple references to ensuring opportunities for early and meaningful involvement in the environmental review process by communities with EJ concerns potentially affected by a proposed action.

**Document all comments:** Document all comments and send copies to the Ecology Project Manager and Environmental Review Coordinator. If no comments were made, make a statement and attest to this.

## Environmental Justice

EPA has integrated EJ into SERP requirements. EPA states:

“One vehicle for EPA’s efforts to address environmental justice concerns is the NEPA analysis. As a matter of policy, EPA has integrated environmental justice concepts into NEPA analyses through guidelines outlining the steps that should be taken to ensure environmental justice concerns have been addressed during the NEPA process. Identifying potential (disproportionately) adverse effects on minority and low-income populations, as well as encouraging early public participation and the development of alternative or mitigating options is emphasized. Like NEPA’s procedural requirements, the purpose of the SERP process is to help ensure that environmental consequences are fully considered and addressed before actions are taken. Therefore, states must comply with Executive Order No. 12898 by integrating environmental justice into their SERP process ([EPA Cross Cutter Handbook](#), 2003, p. 10).”

This guidance is consistent with the requirements of Executive Orders 12898 and 14096, as applicable.

### Directions:

If any minority and/or low-income community residents may be disproportionately and adversely impacted by this agreement, it is important to work with Ecology to take the appropriate steps to ensure these residents are aware of such impacts during public outreach. This information, including their responses, must be provided to Ecology’s Environmental Review Coordinator. If it appears this agreement is financing work that may be causing undue hardship in any way, stop – and let Ecology staff assist with resolving such concerns.

To ensure the project complies with the current EJ requirements, review the following:

#### **Ensure Non-Discrimination**

In accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and agency regulations, ensure that all programs or activities receiving Federal financial assistance that potentially affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, policies, practices, or methods of administration that discriminate on the basis of race, color, or national origin. For more information on how to ensure this agreement complies with Title VI of the Civil Rights Act, visit: [EPA Civil Rights and non-discrimination](#)

If you are a member of the public and you have a complaint, or you receive a complaint from a member of Public, related to Title VI, involving discrimination, please contact Ecology's Civil Rights Coordinator [civilrights@ecy.wa.gov](mailto:civilrights@ecy.wa.gov) or review: [Ecology Non-discrimination policy](#)

**Environmental Justice Report** (*For a template, see the WSDOT's EJ Discipline Template Report [here](#).*)

To ensure the project complies with the current EJ requirements, complete a robust public outreach (above), and provide an Environmental Justice Report. The EJ Report may follow any template, such as the [WDOT EJ template](#), or develop your own. At a minimum, Ecology wants to see:

- Description of the project and community
- Description of the public engagement process, including any additional outreach to minority and underrepresented portions of the community (see earlier section, above)
- Results from the EPA's EJSCREEN tool<sup>6</sup> (recently updated to version 2.0) the WA DOH Washington Tracking Network, or both
  - Specify the buffer used when running the report (should be 3-mile radius around the facility or more – use the Service Area the facility provides service to)
- Description of any cumulative impacts, if identified
- Description of any disproportionately adverse impacts on the community, if identified
- Is mitigation required? If so, Is the mitigation documented in the agreement? Was there follow-up with the Ecology Environmental Review Coordinator?
- Complete the ***Community Outreach, Public Engagement and Environmental Justice*** section of the SERP EID, Ecology Publication ECY 070-421 (Rev. 06/23)

If any minority, underrepresented and/or low-income community residents may be disproportionately and adversely impacted by this project, it is important to take the appropriate steps to ensure they are aware of the impact during public outreach. The key terms under Executive Order 14096 are “disproportionate and adverse”.<sup>7</sup>

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<sup>6</sup> For instructions, see [How to use EJ Screen](#)

<sup>7</sup> Replacing the phrase “disproportionately high and adverse” used in Executive Order 12898. Those phrases have the same meaning but removing the word “high” eliminates potential misunderstanding that agencies should only be considering large disproportionate effects.

If concerns remain, follow up with the Ecology Environmental Review Coordinator.

## References and Resources:

[Office of Equity & Environmental Justice - Washington State Department of Ecology](#)

EJ Tools: [EJScreen \(epa.gov\)](#)

[EJ Screen Help](#)

[CDC Environmental Justice Index for Cumulative Impact Assessment](#)

Questions: Contact [ejc\\_coordinator@cdc.gov](mailto:ejc_coordinator@cdc.gov)

Launch: EJ Explorer - <https://ejc.cdc.gov/launcher.html>

[Washington Tracking Network](#)

Questions: Contact [DOH.WTN@doh.wa.gov](mailto:DOH.WTN@doh.wa.gov).

WTN – Resources - [Resources - Washington Tracking Network \(WTN\) | Washington State Department of Health](#)

Ecology's [Water Quality Atlas](#)

Ecology's [What's in My Neighborhood](#)

[U.S. Census](#)

Revitalizing Our Nation's Commitment to Environmental Justice for All, Executive Order 14096, 88 FR 25251, April 21, 2023: [Federal Register :: Revitalizing Our Nation's Commitment to Environmental Justice for All](#)

Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Environmental Justice, Executive Order 12898, 59 FR 7629, February 11, 1994: [Federal Actions to Address Environmental Justice in Minority and Low Income Populations](#)

## Information on disadvantaged communities and Justice 40:

In its Justice40 Initiative, the federal government sets a goal that 40% of the overall benefits of certain federal investments should flow to disadvantaged communities that are marginalized, underserved and/or overburdened by pollution. While distinct from Executive Order 12898 Environmental Justice, Justice 40 addresses many of the issues disadvantaged and hardship communities face. SERP does not ask questions about Justice 40 or related tracking.

### Justice 40 Questions:

Shelly McMurry, CWSRF Fund Coordinator, (564) 999-1649 or [Shelly.McMurry@ecy.wa.gov](mailto:Shelly.McMurry@ecy.wa.gov)

Liz Ellis, CWSRF Environmental Review Coordinator, (360) 628-4410 or [liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov)

## Requirement: Section 106 of the National Historic Preservation Act

**Applies to:** State and Federally funded CWSRF agreements.

**Trigger:** CWSRF agreements

**Authorities with Expertise:** Washington State Department of Archaeology and Historic Preservation (DAHP), Advisory Council on Historic Preservation (the Council), Tribal Historic Preservation Officers (THPOs), local historians

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Tip: Reference Section 106 Consultation to answer [SEPA Question 13, Section B: Historic and Cultural Preservation](#)

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**Important:** This section does not replace the requirement to complete Section 106 consultation of the National Historic Preservation Act (NHPA). To ensure Section 106 requirements are completed, review Figure 1 below, and the directions in the Appendix A.

The NHPA embodies a long-standing national policy to protect historic properties from adverse impacts caused by activities undertaken directly, assisted in part, or funded by federal agencies.

Section 106 of the NHPA are the regulations for consultation regarding how to determine the effects on historic properties (See [36 C.F.R. Part 800](#) Protection of Historic Properties). The procedures generally call for consultation between the agency and relevant state or tribal historic preservation officers (SHPOs and THPOs, respectively) and other interested parties.

The Clean Water State Revolving Fund (CWSRF) is covered by a Nationwide Programmatic Agreement<sup>8</sup> covering the steps for Section 106 compliance on SRF agreements. In this Agreement, the EPA delegates specific duties for most of Section 106 compliance to the states managing the CWSRF programs. Washington State takes advantage of this arrangement to ensure consistent application of Section 106 on all SRF agreements. This streamlines consultation by ensuring only one process applies to CWSRF agreements and allows better coordination with other agencies with federal funding or federal licenses.

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<sup>8</sup> *Programmatic Agreement Among the Environmental Protection Agency, The Advisory Council on Historic Preservation, And the National Conference of State Historic Preservation Officers Concerning Compliance With the National Historic Preservation Act Under EPA's State Water Pollution Control Revolving Fund Program (1991).*

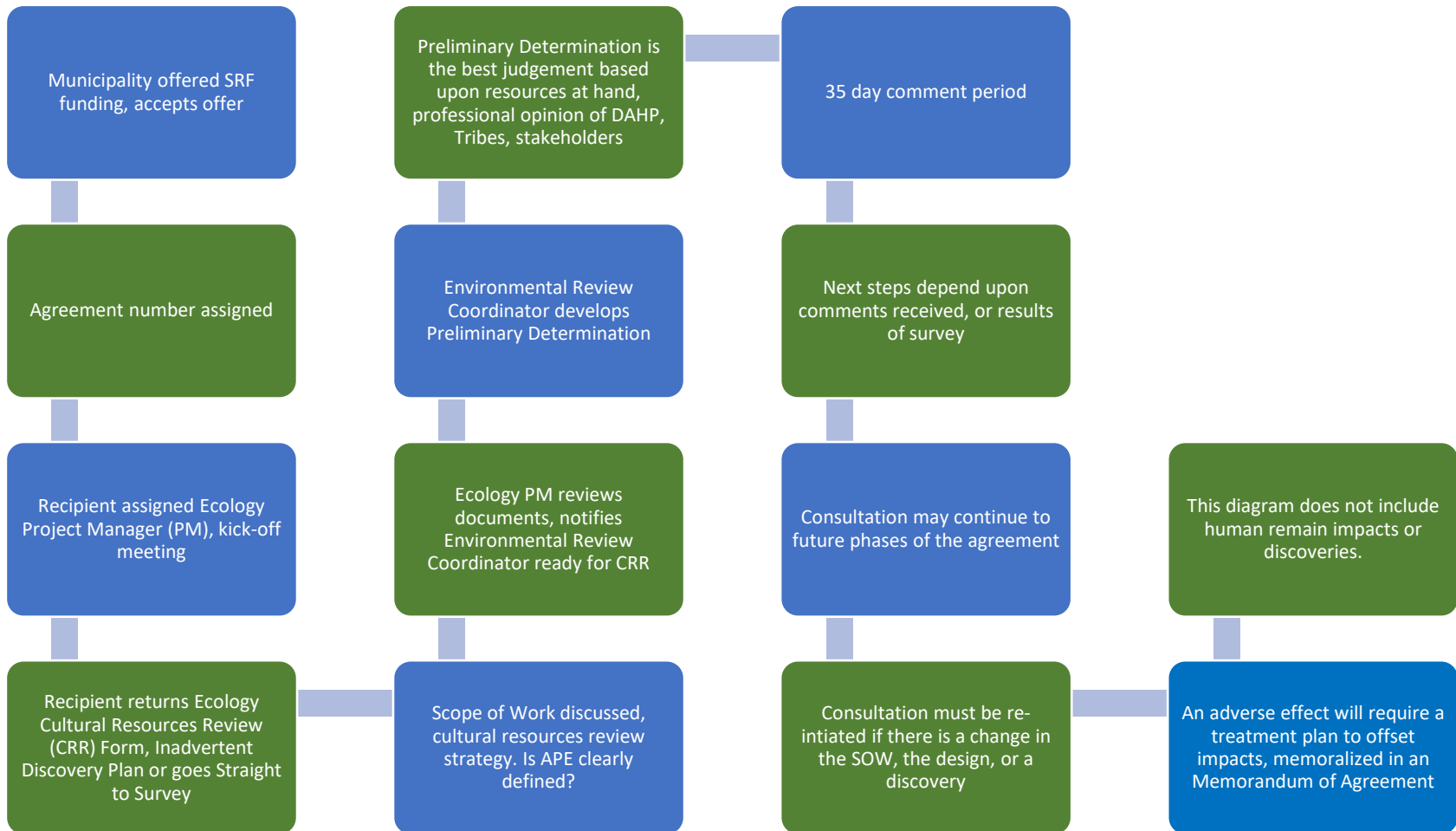


Ecology assumes lead agency status for all CWSRF projects unless other arrangements have been made. To prepare for Section 106 consultation, follow the steps below. Do not initiate consultation, and do not upload materials to the Department of Archaeology and Historic Preservation (DAHP) WISAARD database unless asked to. Ecology, as lead agency, will create the project. Do not upload any cultural resources information other than the Inadvertent Discovery Plan (IDP) to EAGL as EAGL does not protect sensitive information.

**Table 1 CWSRF Cultural resources compliance roles, in general**

<b>Recipient</b>	<b>Ecology Project Manager</b>	<b>Environmental Review Coordinator</b>
Completes Cultural Resources Review Form, documents lead agency, provides documents for cultural review, sends to Ecology Project Manager. May or may not hire archaeological consulting firm for assistance.	Reviews for completeness, ensures Environmental Review Coordinator receives, may create a SharePoint workflow	Responds in a timely manner, notes if any information is required before consultation can start. Verifies federal or state consultation, verifies Ecology is the lead agency
Completes IDP, uploads to EAGL	Reviews for completeness, verifies in EAGL	Reviews for accuracy, assists with finding necessary information
Participates in pre-construction meetings.	Coordinates pre-construction meetings	Participates when invited, assists with developing strategies to ensure compliance while keeping the project moving forward
Completes required Landowner Agreement	Reviews landowner agreement	Uses landowner agreement for verifying ownership and location
Liaison between consultant and Ecology. Timely communication and documentation. Available for meetings, negotiation, questions and clarification, discoveries, consultation.	Ensures necessary information flows between recipient, consultant and Environmental Review Coordinator in a timely manner, or help sets up meetings as needed	Works with recipient, consultant, and Project Manager. Completes preliminary and final determinations, ends consultation, assists with development of any MOAs if needed
Discusses necessary design changes to avoid adverse effects, discusses potentially required mitigation, participates as needed in consultation	Works with Financial Manager and Recipient to ensure requirements are outlined as tasks and deliverables in agreement SOW.	Available for clarity, questions, and refinement on any requirements from consultation
Assists with coordinating site visits, ensures SOW does not change without reinitiating consultation	Coordinating site visits, monitors SOW, notifies environmental review coordinator if design changes.	Works to re-initiate consultation should a significant change occur.

Figure 3 Ecology CWSRF Cultural Resources Review Steps, in general



## References:

Archeological and Historic Preservation Act, Pub. L. 93-291, as amended:

[Archeological and Historic Preservation Act of 1974 - Archeology \(U.S. National Park Service\) \(nps.gov\)](#)

Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-mm:

[Archaeological Resources Protection Act of 1979 - Archeology \(U.S. National Park Service\) \(nps.gov\)](#)

National Historic Preservation Act, Pub. L. 89-655, as amended:

[National Historic Preservation Act of 1966 - Archeology \(U.S. National Park Service\) \(nps.gov\)](#)

Native American Graves Protection and Repatriation Act, 25

U.S.C. § 3001 et seq: [Native American Graves Protection and Repatriation Act of 1990 - Archeology \(U.S. National Park Service\) \(nps.gov\)](#)

Department of Archaeology and Historic Preservation (DAHP)

[Washington State Department of Archaeology & Historic Preservation \(DAHP\)](#)

## Requirement: Floodplain Protection

**Applies to:** State and federally funded CWSRF agreements.

**Trigger:** Project located in a Special Flood Hazard Area (see below)

**Agencies of expertise:** [Ecology](#), [FEMA](#), City and County local ordinances, Critical Areas and other ordinances.

### **Floodplain Protection**

Floodplains are the lowland and relatively flat areas adjoining inland and coastal waters and other flood prone areas such as offshore islands. Floodplains are closely integrated with the function and utility of all water resources due to their effect on water moving toward the coast (from upland precipitation and snowmelt) and floodwaters moving landward (from upstream and offshore storms). Washington State is one of the most flood-prone states in the nation, ranking just behind Oregon.

Compliance with state ([Chapter 86.16 RCW Floodplain Management](#)) and federal development requirements in floodplains that are considered [special flood hazard areas](#) (SFHA) is required for all agreements. A SFHA is on a FEMA flood insurance map as Zone A or V and is where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. Through the NFIP, local governments can administer statewide and federal floodplain management regulations, and the establishment of regulatory orders. Regulations are exercised over the planning, construction, operation and maintenance of any works, structures, and improvements, private or public, which might, if improperly planned, constructed, operated, and maintained, adversely influence the regimen of a stream or body of water, or might adversely affect the security of life, health, and property against damage by flood water.

### **For assistance, please contact:**

[Ecology Floodplains Management Contacts](#)

### **Resources:**

Federal Emergency Management Agency. [Floodplain Management](#). Website.

Revised Code of Washington (RCW) [86.16 Floodplain Management](#).

Washington State Department of Ecology, [Floodplain Management](#). Website.

EPA. 2005. [Cross-Cutting Authority Handbook](#) (See Floodplain Management) -Note this document is not updated.

FEMA. 2015. [Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.](#)

## Section A is Complete – Please Review

The minimum required documentation components for a standard agreement are:

- Explain if the review is non-project (programmatic) for planning, or project level review (design, construction, or design and construction). Answer the following as it applies to the project.
- Summarize potential resources impacts.
  - Additional requirements for federally funded agreements (see Section B).
- Attached report showing how you met Executive Order 12898, Environmental Justice requirements to the SERP EID.
- Attached documentation on public engagement.
- Ensure compliance with Section 106 of the National Historic Preservation Act, as amended, is complete or in process.
- Completed the steps to show compliance with Executive Order 11988, Floodplain Management and Executive Order 13690, Establishing a Federal Flood Risk Management Standard when applicable.

The project may trigger additional permits and regulations, based upon location and design. Use the table below as a reference. Note the actual trigger of any law is highly dependent upon the details of the project. For example, because federal funding is offered does not necessarily mean the ESA will be triggered, for example (*the trigger* is the presence of listed species and potential to harm said species and the habitat upon which they depend).

If any regulation is required, please provide that information as part of the SERP EID and explain if any associated resource is impacted.

Table 2 – Potential regulations and agreement type

Type of Fund	Law
SRF-State	Air Pollutants and Odor Control
SRF-Fed	Federal Clean Air Act
SRF-Fed	New Source Review, Title V
SRF-State	Impacts to surface or groundwater

<b>SRF-Fed</b>	Safe Drinking Water Act
<b>SRF-State, SRF-Fed</b>	Protection of Wetlands
<b>SRF-Fed</b>	Coastal Zone Management Act
<b>SRF-Fed</b>	Farmland Conversion
<b>SRF-State, SRF-Fed</b>	Wild and Scenic Rivers Act
<b>SRF-State, SRF-Fed</b>	Impacts to protected species and habitats
<b>SRF-State, SRF-Fed</b>	Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act

Please continue to Section B, next, and follow the directions if the project triggers any of these regulations or permits. Provide the information associated with these permits/regulations as an attachment or additional upload to EAGL and report the information on the SERP EID.

Contact Liz Ellis, CWSRF Environmental Review Coordinator should you have any additional questions.

## Section B: Environmental Information Document Supplemental Guidance

This section assists recipients with additional requirements for a treatment works project. These authorities may be triggered by type of financial assistance, additional federal permits, oversight, land ownership, location, design, and resource impacts. This section also provides a way for recipients to continue documenting information that may be part of their SERP EID package, including responses to these additional requirements.

Each section discusses one of the more commonly triggered resource areas, or laws. A background is provided information followed by directions on how to consider impacts. If the regulation is triggered, follow the instructions on what information is needed for the [SERP EID](#).

### IMPORTANT

When completing a SERP EID, a NEPA/TEPA/SEPA document is required and any attachments describing impacts the project has. This includes information on any mitigation requirements. Failure to follow through with any outcomes of SERP, including mitigation, may result in withholding of payments, even a repayment of the entire loan.

Guidance and directions for the following:

- Air pollutants and odor control.
- Impacts to surface and ground water.
- Protection of wetlands.
- Coastal Zone Consistency Determinations.
- Farmland conversion.
- Wild and Scenic Rivers Act.
- Listed Species and Habitat.
- Migratory Bird Treaty Act.
- Bald and Golden Eagle Protection Act.

The applicability of these requirements may be design and location dependent.



## Requirement: Considering Potential Air Pollutants and/or Odor Control

**Affects:** All CWSRF agreements (state and federal)

**Trigger for potential air permit/approval:** Construction and operation of Wastewater Treatment Plant components

**Agency with Expertise:** [Ecology Air Quality Or Local air authority](#)

In the state of Washington, the Department of Ecology's Air Quality Program has jurisdiction for regulating sources of air pollution that are not located in a county with a local clean air agency. The local clean air agency has jurisdiction for regulating wastewater treatment plants and other facilities that located in the county for which they are responsible. Please refer to Ecology's Air Quality Permit's webpage (link below) for more info on the jurisdictional areas. Under Ecology's or the appropriate local air agencies air quality regulations, owners of wastewater plants may be required to obtain an air quality permit prior to constructing a new or modifying an existing unit that emits pollutants into the atmosphere. Pollutants that may require permitting include criteria pollutants, such as particulate matter, nitrogen dioxide, sulfur dioxide, ozone, carbon monoxide, and lead, as well as toxic air pollutants (TAPs) listed in WAC 173-460 under Ecology's regulations for those sources regulated by Ecology.

### **Construction:**

For sources that operate under Ecology's jurisdiction, in accordance with WAC 173-400-040(9), the owner or operator of any activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions. For sources that operate under a local air authority, please review their regulations associated with fugitive dust.

Ecology also notes that the use of non-road engines may require notification to Ecology, at a minimum, and requires pre-approval if the project will use non-road engines with a cumulative maximum rated brake horsepower (BHP) of 2000 BHP or more (WAC 173-400-035).

## Considerations:

When considering air pollutants, note that the temporary pollutants created during construction are often exempt from air permitting. While exempt, it is important to consider impacts from pollutants from construction activities on the surrounding community:

- The cumulative impact of air pollution associated with construction activities is still important to consider during government planning. Timing the location and duration of construction is important to maintain low levels of particulate matter.
- Construction activities will commonly involve one or more vehicles that run on diesel. Diesel engine exhaust, particulate (DEEP) is an identified toxic air pollutant in WAC 173-460-150.

[Learn more about diesel exhaust here](#)

## Federal Funding and the Federal Clean Air Act:

For projects with federal funding, compliance with the federal Clean Air Act (FCAA) authority is required.

Whenever EPA sets or revises an ambient air standard, the FCAA requires EPA to designate all areas of each state as attainment (meets the standard), nonattainment (fails to meet the standard), or unclassifiable (insufficient information).

The FCAA requires the state to develop a State Implementation Plan (SIP) to bring each nonattainment area into compliance with the standard in a timely manner. A former nonattainment area, which has come into compliance with the standards, is referred to as a “maintenance area.” In Washington, Ecology’s Air Quality Program or a local clean air agency prepares SIPs for nonattainment and maintenance areas, and Ecology submits them to the EPA for approval. One of the triggers for this portion of the FCAA applies to projects located in *nonattainment or maintenance areas*. In Washington, there are several areas of concern which may be viewed through Ecology’s criteria pollutants [map](#). Currently (as of the writing of this document), with the exception of one small location in Whatcom County, [all areas in Washington](#) are in attainment with Clean Air standards, although this is subject to change in real time. Note that some of the attainment areas in Washington are maintenance areas. The following EPA link provides current information for nonattainment areas, attainment areas, and attainment areas in maintenance for Washington State ([link](#)). Learn more about compliance with the FCAA under the next section.

## Operations/Emergency Engines:

New Source Review (NSR) air permits and Title V air operating permits might be required for the duration of the facility operations. Even if the facility is located within an attainment area as described above, an application for minor NSR and a Title V operating air permit may still be required. The classification of an area as in attainment does not mean the facility complies with the Federal Clean Air Act. Non-attainment is only one program under NSR. The two other NSR permitting programs address minor sources and Prevention of Significant Deterioration (PSD).

Ecology has exemptions from NSR permitting for certain units and activities (WAC 173-400-110(4)) and for projects that are less than certain emission thresholds (WAC 173-400-110(5)). If the project is exempt from the NSR, document the specific exemption criteria as part of this EID. Contact your Local Air Authority or Ecology Air Quality to learn more.

If a project is not exempt, a NSR permit is required prior to starting construction of the project. If a source is large enough to require a Title V air operating permit, a complete application for the Title V permit is required within one year of operating as a major Title V source.

The [Ecology Air Quality Permits webpage \(link\)](#) provides resources for state and federal air quality standards, and [contact information \(link\)](#) for the appropriate Ecology or local clean air agency office as well as EPA Region 10 contacts for tribal lands. Include the response/permit as part of the EID, including any evidence of a successful permit application.

Unless otherwise regulated by the local air authority, emergency engines with a cumulative BHP greater than 500 BHP and equal to or less than 2000 BHP may be exempt from permitting if the owner/operator complies with WAC 173-400-930.

Even when air permitting is not triggered, Wastewater Treatment Plants must also address odor control, and note during SEPA if they have an existing problem, or if they are minimizing existing odor.

For sources that operate under Ecology's jurisdiction, in accordance with WAC 173-400-040(5), "...any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of her or his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum."

Minimize odor by prevention—when possible. If impossible, operate the plant in a way that minimizes or reduces the odors generated, restrict releases to certain times of the day, or implement emission controls and filtering techniques. The Agency for Toxic Substances and

Disease Registry has a generic webpage about controlling odors that may have some useful information – [Environmental Odor control](#).

## Resources:

[Ecology Air Quality Permits webpage Clean Air Act, Pub. L. 95-95, as amended](#)  
[Link](#) for these three standards:

- National Ambient Air Quality Standards (NAAQS)
- Federal Hazardous Air Pollutants (HAPs)
- Washington State Toxic Air Pollutants (TAPs) in WAC 173-460

See also: [Washington Ambient Air Quality Standards \(WAAQS\) in WAC 173-476](#), and [ATSDR CDC Odor Control](#)

WAC 173-400-110 – New source review (NSR) for sources and portable sources

WAC 173-400-930 – Emergency engines.

**Requirement: Water – Considering impacts to surface or ground water**

**Affects:** State and federally funded CWSRF agreements

**Trigger for permit:** Creating stormwater runoff, discharging stormwater to waterbody, siting of a project near or on an aquifer.

**Agency with Expertise:** Ecology Water Resource, Ecology Water Quality, U.S. Environmental Protection Agency

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*Tip: Use the information in this section to help answer SEPA Question 3, Section B, Surface and Ground water resources*

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Water resources include surface water, groundwater and drinking water, wetlands, and floodplains (see earlier section on floodplains). Evaluation of water resources examines the quantity and quality of the resource and its demand placed on it for various purposes.

## **Surface Water Resources**

Surface water resources consist of lakes, rivers, streams, wetlands, estuaries, and the coastal waters. Surface water is important for its contributions to the economic, ecological, recreational, and human health of a community or locale. Year-round presence of water in surface water features varies, falling into the categories of perennial, intermittent, and ephemeral. Stormwater is an important contributor to surface water systems and is a potential source of sediments and other contaminants that might degrade downstream waters.

When reviewing the project, consider potential pollutants the project will create, whether temporary or permanent. Flows associated with a “storm” event are often called stormwater runoff. Stormwater runoff from construction sites can carry muddy water, debris, and chemicals into local waterways. Sediments, chemicals, and debris can harm aquatic life and reduce water quality.

Learn more about stormwater runoff during construction here:

[Construction Stormwater General Permit](#)

Operators of regulated construction sites are required to:

- i. Develop stormwater pollution prevention plans.
- ii. Implement sediment, erosion, and pollution prevention control measures.
- iii. Obtain coverage under this permit.

Ensure the Ecology Project Manager is provided with copies of the SWPPP or provide a link to this plan and permit.

### **Safe Drinking Water Act – Federally Funded Equivalency Projects Only**

The Safe Drinking Water Act (SDWA) was established to protect the quality of the nation's drinking water. This law focuses on all waters actually or potentially designed for drinking use, whether from above surface water or underground sources. The Act establishes minimum standards to protect tap water and requires all public water systems comply with primary (health-related) standards. State governments are often authorized by the EPA to implement these standards.

The SDWA also sets a framework for the Underground Injection Control (UIC) program to control the injection of wastes (including stormwater runoff) into ground water. EPA and states implement the UIC program, which sets standards for safe waste injection practices and bans certain types of injection altogether. Injection wells are overseen by either a state or tribal agency or one of EPA's regional offices.

Under Section 1424(e) of the SDWA, the Sole Source Aquifer (SSA) program was authorized. The SSA program enables EPA to designate an aquifer as a sole source of drinking water and establish a review area. There are several sole-source drinking water aquifers located in Washington. SSAs can include the source areas of streams that flow into the SSA's recharge zone. These areas have no alternative drinking water source(s) that can physically, legally, and economically supply all those who depend on the aquifer for drinking water. Facilities are not allowed to contaminate an SSA.

If the agreement is a Designated Equivalency Project or otherwise federally funded agreement, or if the project is located on top of an aquifer, [follow these steps](#) and document the information as part of the SERP Environmental Information Document:

1. Is the project located within an aquifer review area or its surrounding source areas as delineated on [EPA sole source aquifer maps](#)?

- a. An aquifer review area is the aquifer and its source area, as delineated on the EPA Sole Source Area (SSA) maps. Refer to the SSA maps available (link above) to make this determination. If the answer is “no,” this regulation does not apply.
  - b. Document the location of the project in relation to sole source aquifers on the map in the SERP EID. State clearly the project is not located within a sole source aquifer. No further analysis is necessary.
  - c. If the answer is “yes,” go to Step 2.
2. Obtain and complete the Sole Source Aquifer Checklist. The Ecology’s Environmental Review Coordinator has the latest version.
3. Provide a copy of the checklist results to the county hydrologist, department of environmental health, or Washington State Department of Health for review and comment.
4. Provide results of the review to Ecology’s environmental review coordinator.
5. Ecology’s environmental review coordinator will submit the local review to [EPA Sole Source Aquifer Program](#) for review and approval.
6. EPA’s Sole Source Review Program will respond as follows:
  - a. The project **will not** contaminate the aquifer, without conditions, and the project may proceed. No further review is needed, attached results to the SERP Environmental Information Document.
  - b. The project may or will **contaminate** a sole source aquifer, an applicant must determine an alternative site or produce mitigation measures. A ground water or environmental site assessment may be required. Provide a description of project modifications or mitigation measures in the SERP Environmental Information Document.
7. Ecology’s Environmental Review Coordinator will communicate to the recipient the EPA response. If contamination may occur, follow the directions under 6(b).

## Requirement: Protection and Regulation of Wetlands

**Affects:** State and federal CWSRF agreements

**Trigger for permit:** Potential impacts to state or federally protected wetland habitat

**Agency with Expertise:** [Ecology Wetlands Team](#), [Washington Natural Heritage Program](#), U.S. [Army Corps of Engineers](#), [U.S. Environmental Protection Agency](#), [Tribal Governments](#)

In Washington State, the definition of wetlands specifically excludes wastewater lagoons and artificially created wetlands, such as stormwater ponds. The definition is found at [RCW 37.70A.030](#)<sup>1</sup>.

**Locating Wetlands:** Wetlands are areas where water covers the soil or is present either at or near the surface of the soil all year or for varying periods of time during the year, including during the growing season. Water saturation (hydrology) largely determines how the soil develops and the types of plant and animal communities living in and on the soil. [Washington's wetlands](#) protect water quality, reduce flooding, provide aquifer recharge for drinking water and other uses, and provide critical habitat for fish and wildlife.

The prolonged presence of water creates conditions that favor the growth of specially adapted plants (hydrophytes) and promote the development of characteristic wetland (hydric) soils. Wetlands vary widely because of regional and local differences in soils, topography, climate, hydrology, water chemistry, vegetation, and other factors, including human disturbance.

There are several methods or classification systems used to identify wetland types and characteristics. Review [Ecology's Rating Systems website](#) for the latest information.

Ecology participates in the [National Wetland Condition Assessment](#), a survey of Washington's wetlands and their condition. This data is updated every five years. DNR Heritage Program has a [map viewer](#) for wetlands assessed by Washington's rating system and considered of High Conservation Value (now integrated into the Washington Natural Heritage program's Data Explorer).



The U.S. Fish and Wildlife Service has developed the National Wetland Inventory (NWI) which maps some, but not all, portions of wetlands mapped from aerial photography. NWI data provides a valuable geospatial resource for high level analysis, but the data should be verified with a state or local source.

## **Protection and Regulation of Wetlands**

In Washington, wetlands are protected by several laws overseen by state, local, and federal agencies as well as tribes. Ecology is the lead wetland regulatory agency within the state. At the local level, contact the city or county planning department, and depending upon the wetland definition, the federal government may be involved.

Ecology has the authority to regulate wetlands under the state Water Pollution Control Act and the Shoreline Management Act, and reviews and approve projects under Section 401 of the federal Clean Water Act ([Ecology Wetland Regulations website](#)). Ecology encourages the use of the State Environmental Policy Act (SEPA) process to identify potential wetland-related concerns early in the environmental review and permitting process<sup>9</sup>.

The federal level contact may be the U.S. Army Corps of Engineers (Corps). Tribes and the U.S. Environmental Protection Agency (EPA) also play an important role in wetland regulations when projects affecting reservation land, trust lands, cultural resources, traditional cultural properties, and tribal “usual and accustomed” areas beyond reservation boundaries. For further information, see [Washington State Wetlands Regulations](#)

It does not matter how the agreement is funded, protection of wetlands must be ensured to minimize the destruction, loss, or degradation of wetlands, including waters of the United States, and to preserve and enhance the natural and beneficial values of wetlands. To learn more about regulations and mitigation, visit [Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance](#) (update available).

## **Wetland Resource Impact Assessment:**

If a wetland or suspected wetland is in or adjacent to the project area, determine who has jurisdiction over it before reaching out to an agency. Wetlands meeting the current criteria for [waters of the United States](#) are regulated by the Corps and the EPA<sup>10</sup>.

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<sup>9</sup> Please review the information on the revised definition of Waters of the United States (WOTUS) here: [Regulations - Washington State Department of Ecology](#) – if your project area has wetland, it remains protected under state protection.

<sup>10</sup> Please review the information on the revised definition of Waters of the United States (WOTUS) here: [Regulations - Washington State Department of Ecology](#) – if your project area has wetland, it remains protected under state protection.

Under the Clean Water Act (CWA), there are typically two permitting pathways associated with projects that include wetland impacts. The Corps permitting pathway operates under Section 404 of the CWA, and Ecology's decision is thorough Section 401 of the CWA. Timelines may be different. The Corps will decide what type of permit is necessary (individual or Nationwide), and Ecology (or EPA or authorized tribes in Indian country) will provide a Section 401 response based upon either pathway. The best way to determine when laws and rules apply to a particular wetland or activity is to consult with all appropriate agencies.

No matter what the federal government decides, if the wetland meets the state definition of a wetland ([RCW 37.70A.030](#)) the wetland is regulated by state and local agencies as waters of the state. For non-federally regulated wetlands, applicants must submit a request to Ecology for an Administrative Order (to comply with Chapter 90.48 RCW).

Those proposing to impact a wetland(s) need to submit a request for authorization. To make the process easier, Washington State developed the [Joint Aquatic Resource Permit Application \(JARPA\)](#). The JARPA streamlines the application process for water-related projects.

For more information see [Ecology's wetland regulation and permitting web page](#)

**For the SERP EID:** Report the results of the impact assessment, generally in the form of a wetland delineation report with associated mitigation measures if needed, as an attachment to the SERP Environmental Information Document.

### **For questions contact:**

[Contact our wetland staff \(organized by subject and area\)](#)

OR

Federal permit coordinator

[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

360-407-6076

**Resources:** Ecology [Wetlands](#) Overview

Contact wetlands staff assigned to the County [here](#)

Locate Wetlands of High Conservation Value [here](#)

## References:

Protection of Wetlands, Executive Order 11990, 42 Fed. Reg. 26961, May 24, 1977, as amended by Executive Order 12608, 52 Fed. Reg. 34617, Sept. 14, 1987: [Section 404 of the Clean Water Act - epa](#)

[Ecology Wetland Regulations](#)

[Growth Management Act](#) – Critical Areas Ordinance

Washington State [Wetland Program Plan](#)

[Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance.](#)

## Requirement: Coastal Zone Consistency Determinations

**Affects:** Federal Clean Water State Revolving Fund Agreements

**Trigger for permit:** Federally funded CWSRF agreements located in a coastal zone county that require a federal permit or license.

**Agency with Expertise:** [Ecology SEA Program](#)

Under Washington's Coastal Zone Management (CZM) Program, federal actions that may affect any land use, water use, or natural resources in the coastal zone must be consistent with the [enforceable policies](#) found within four state laws – the Shoreline Management Act, Water Pollution Control Act, Washington Clean Air Act, Ocean Resources Management Act and the state [Marine Spatial Plan](#), including their implementing regulations.

Washington's coastal zone is comprised of the following 15 counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom. Each of these counties border saltwater--the Pacific Ocean, the Puget Sound, or the lower Columbia River estuary. All projects occurring in these counties must meet CZMA requirements when they are undertaken by a federal agency or require a federal license or permit. Projects on federal or tribal lands that may affect our coastal uses or resources must also meet CZMA requirements.

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TIP: The Governor's Office for Regulatory Innovation & Assistance (ORIA) [permit questionnaire](#) is designed to help identify many of the permits and approvals that may be required for the project.

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When facility planning for upgrades or new construction in areas within the shoreline, obtain the shoreline permit early and complete a Coastal Zone Management Determination if the project requires a federal permit of license. This is important to do if there is an existing outfall that will be upgraded, or there is a plan to install a new one. Other resource areas to be cognizant of include addressing whether the action involves DNR State Aquatic Lands and will require a Hydraulic Project Approval.

If the agreement is federally funded, follow these steps, and document the information as part of the SERP Environmental Information Document:

1. *Does the project require a federal permit or license? **If no, stop here. If yes, continue to** Step 2.*

2. Is the proposed project located in one of the 15 Washington's coastal counties? ***If the answer is "no," end here.*** Note the project's location as outside of a coastal county in the SERP Environmental Information Document. No further action is required. ***If the answer is "yes," go to Step 3.*** Projects located in the coastal zone must meet federal consistency requirements.
3. Prepare a [Federal Consistency Certification form for activities that require federal approval](#) and submit it to Ecology's Shorelands and Environmental Assistance (SEA) Program for review at [fedconsistency@ecy.wa.gov](mailto:fedconsistency@ecy.wa.gov) The certification package [includes the certification form](#), a site map, and project description. For additional information please see [Washington State Coastal Zone Management Program Federal Consistency Procedures](#) .

The following enforceable policies will need to be addressed to demonstrate consistency with Washington's Coastal Program:

- State Shoreline Management Act
  - State Water Pollution Control Act.
  - Washington Clean Air Act.
  - State Ocean Resource Management Act.
  - The Marine Spatial Plan for Washington's Pacific Coast
4. Ecology may concur, conditionally concur, or object to a consistency determination. Attach a copy of the certification package and the consistency decision to the SERP Environmental Information Document. No further action is required unless Ecology objected to the consistency determination (see ***Step 5***).
  5. If Ecology's SEA Program cannot concur, Ecology's Water Quality Program will facilitate consultation between the SRF applicant and the SEA Program. Conflicts should be addressed through informal discussions with Ecology, prior going through the formal processes.

## References and Resources

[Washington State Coastal Zone Management Program Federal Consistency Procedures](#)

[Washington Coastal Zone Program and Policies](#)

Ecology Federal Permitting Team

[fedconsistency@ecy.wa.gov](mailto:fedconsistency@ecy.wa.gov)

360-407-6076

Questions about CZM Federal Consistency

Loree' Randall

Federal Consistency Policy Lead

[loree.randall@ecy.wa.gov](mailto:loree.randall@ecy.wa.gov)

360-485-2796.

Questions about Washington's CZM Program operation and implementation

Henry Bell

[henry.bell@ecy.wa.gov](mailto:henry.bell@ecy.wa.gov)

360-628-2750

## **Requirement: Farmland Conversion**

**Affects:** Federal Clean Water State Revolving Fund Agreements

**Trigger for permit:** Acquisition and conversion of important farmlands to nonagricultural use

**Agencies with Expertise:** Natural Resources Conservation Service, Office of Farmland Preservation

In just the 15-year period from 2001-2016, 11 million acres of agricultural lands (equivalent to all US farmland devoted to fruit, nut, and vegetable production in 2017) were paved or converted to uses that threaten the future of agriculture. One of the largest contributors to this conversion was the federal government (American Farmland Trust, [Strengthening the Farmland Protection Policy Act](#), 2021).

When Congress passed the Farmland Protection Policy Act (FPPA) in 1981, it acknowledged the Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States. Congress noted that, each year, a large amount of the nation's farmland is irrevocably converted from agricultural use to nonagricultural use.

The FPPA discourages federal activities that convert prime and unique farmlands or farmlands of statewide or local importance to nonagricultural purposes. The FPPA requires agencies to cooperate with the [U.S. Department Agriculture's \(USDA\) Natural Resources Conservation Services \(NRCS\)](#) to:

1. Identify and consider the adverse effects of federal programs on the preservation of farmland.
2. Consider alternative actions, as appropriate, that could lessen such adverse effects.
3. Assure that such federal programs, to the extent practicable, are compatible with state, unit of local government, and private programs and policies to protect farmland.

Projects are subject to the FPPA if they irreversibly convert farmland or ranchland, directly or indirectly, to non-agricultural use and are completed by a federal agency, or with assistance from a federal agency. In the CWSRF, projects receiving one federal dollar or fully funded federal agreements (equivalency) and any other federally funded projects are subject to the FPPA. This includes federally funded non-point 319 and 320 agreements.

The local office of the NRCS or the State Conservationist may offer advice on:

- Alternative sites.
- Actions the CWSRF applicant must take to protect important farmlands.
- Sizing of the project as it relates to secondary growth.
- The continued viability of farming and farm support services in the project area.
- Alternatives or mitigation measures Ecology and the SRF applicant should take to reduce potential adverse effects on important farmlands.

**Procedure to document potential impacts and determine if mitigation is required – please note this procedure involves cooperation with the Ecology’s Environmental Review Coordinator:**

1. Will the project occur on prime, unique, or state or locally important farmland? Identification of important farmlands is determined from currently published or interim soil survey maps and data produced and certified by the NRCS National Cooperative Soil Survey Program.
  - a. ***If the answer is “no”*** and the project does not convert or otherwise adversely impact farmland, the project complies with the FPPA. Make note of the project site’s current land use and zoning. Attach documentation from the NRCS to the SERP EID. No further analysis is necessary.
  - b. If yes, go to Step 2.
2. Determine which project alternatives will convert or otherwise adversely impact critical farmland if the project is located outside of an urban area.
3. Complete Part I and III of the US Department of Agriculture (USDA) [form AD-1006](#) and submit with an appropriately scaled map to the Ecology’s environmental review coordinator to complete on behalf of the EPA.

HELPFUL HINT

The [Farmland Conversion Impact Rating form](#) must be filled out by either EPA or Ecology on behalf of EPA.

Expedite this process and ensure correct information is provided by downloading the form, completing the details on location, proposed land use, acres, conversion, etc.

Turn the form into the current Ecology’s environmental review coordinator, who will ensure it is complete. They will also verify the form is required. Certain activities are not subject to this



4. Ecology's environmental review coordinator will review Parts I and III, and if complete, submit to the Natural Resource Conservation Service (NRCS) to identify critical farmland. Unless a site visit is required, NRCS will respond within ten working days after receipt of the form. The NRCS will complete Parts II, IV and V of the form if farmland will be converted.
5. If it is determined that farmland will be impacted and converted, Ecology's environmental review coordinator, in consultation with the NRCS and the county planning department will complete Parts VI and VII. The final site selection will be returned to the NRCS. Ecology's environmental review coordinator will be responsible for determining whether providing assistance under the CWSRF to the proposed project, which would convert prime and unique farmland, is consistent with the FPPA.
6. Include the SERP determination in the SERP Environmental Information Document.

## Resources:

[Natural Resources Conservation Service](#)

[Office of Farmland Preservation](#) (State)

[American Farmland Trust](#)

[USDA FPPA website](#) including Conversion Impact Rating Form (AD-1006), regulations and other helpful information.

[NRCS Web Soil Survey](#): Conversion Impact Rating form (AD-1006):

<https://www.nrcs.usda.gov/sites/default/files/2022-06/AD1006.pdf>

**Requirement:** Project will impact designated Wild and Scenic Rivers; (Wild and Scenic Rivers Act)

**Affects:** State and Federal Clean Water State Revolving Fund agreements

**Trigger for permit:** Potential impact to the natural, cultural, or recreational values of the free-flowing condition of these protected rivers

**Agencies with Expertise:** The National Park Service, Bureau of Land Management, U.S. Forest Service, and U.S. Fish and Wildlife Service.

Passed in 1968, the Wild and Scenic Rivers Act preserves certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act safeguards the special character of these rivers, while also recognizing the potential for their appropriate use and development. Rivers are designated by Congress or, if certain requirements are met, the Secretary of Interior. Rivers can be classified as wild, scenic, or recreational, with the goal of protecting and enhancing the values that caused the river to be designated.

The 2022 list of designated of [wild and scenic rivers in Washington state](#) constitute less than 1/10ths of 1% of all river miles in the state. No activity will be approved in or directly adjacent to a designated Wild and Scenic River without approval. View an [interactive map here](#).

The list is:

- Illabot Creek - Managed by US Forest Service
- Klickitat River - Managed by US Forest Service
- Pratt River - Managed by US Forest Service
- Skagit River - Managed by US Forest Service
- Snoqualmie (Middle Fork) River – Managed by US Forest Service
- White Salmon River - Managed by US Forest Service
- Snake Wild and Scenic River – Managed by the US Forest Service, Bureau of Land Management

Rivers are designated as [Wild, Scenic, or Recreational](#).

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The WSR Act prohibits federal support for actions such as the construction of dams or other instream activities that would harm a designated river's free-flowing condition, water quality, or outstanding resource values.

If the SRF agreement is state funded, it will still require a federal permit for in-water work. This is the trigger for the WSRA Section 7 Review.

Ecology has the discretion to deny an agreement having the potential to adversely impact a designated river. Ensure approval is obtained from the appropriate federal land management agency and provide that documentation to Ecology.

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In addition to these three classifications, rivers may be studied (Study Rivers) in whole or as segments for potential inclusion in the WSR system. No impacts are allowed to Study Rivers. Regardless of classification, each river in the National System is administered with the goal of protecting and enhancing the values that caused it to be designated. Designation neither prohibits development nor gives the federal government control over private property. Recreation, agricultural practices, residential development, and other uses may continue.

Four primary federal agencies are charged with protection and managing our designated wild and scenic rivers: the National Park Service, Bureau of Land Management, U.S. Forest Service and U.S. Fish and Wildlife Service. Each designated river segment is often administered by one of these federal agencies and/or a state agency and in some cases, a tribe or in coordination with local government.

**Note:** WSRA purposefully strives to balance construction at appropriate sections of affected rivers with permanent protection for some of the country's most outstanding free-flowing rivers. To accomplish this, it **prohibits support for actions such as the dam construction or other instream activities that would harm the river's free-flowing condition, water quality, or outstanding resource values.**

This [report](#) provides examples (Appendix A) of activities triggering a Section 7 impact review. Most of the examples provided involve an additional federal nexus – a permit, authorization, or assistance. The standard does not change – agencies must consider whether the proposal diminishes or alters the scenic, recreational, fish and/or wildlife values present at the date of designation. This requirement is in place for both state and federally funded agreements. If the agreement is state funded and may appreciably diminish these values for a designated river, a Section 7 review is required. Ensure the information from that Review is completed as part of the SERP EID. No impacts to WSR rivers are allowed.

## Procedure

1. Is the project in the corridor of the drainage basins of one of the currently designated Wild and Scenic River (WSR)?
  - a. If yes, continue to 3.
  - b. If no, end here and document in the SERP EID “Not in a WSR drainage.”
2. Is the project located outside a WSR corridor, but is adjacent to a WSR drainage?
  - a. If yes, continue to 3.
  - b. If no, end here and document in the SERP Environmental Information Document “Not in a WSR drainage.”
3. For projects locate in the corridor of a WSR, will there be any construction in the riverbed or below the Ordinary High-Water Mark (OHWM) of the river?
  - a. If no, provide results in SERP EID. No further analysis required.
  - b. If yes, continue analysis using Direct and Adverse Effect Standard found in Appendix C of the Council’s [Section 7 technical report](#). Provide results to the SERP Coordinator and the Federal agency managing the river and wait for a response.
4. For projects located outside of the corridor of the WSR, is the project located within the river’s bed or banks upstream, downstream, or on a tributary to the WSR Corridor?
  - a. If no, provide results in SERP EID. No further analysis required.
  - b. If yes, answer the next question.
5. Does this project have the potential to affect free-flow or scenery, recreation, fish, or wildlife values present within the WSR?
  - a. If no, provide results in Ecology’s Environmental Information Document. No further analysis required.
  - b. If yes, continue analysis using Invade the Area or Unreasonably Diminish Standard found in Appendix D of the Council’s [Section 7 technical report](#). Provide results to the SERP Coordinator and the Federal agency managing the river. Wait for a response.

Mitigation may be required. If so, incorporate avoidance/mitigation measures into the proposed action as required by the federal agency for the project to proceed. Provide copies of any suggested modifications and recommendations in the SERP EID.

**Requirement:** Presence of state and/or federal listed species and/or habitat

**Affects:** Protections for listed species in place for all agreements, framework for consulting is different for state vs. federal

**Trigger for permit/consultation:** Presence of protected, listed species and/or habitat

**Agency with Expertise:** Washington State Department of Wildlife, National Marine Fisheries Service, U.S. Fish and Wildlife

## Background

State and federal laws protect listed species and their habitat. At the state level, Washington Department of Fish and Wildlife (WDFW) coordinates directly on impacts to wildlife and their habitat. For hydraulic projects in or near state waters, the project-specific [Hydraulic Project Approval \(HPA\)](#) ensures construction methods protects fish and aquatic habitat. The Priority Habitats and Species (PHS) Program is the agency's primary means of conveying fish and wildlife information from our resource experts to local governments, landowners, and others who use it to protect habitat. PHS information is used primarily by cities and counties to implement and update land use plans and development regulations under the [Growth Management Act](#) and [Shoreline Management Act](#). Landowners also use PHS as they consider developing or conserving their property. The WDFW administers or assists several programs that protect and preserve habitat in the state, whether responding to emergencies or proactively aiding fish and wildlife species faced with a changing environment.

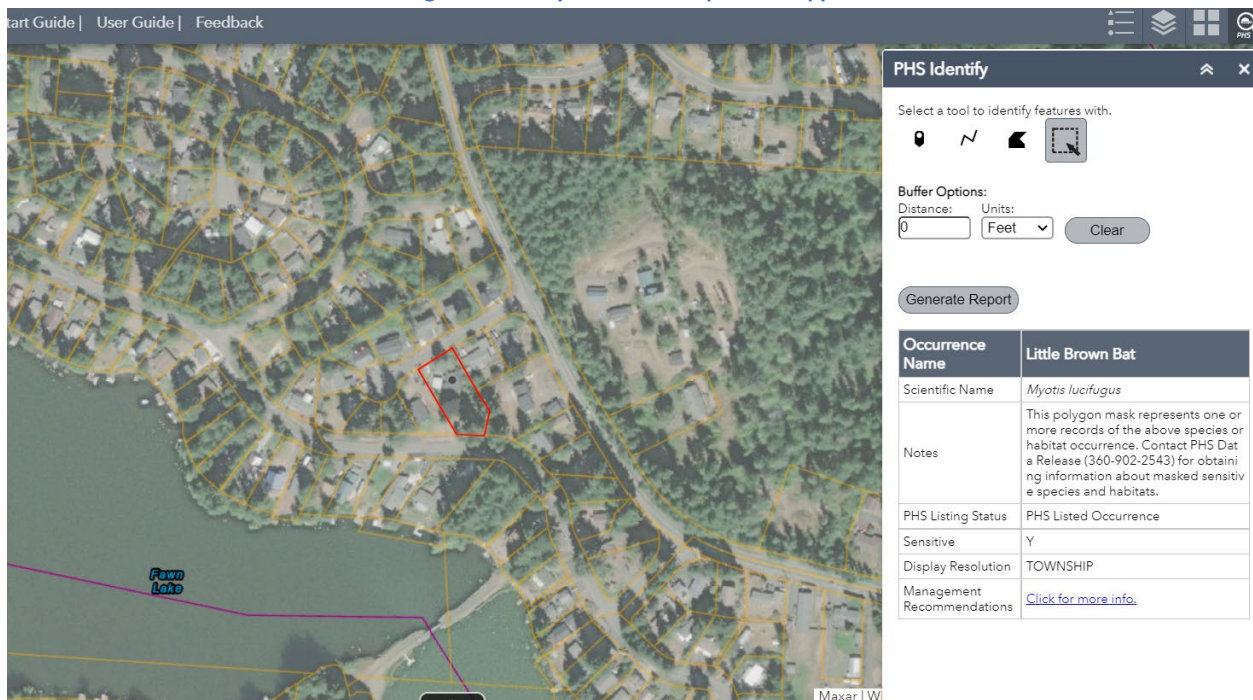
For agreements with federal funding, addressing potential impacts may involve two federal agencies: the National Marine Fisheries Services (NMFS) and/or the U.S. Fish and Wildlife Services (USFWS). Ecology is the designated non-federal lead agency for informal consultation with these two agencies.

The following overview will address how to handle potential impacts from the agreement, whether it is state or federally funded.

## State Funded Agreements

1. Use the [Priority Habitat and Species](#) (PHS) App or Web Mapper to locate any PHS within the project area. Species listed in PHS are generally inclusive of those found in the [USFWS iPac - Information for Planning and Consultation](#) or [Ecos - Environmental Conservation Online System](#) web-based tools. The suggested buffer for mapping the potential of species occurrences within and adjacent to the project area is 1 – 3 miles, depending upon the size of the project.
2. Enter the address of the parcel location in the mapper – click to add the point.
3. Select the parcel using a tool (parcel, polygon, point, etc.)
4. A list of species will appear with management recommendations. In Figure 2.0 there is a parcel, and the presence of the Little Brown Bat (*Myotis lucifugus*). This person has a bat box on their chimney.

Figure 4 Priority Habitat and Species Mapper



Click “management recommendations” to find more information on how to ensure appropriate [conservation measures](#) are included in the project for this species. This downloadable document indicates two species frequently use bat boxes – the Little Brown and Big Brown Bat – provided the boxes are well constructed and properly maintained.

By taking these simple steps for species on state funded projects, learn about conservation measures to consider for Species of Greatest Conservation Need in Washington State.

A project may also be required to conform with the Washington Hydraulic Code via issuance of a WDFW [Hydraulic Project Approval \(HPA\)](#), and local Shoreline Management and Critical Area regulations. Projects must comply with all required mitigation actions, which must be included in detail in the SERP EID.

[Section 9](#) of the Endangered Species Act (ESA) may also apply to state funded agreements if the definition of *take* occurs. Take is defined as “To harass, harm, pursue, hunt, shoot, would, kill, capture, or collected or attempt to do so.” Within this sentence, the word “harm” is broadly defined as: “An act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation by significantly impairing essentially behavioral patterns, including breeding, feeding, or sheltering.”

Section 9 codifies take prohibitions and applies to “*any person of the United States.*” Learn more about take prohibitions [here in this Sea Grant Law Center article](#).

**Take-away:** If this is a state funded agreement, but there are federally endangered species within the project area that may be impacted, contact the Ecology Environmental Review Coordinator for next steps.

## **Federally Funded Agreements**

At the Federal level, a more structured process for projects with a federal nexus (actions authorized by a federal agency, permitted by a federal agency, occurring on federal land, funded using federal assistance, or undertaken by a federal agency) is available. This process provides consultation under the ESA. In some areas, consultation includes addressing Essential Fish Habitat (EFH). This is known as ESA/EFH consultation.

The ESA provides a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and provides a program for the conservation of such endangered species and threatened species. The EFH protects habitat required for fish to survive, such as seagrass, salt marsh, coral reefs, kelp forests, rocky intertidal areas, rivers, and streams. NOAA oversees the EFH. Both the National Marine Fisheries Service of NOAA Fisheries and the United States Fish and Wildlife Service (USFWS) participate in ESA consultation. The USFWS has jurisdiction over terrestrial and non-marine aquatic species and the NMFS has jurisdiction over marine and most anadromous salmonid species.



Recipients of CWSRF federal funds are required to coordinate through Ecology who is EPA's designated non-federal lead agency for ESA consultation. Ecology will work to verify lead agency status, review, and approve Biological Evaluations and Assessment, and coordinate correspondence to the Services (NMFS and USFWS) on behalf of the EPA.

The following is meant to be a helpful guide on best practices for the development of a Biological Assessment (BA) or similar document with examples of treatment works projects. Following this are the steps in making a recommended determination on the impacts of the project. Other helpful templates may be found on the U.S. Army Corps of Engineer's webpage and on the Washington State Department of Transportation's webpage.

It will be helpful to obtain a current species and designated critical habitat list from the USFWS and the NMFS (together, the "Services") online or directly from the regional offices.

This document must fulfill the Biological Assessment requirements under section 7(c) of the ESA. The following is a suggested template based upon current templates used by the U.S. Army Corps of Engineers and the Washington State Department of Transportation:

### **Section: Background/History**

1. **Project History**
2. **Previous correspondence consultation history**

### **Section: Description of the Action and Action Area**

1. **Discussion of Federal Action and Legal Authority** – The Services may want to confirm Ecology's role. In some agreements, there are two federal funding agencies. When two or more Federal agencies are involved in an activity affecting listed species or critical habitat, one agency is designated as the lead (50 CFR §402.07), often based on which agency has the principal responsibility for the project. Example: a dam has a reservoir for flood storage. The Federal Energy Regulatory Commission (FERC) maintains the dam, the Corps maintains the reservoir. Who is the lead on the entire footprint during consultation? Answer: FERC is the lead for consultation as the reservoir would not be present were it not for the dam to begin with.
  - a. **Construction Techniques and Sequencing** – Note that re-initiation of consultation will be required if a specific technique is not included, which may delay the project. Please consider including all possible construction techniques. This section should include:
    - i. **Timing of each stage**
    - ii. **Site preparation**
    - iii. **Equipment and materials to be used**
    - iv. **Work corridor location**
    - v. **Staging areas, equipment washing areas**

- vi. **Stockpiling area**
  - vii. **Describe equipment that will run during construction**
  - viii. **Soil stabilization**
  - ix. **Clean-up, mobbing, re-vegetation**
  - x. **Stormwater controls**
  - xi. **Source of fill, if used**
2. **Action Area** – Delineate the “action area” by defining the geographic area for the project. This is not the project location; it is all areas that may be affected directly or indirectly by the Federal action. Describe the physical and biological attributes of the action area, such as topography and vegetation. Include a detailed map delineating where the action will occur within the action area.
- a. **Project Area:** Details on the proposed project, the location, the methods, and techniques required to accomplish the final product, information about effluent (where/how it is discharged, increased flows, etc.), and basic information on the project schedule. If multi-phased, describe the chronology of each phase separately.
  - b. **Locate the project area as precisely as possible:** If necessary, include separate locations for scattered sites. Quantify using acres, square miles, or other conversion units. Include HUC, Watershed, Township, Range, Section (include quarter section or quarter/quarter section), Latitude and Longitude.
  - c. **Maps, diagrams, project drawings, photographs**
3. **Operational Characteristics of the Proposed Project** – this section will describe the relevant operational characteristics of the proposed action. The purpose of this section is to ensure the analysis of any potential effects from ongoing operations and maintenance of the action being proposed.

**Section: Mitigation and Conservation Measures**

- 1. **Description of Conservation Measures Required by other permits** - Describe any conservation measures clearly and specific actions that will be adopted or implemented to eliminate or reduced adverse effects from the action, in general.
- 2. **Description of Mitigation Requirements** – Describe mitigation measures required under local, state, Tribal and other federal permits which are part of the proposed action. Ensure you indicate who the responsible party is when implementing the mitigation and where the funding will come from (e.g., CWSRF agreement).

**Section: Interrelated and Interdependent Actions** – Discuss the relationship of the proposed action to actions that have no independent utility apart from the proposed action. For example, an outfall is an interdependent action to a wastewater treatment plant. Also discuss actions which depend upon the larger action for their existence. These are interrelated actions. For example, discharge depends upon the outfall and treatment plant for its existence.

**Section: Status of Species and Critical Habitat** – Identify listed or proposed species that may be present. Ensure the listing is current.

1. Species Lists must be requested from USFWS in writing, following a search through [USFWS iPac - Information for Planning and Consultation](#). NOAA Fisheries species lists relevant for the West Coast Region can be accessed on-line [here](#). Consider supplementing these lists using the [PHS database](#) and the [Washington Natural Heritage Program Data Explorer](#).
2. For each species listed, describe their current habitat condition within the action area. Briefly summarize their relevant Evolutionarily Significant Unit (ESU)/Distinct Population Segment (DPS), current legal status and listing history. Address adjacent species and explain why they are not within the action area. If no species are present or adjacent, state so (do not state “N/A”).
3. For critical habitat (if present), include the identify extent of designated critical habitat, the primary constituent elements that are within the action area, and any activities that have been identified as having a potential for altering the habitat. If there is no designated critical habitat covering this area, or no habitat for listed species, state.

**Section: Description of Species** – Available from Status Review, important to include a section on Limiting Factors, Local Information (in-water work windows) and Local Populations, including trends.

**Section: Critical Habitat Designation for each ESU/DPS** – Available from the Federal Register Notice designated critical habitat

**Section: Environmental Baseline** – This section is an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species, its habitat (including designated critical habitat), and ecosystem within the action area. The environmental baseline is a “snapshot” of a species’ health at a specified point in time. It does not include the effects of the action under review in the consultation. Identify whether the proposed activity is located within or adjacent to a listed species or its critical habitat. If it is near either, clarify how nearby. If d within a migratory corridor, explain who uses the corridor and how often/when each year.

**Section: Effects of the Action** - This section includes an analysis of the direct and indirect effects of the proposed action on the species and/or critical habitat and its interrelated and interdependent activities. Factors considered in the analysis include proximity of the action, distribution, timing, nature of the effect, duration and disturbance frequency, disturbance intensity, and disturbance severity. Sufficient description of the proposed action should be included so the subsequent analysis of effects and the scope of the Biological Opinion are clear.

For action areas with listed species and/or designated critical habitat, include the effects of all past human and natural activities that have led up to the current status of the species. Add to this if and how the project may affect listed species and/or designated critical habitat. Document the conclusion, and provide a supporting, logical, and connected rationale. The analysis should consider phases, parts, and all details of the project. It should not be piecemealed. This section should be very straightforward, and as accurate and realistic as possible. Consider range, habitat needs, recorded locations in relation to the project, forage/food needs, and behaviors. The analysis should include “effects of the action” which are defined as direct and indirect effects of the action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent.

1. **Use of Logical Framework for Analysis** (e.g., use of MPI or another appropriate framework. Example pathways include water quality; habitat access; habitat elements; channel conditions/dynamics; flow and hydrology; watershed conditions). The effects analysis must use a logical framework for the effects analysis. For example, the “Habitat Approach” and the “Matrix of Pathways and Indicators (MPI)” also known as the “Matrix Paper” establish a logical framework for determining the effects of a proposed action.
2. **Direct Effects** (on each species and designated critical habitat) - Direct effects resulting from the proposed action include the effects of interrelated actions and interdependent actions. Direct effects include all immediate impacts (adverse and beneficial) from project-related actions. Direct effects occur at or are very close to the time of the action itself. Examples could include construction noise disturbance, loss of habitat, or sedimentation that results from construction activity.

Direct or immediate effects should be analyzed to both the species, and where applicable, its habitat. Direct effects can have temporal and spatial limits. Direct effects impact species tolerances, resulting in mortality and other forms of “take” (i.e., harm, harass, capture, etc.), or adversely modifying critical habitat, even resulting in habitat loss. *Example* - driving an off-road vehicle through the nesting habitat of an endangered mouse both results in a form of take and damages the critical habitat.

3. **Indirect Effects** Those effects that are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur. Indirect effects may occur outside of the area directly affected by the action. *Example* - Discharge from wastewater outfalls, a land-based nitrogen load, when combined with numerous nonpoint sources in the Salish Sea, influences the dissolved oxygen (DO) in ways that may contribute to persistent hypoxia within Hood Canal and other portions of South Puget Sound

(Khangaonkar, T. et.al. 2017). This is an indirect effect as it occurs later in time, and place, and is reasonably certain to occur in many areas.

Indirect effects may include other Federal actions that have not undergone section 7 consultation but will result from the action under consideration. Use the same steps as with direct effects to identify impacts and conservation measures to offset the adverse impacts.

**Section: Effects from Ongoing Project Activities – (Ongoing Operations and Maintenance) -**

This section should identify the potential effects of ongoing project activities such as operation and maintenance. This discussion should typically be included as part of the indirect effects discussion or as part of interdependent and interrelated actions. For treatment plant operators, what operations and maintenance activities have potential effects to listed species in the area? They are related to the consultation because they are interrelated and/or interdependent.

**Section: Conservation Measures:** Follow this section with an explanation of how any previously proposed conservation measures (section on Mitigation Measures Required by Permits) would help to *eliminate or reduce the adverse effects of the proposed action*. Discuss any measures included in the proposed action that serve to avoid or minimize potential effects to listed species. Typically, these measures include avoidance or preservation measures of some kind, for example, timing restrictions or buffers around sensitive habitat types and habitat features that are important to sensitive species. Best Management Practices (BMPs) are methods, facilities, built elements, and techniques implemented or installed during project construction to reduce short- and long-term project-related impacts.

**Section: Determination of Effect**

1. **NO EFFECT (NE)**<sup>11</sup>: While this phrase is found in the ESA Consultation Handbook (1998) it is outdated and rarely used by the Services. It is recognized by the Services as being difficult to truly achieve “No” effect for a construction project if listed species and/or critical habitat are involved. To truly achieve *No Effect*, the recipient must show absolutely *No Effect* at all – this means, the project has No Effect:

- Directly.
- Indirectly.
- Adversely.
- Cumulatively.

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<sup>11</sup> Effect – Noun

- In the reasonably foreseeable future.
- There are no interdependent or interrelated effects.
- Future phases will have no effects (direct, indirect, cumulatively, adversely).

If the recipient can conclusively say the project location, phases, and design meet all these standards, Ecology may develop a No Effect letter. Ecology's Environmental Review Coordinator will send the recipient's Biological Evaluation or Assessment with the NE letter requesting concurrence to the Services and the Region 10 EPA to initiate consultation.

Otherwise, for a project where critical habitat and/or listed species are involved, the **Not Likely to Adversely Affect** letter is more realistic, with a discussion on the level of effect (discountable, insignificant, beneficial, or otherwise). See **Step 2**.

2. **MAY AFFECT<sup>12</sup> NOT LIKELY TO ADVERSELY AFFECT (MANLAA or NLAA)**: the project May Affect, but not significantly. This is a more realistic scenario for treatment works projects in the vicinity of listed species and/or critical habitat. All effects are beneficial, insignificant and/or discountable. Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based upon best judgement, a person would not (1) meaningfully be able to measure detect or evaluate insignificant effects or (2) expect discountable effects to occur. Ecology's Environmental Review Coordinator will send a NLAA letter directly to the contact listed in the BA with a copy to the Services and to the Region 10 EPA.
3. **MAY AFFECT, LIKELY TO ADVERSELY AFFECT (MALAA or LAA)**: The appropriate conclusion if any adverse effect were identified, direct or indirect, or because of interrelated or interdependent actions, or cumulative effects. The effect is also not discountable, significant, or beneficial. Listed resources are likely to be exposed to the action or its environmental consequences and will respond in a negative manner to this exposure. If Ecology' Environmental Review Coordinator concurs, it will send the recipient's BA and letter to the Services and Region 10 EPA to initiate formal consultation under Section 7(a) (2) of the ESA. Region 10 EPA is responsible for leading formal consultation.

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<sup>12</sup> Affect – Verb: *It does not affect you.*

**Essential Fish Habitat Recommendations** - Include the Essential Fish Habitat Consultation in the document. Refer to the section on the Sustainable Fisheries Act (EFH). Please include a Description of the Proposed Action (DOPA), address any impacts to EFH by referencing the correct Fisheries Management Plans through the EFH website and online EFH mapper, consider effects on EFH, managed species, cumulative effects, list proposed conservation measures to offset effects, and develop conclusions.

**Literature Cited/List of Contacts** – Include correspondence and references here.

**Next Steps:** As described earlier, provide the BE/BA to Ecology’s State Environmental Review Coordinator. The Environmental Review Coordinator will review the BE/BA to ensure the appropriate level of detail is provided by the recipient. Ecology may request additional information. Ecology may agree with or revise the proposed determination.

Once Ecology has sufficient information, Ecology will send the complete package to the Services with a copy to the Region 10 EPA. Ecology will coordinate with the Region 10 EPA and request concurrence from the Services dependent upon the determination. Recipients should coordinate early and throughout the planning process to ensure consultation is completed in a timely manner.

1. **What to expect during informal consultation:** The federal Services or Ecology may ask questions about the proposed project, make recommendations, and otherwise give the opportunity to modify the project to minimize impacts on listed resources. If the Services concur with the *not likely to adversely affect* determination, the recipient has met the requirements of the ESA. Attach the concurrence letters from the Services and other documentation or communications to the SERP Environmental Information Document. No further action is required. If the Services make a *likely to affect* determination, formal consultation is required.
2. **What to expect during formal consultation:** Formal consultation will require significant communication between the recipient, Ecology, the Region 10 EPA, and the federal Services regarding the project’s effects on listed species and designated critical habitat. An outcome of formal consultation is a “Biological Opinion” (BiOp), which the federal services will mail to the Region 10 EPA.
  - a. The objective of a BiOp is to determine whether the subject action is likely to jeopardize the continued existence of listed species, and/or result in the destruction or adverse modification of designated critical habitat.

- b. The BiOp will include a conclusion section presenting the Services' opinion on the aggregate effects of the factors analyzed against baseline conditions, effects of the action and cumulative effects in the action area.
- c. The BiOp will identify any actions that may not be likely to jeopardize listed species, but still constitute "take" pursuant to section 9 of the ESA.
- d. The Services will then identify Reasonable and Prudent Measures, and specific Terms and Conditions, for an Incidental Take Permit (ITP).
- e. The final Incidental Take Permit (ITP) will set forth the Reasonable and Prudent Measures, and Terms and Conditions under which the facility can operate. Most have a five-year term. A copy of the ITP will be necessary for the SERP Environmental Information Document
- f. Coordinator will attach the ITP to the SERP Environmental Information Document and include it in the Contract File. ITPs have certain conditions; including changing the project footprint in which ESA consultation would be re-initiated. Please contact the Environmental Review Coordinator with any questions.

It may be necessary to re-initiate consultation once the ITP has expired. Contact the Ecology Environmental Review Coordinator.

## Useful references - ESA

- [16 USC 1531 - Endangered Species Act](#)
- [Endangered Species Consultation Handbook](#) – opens a PDF document from USFWS website. Fish data for the Northwest: <https://www.streamnet.org/>
- [WSDOT ESH and ESA Guidance and templates](#) – Note: This general guidance and these templates are meant to supplement, not replace, the directions found here.
- [USACE Templates and general guidance](#) - Note: This general guidance and these templates are meant to supplement, not replace, the directions found here.

## NOAA & NMFS

- NOAA West Coast Region [West Coast | NOAA Fisheries](#)
- NMFS West Coast Environmental Analyses (ESA, NEPA, MMPA, more): [Environmental Analyses on the West Coast | NOAA Fisheries](#)
- NOAA Fisheries, West Coast Region, Complying with the Endangered Species Act [Restoration of Salmon and Steelhead Habitat on the West Coast](#)



## Useful references - EFH

- NOAA Fisheries, West Coast Region, Essential Fish Habitat [Essential Fish Habitat on the West Coast | NOAA Fisheries](#)  
EFH Mapper: [Essential Fish Habitat Mapper | NOAA Fisheries](#)  
EFH: Contact - For more information contact: West Coast EFH Coordinator, John Stadler, at john.stadler@noaa.gov or (360) 534-9328.

## USFWS

- USFWS's Pacific Region [USFWS Pacific Region](#)
- U.S. Fish & Wildlife Service: Section 7 Consultation Guidance (server may be overloaded at times) <https://www.fws.gov/service/esa-section-7-consultation>
- USFWS Critical Habitat – select Critical Habitat Reports <https://ecos.fws.gov/ecp/>
- [USFWS iPac - Information for Planning and Consultation](#)

## WDFW

- WA Department of Fish and Wildlife priority habitats and species: [WDFW PHS](#)
- [State Wildlife Action Plans \(SWAP\)](#) – State Wildlife Action Plans identify both federal and state of greatest conservation need (SGCN), with or without legal protection status, as well as game species with low populations. The WDFW SWAP is part of a nationwide effort by all 50 states and the U.S. Territories to develop conservation action plans for fish, wildlife, and their natural habitats. Conservation measures for the species and habitats is provided through the Priority Habitat Species program, and through the Growth Management Act. SWAP assists in prioritizing the ranking of grant recipients for the Recreation and Conservation Office (RCO) Program through the identification of high priority habitats.

## **Requirements:** Migratory Bird Treaty Act, Bald and Golden Eagle Protection Acts

**Affects:** Protections for listed species in place for all agreements, framework for consulting different for state vs. federal

**Trigger for Federal permit/consultation:** Potential take of Migratory Birds, Bald Eagles (*Haliaeetus leucocephalus*) and Golden Eagles (*Aquila chrysaetos*)

**Agency with Expertise:** U.S. Fish and Wildlife

**Migratory Bird Treaty Act of 1918:** The Migratory Bird Treaty Act of 1918 ([16 U.S.C. 703-712](#)) implements four international conservation treaties that the U.S. entered into with [Canada in 1916](#), [Mexico in 1936](#), [Japan in 1972](#), and [Russia in 1976](#). It is intended to ensure the sustainability of populations of all protected migratory bird species. The Migratory Bird Treaty Act (MBTA) prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior [authorization](#) by the Department of Interior U.S. Fish and Wildlife Service. The list of migratory bird species protected by the law is primarily based on bird families and species included in the four international treaties. The 10.13 list was [updated in 2020](#), incorporating the most current scientific information on taxonomy and natural distribution. The list is also available in a [downloadable Microsoft Excel file](#).

**Bald and Golden Eagle Act:** Prohibits the take of or disturbance to a Bald or Golden Eagle without a permit. "The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Regulations further define "disturb" 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" ([50 CFR 22.6](#)).

**Which birds are protected?** All migratory birds except nonnative bird species that have been introduced by humans into the United States or the U.S. Territories. This list is updated regularly, as required by the Migratory Bird Treaty Reform Act (2004). See the current 2020 list [here](#). Examples of birds not protected include the European Starling, the House Sparrow, the

Eurasian Collared Dove, and all non-native migratory bird species introduced into the United States by humans.

### What are the regulations?

Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). Unless permitted or otherwise allowed by the USFWS, migratory birds, their habitat and nesting materials are protected.

For more information see the [Migratory Bird Treaty Act](#) and the [Bald and Golden Eagle Protection Act](#).

The MBTA has a new three-tiered permitting system which includes broad, general permits covering flyways, and project level specific permits, aimed at specific activities.

Additionally, actions may be categorized as Low, Medium or High Risk, specified or non-specified. Non-specified activities include non-federal and/or private entities not otherwise covered. Learn more at: [Migratory Bird Permit | U.S. Fish & Wildlife Service \(fws.gov\)](#)

The categorization of the entity and activity determines whether consultation will occur electronically or include some level of USFWS involvement. For low-risk activities, all consultation may occur online, with permits issued including pre-identified conservation measures, as needed. Learn more about the top threats to migratory birds [here](#).

The Bald and Golden Eagle Protection Act and associated conservation measures have been rolled into the 2004 reforms of the MTBA.

For moderate to higher risk activities, some level of compensatory mitigation may be required. Visit the USFWS Migratory Bird Treaty Act permitting site for more guidance. Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. Follow any direction from the Region 1 USFWS Office you may receive. Ecology can assist recipients by applying for the permit on behalf of the recipient. Contact Liz Ellis if you need assistance.

## **Recommendations:**

In general, current MBTA guidelines prohibit incidental take of eggs, chicks and/or adult birds. No take of the nest is allowed if it is active. A permit is required to remove or relocate a nest during breeding season, or for incidental take of eggs, chicks, or adult birds at any time.

No incidental take permit is required for inactive migratory bird nests, provided that no possession occurs during the destruction and no permit or other regulatory authorization is required.

It is recommended that all activities are planned and conducted outside of the breeding season, which will change from bird to bird, but ranges between March – August, generally. Comply with the appropriate permitting conservation measures, as required. Submit a copy of the permit to the Ecology Project Manager and Environmental Review Coordinator.

Ecology can assist recipients by applying for the permit on behalf of the recipient. Contact Liz Ellis if you need assistance.

## **Resources:**

[Migratory Bird Treaty Act](#)  
[Bald and Golden Eagle Protection Act](#)  
[WDFW: Reporting on the Bald Eagle](#)

## Questions or Further Information:

Liz Ellis, Environmental and Cultural Resources Review Coordinator  
Clean Water State Revolving Fund, FMS, Water Quality Program  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600  
[liz.ellis@ecy.wa.gov](mailto:liz.ellis@ecy.wa.gov)  
(360) 628-4410 Cell/Work

## Appendix A: Volunteer Feedback Survey

Survey Questions – If you would like to provide feedback on the updates to SERP, please answer the following questions under separate cover and return to [Liz Ellis](#):

### Scope of Update

- Background on SERP- history, SERP vs. NEPA and SEPA.
- Roles and responsibilities.
- Clarification when state and federal regulations may apply and steps to take.
- Clarification on requirements for specific situations such as refinancing and Emergency Funding Agreements.
- Clarification on adoption, re-affirmation.
- Additional guidance
- Updates to the Coversheet, development of this guidance

### Reason for this update:

These updates will provide information and clarification requested by consultants and recipients. The updates provide a robust environmental review document easier for other financial assistance agencies to incorporate, further streamlining inter-agency environmental review coordination. The updates provide an improved format for the Ecology Environmental Review Coordinator, to communicate with recipients what environmental documentation is needed to make an informed SERP determination on an agreement.

### Directions

1. After you review the SERP Environmental Information Document and companion Guidance, please answer the following questions.
2. You are free to provide any comments and questions directly on either document, using Word format and the Track Changes or Insert Comment features.

### Questions on readability

1. Was the EID Guidance easy to follow?
2. Did the updates to the SERP EID assist you, and flow as you reviewed the Guidance?
3. Did it help to have the document broken into two sections – Required information and Supplemental Information (permits/approvals that could be triggered based upon the project, phase, location, etc.)?
4. Did you find the Directions clear, helpful?
5. Was information missing in the documents?
6. Did anything need clarification?

## Questions on additional sections

7. Did you find the new sections on *History of SERP* helpful? Would this section help someone new to SERP?
8. Did the section on Responsibility help clarify roles?
9. Did you find the section on *Type of Review* helpful?
10. Did the expanded section on *SEPA Exemptions and NEPA Categorical Exclusions* help explain what to do?
11. Did you find the additional sections on *External Funding, Refinancing and Reaffirmation* helpful?
12. If you reviewed the section on *Emergency Funding*, do you have any comments on the revised environmental review? It has been clarified for recipients.

## Questions on permits, approvals, and resources

13. Did you find the following in *Section B* provided the information you may need, assuming your project had the potential to impact one of these resources?
  - a. Air quality, including air pollutants and odor control.
  - b. Floodplain.
  - c. Surface or groundwater.
  - d. Wetlands.
  - e. Coastal zone.
  - f. Protected farmland.
  - g. Wild and Scenic River.
  - h. State and/or federally listed species and habitat.
  - i. Migratory Birds & Bald and Golden Eagles.

## Questions on Public Engagement and Environmental Justice

14. Are the directions on public engagement clear?
15. Do you have enough information to understand what is required to meet Ecology's Environmental Justice requirements?
16. Do you have any suggestions for additional information?

## Other

17. Do you have any questions on how to document and turn in mitigation that is required for the project to be successful?
18. Do you have any questions on what type of documents may need to be included in an EID?
19. Do you have any questions about how to apply for a NEPA or SEPA Categorical Exclusion?
20. Do you have comments or suggestions on how the Environmental Review Coordinator can improve the State Environmental Review Process, which includes cultural resources compliance?
21. Do you have any other comments, concerns, or suggestions?

Thank you so much for your valuable time!

Liz Ellis, Environmental and Cultural Resources Review Coordinator

## **Appendix B: Attachments Include (SEPA/NEPA/TEPA, permits, mitigation, reports)**

Please attach any required permits, reports, authorizations along with the [SERP EID](#). Alternatively, send them separately, or upload to EAGL.

Failure to do so may result in Ecology FMS returning the EID as incomplete.