



State Environmental Review Process Environmental Information Document

Guidance for Clean Water State Revolving Fund Agreements

Prepared by

Liz Ellis, Environmental Review Coordinator

For the

Financial Management Section, Water Quality Program

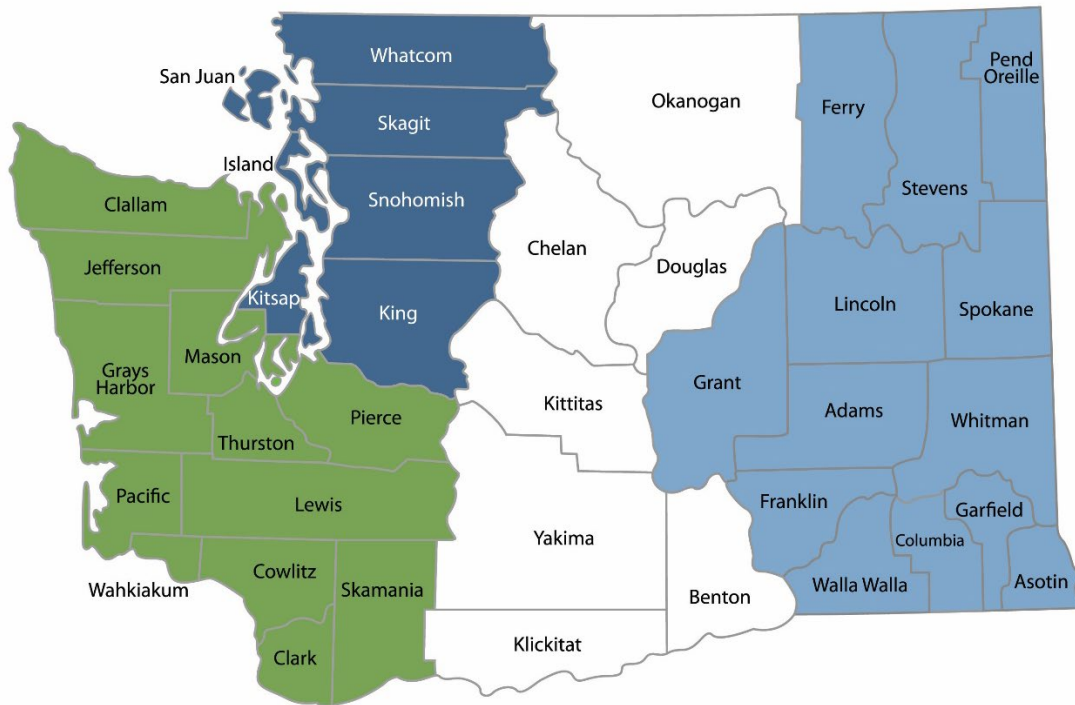
Washington State Department of Ecology

Olympia, Washington

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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
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Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 West Alder Street Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 North Monroe Spokane, WA 99205	509-329-3400
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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.

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¹ <https://ecology.wa.gov/water-shorelines/water-quality/water-quality-grants-and-loans/environmental-and-cultural-review>

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

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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

Introduction

This section contains the following information:

[Background of SERP](#)

[History](#)

[SERP – Key Points](#)

[Purpose of this Guidance](#)

[Responsibilities during SERP](#)

[Limitations on actions during the SERP Review \(new\)](#)

[Refinancing](#)

[Re-affirmation process \(Clarified\)](#)

[Adoption versus Incorporation by Reference](#)

[Deferment and Lead agency decision-making](#)

[SEPA Exemptions and NEPA Categorical Exclusions \(Updated\)](#)

[Directions for Exemptions/Exclusions](#)

[EID Walkthrough](#)

Following this Introduction, Section A will assist you with the minimum requirements for all Clean Water State Revolving Fund environmental review requirements. Section B will assist you with requirements associated with complex treatment works agreements, or federally funded agreements.

Background

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 is called the State Environmental Review Process (SERP).

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), or 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 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* authorities² (Reference: Handbook of Procedures: Construction Grants Program 1980) .

In 1987, the Clean Water State Revolving Fund replaced 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 complete a NEPA environmental review or undertake a [State Environmental Review Process](#) (SERP), a NEPA-like equivalent process. Washington's SERP was approved by EPA for use in 2017.

SERP Key Points

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 decision to enter into a financial assistance agreement with a recipient or applicant.

² 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>

A SERP review is required every time a financial assistance agreement is developed or amended in a significant manner, such as with a change-order that alters the design in a way not approved under the original the Scope of Work (SoW). This does not mean that a recipient needs to re-submit the same documentation every time they apply for financial assistance. If the SoW has changed significantly, best practices are to revisit the environmental review. Permits may need to be updated and cultural review may need to be revisited.

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

Washington state allows for alternative public works contracting under [RCW 39.10](#). Public works contracting law does not override [40 CFR 35.3140 Environmental Review Requirements](#), [40 CFR 35.3145 Application of other Federal Authorities](#), approved SERP policy or this implementation guidance.

Purpose of this guidance

This guidance may assist while completing the [State Environmental Review Process \(SERP\) Environmental Information Document \(EID\)](#). The end goal is to provide the necessary information for a SERP review. The information in this guidance is based upon external authorities and is subject to frequent updates. Please verify the information is current.

This guidance replaces instructions in the Combined Funding Guidelines.

The EID 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](#)

If applicable, adoption forms for cultural resources review (contact your Project Manager or the Environmental Review Coordinator).

Responsibilities

The Water Quality Financial Management Section has a dedicated position to assist recipients with all aspects of environmental review. The State Environmental Review Coordinator is the primary contact for any question on environmental (including cultural resources review) associated with any agreement type. The Environmental Review Coordinator is responsible for training, guidance, forms, and is the designated non-federal representative to coordinate federal environmental authorities on behalf of the EPA Region 10 if needed. Contact information and updates are found on the [Water Quality Grant and Loan environmental and cultural resources review webpage](#).

The Water Quality Project Manager plays an important role in each agreement. The Project Manager gathers important details, ensures the Environmental Review Coordinator stays informed, and helps the recipient by reviewing the SERP EID to ensure the documents are complete before they are submitted to the Environmental Review Coordinator for review.

The recipient may hire consultants, who play an integral role by communicating directly with the Environmental Review Coordinator to provide technical details on permits, approvals, and consultations. This may help to streamline the communication process, but in the end, it is the recipient who is responsible for the overall agreement.

Limitations on actions during the SERP Review

For questions on approval of actions prior to completion of, or during a SERP review, Ecology may consider such actions provided they do not alter the choice of reasonable alternatives in any way prior to signing the SERP Determination. Such actions must not have any effect (environmental, socio-demographic, cultural) not part of the current SERP review.

Questions for the recipient and Ecology staff to consider:

1. Will the proposed action have any effect (environmental, socio-demographic, cultural) that is not currently being reviewed during SERP?
2. Will the action limit the choices of alternatives?
3. Will the action change the preferred alternative design before all potential impacts, mitigation plan and public comments have been reviewed by the Project Manager, Environmental Review Coordinator and approved by the Section Manager?

- a. If the answer is Yes to one or all, the Environmental Review Coordinator will caution against proceeding, and/or suggest the recipient consider funding the items outside of the agreement.
- b. If the answer is No, the Environmental Review Coordinator may suggest Ecology staff approve one or more of the actions, while clearly stating Ecology retains the discretion to select any reasonable alternative/design or the no action alternative regardless of any activity taken by the applicant prior to the conclusion of the environmental review process.

In all cases, careful coordination is required between the Section Manager, Ecology Project Manager, Financial Manager and Environmental Review Coordinator to ensure appropriate documentation and decision-making.

Refinancing

Refinancing occurs when Ecology takes over the financial management of agreements previously funded by another agency (e.g., U.S. Rural Development, Commerce). 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.

Re-affirmation Process (Clarified)

Re-affirmation is a step required in both [40 CFR 35.3140](#) and described in EPA's NEPA Procedures [[40 CFR 6.200\(h\)](#)]. Ecology is basing our SERP reaffirmation requirements in the language of both, with minor requirements for clarity.

For all SERP determinations upon which the date of issue is five years or older, and for which construction is not yet completed, the Responsible Official must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct or require a supplemental environmental review of the action and complete an appropriate SERP document or reaffirm Ecology's original SERP determination.

If there has been substantial change in the proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, the Responsible Official must conduct a supplemental environmental review of the action and complete an appropriate document.

Adoption.

Ecology can adopt another agency's environmental review to fulfill all or a part of SERP requirements provided it meets Ecology's criteria for SERP. For a complete adoption, the documentation must meet all the SERP requirements and cover the same project footprint as the Ecology agreement. Ecology will *adopt* the documentation, submitting a SERP Determination referencing the successful adoption. If the submitted documentation does not meet all of Ecology's criteria, the recipient is responsible for ensuring the remaining criteria are met. This is a *partial adoption*.

Adoption is different from ***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. This is consistent with EPA's NEPA Procedures at 40 CFR 6.201 *Coordination with other environmental review requirements*. 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."*

Example: Moving from Design to Construction with no significant changes to the Scope of Work:

Scenario: A municipality completes a design financed by an Ecology CWSRF agreement. During the design agreement, all permits are obtained, consultations completed, and authorizations approved for CWSRF Environmental and Cultural Resources Review. This includes all requirements for cultural resources compliance. The municipality submits an EID to Ecology, receiving a final SERP Determination of *No Significant Impacts*. No outstanding mitigation is pending.

The municipality applies for and receives CWSRF funds for the construction phase of the project. Ecology awarding CWSRF funds triggers the requirement on Ecology's end to re-visit SERP and issue a SERP Determination for the new agreement.

Question: Would the municipality need to complete a second, new environmental review, including cultural resources review compliance, all required permits, and any other authorities and consultations? Or could the municipality use the earlier documents from the design agreement?

Answer: The SERP requirement is on *Ecology's* end → Ecology must complete a review, issuing a SERP Determination for each agreement as funds are awarded. Recipients may not move forward with reimbursable actions until a SERP Determination is received.

Ecology requires updated information and must either obtain it from the recipient or complete the research and review internally. If the recipient's Scope of Work/Design and permits/approvals are not changing prior to construction, Ecology can use (incorporate by reference) the Design EID documents for the Construction EID Review. Ecology must still issue a separate SERP Determination for each agreement.

To complete an adoption for any agreement type (Step), submit a new EID for purposes of communication and tracking. Ensure the EID is submitted in a timely manner (Example – for a construction agreement, prior to signing of the agreement). The municipality completes the background information, including the project detail, agreement information, and contact details to update the Environmental Review Coordinator. In the EID under the section "Phase and Previous Environmental Review Considerations" the recipient will reference for the Environmental Review Coordinator what documentation to incorporate by reference (use) in the section entitled: *List what, if any, previous documentation from a previous agreement you wish to be considered during this review:*

Tip: It is possible to reference all the documentation or just some documents, such as one Environmental Justice Report.

The municipality will send the EID to the Ecology Project Manager and Environmental Review Coordinator.

Deferment and informal Lead Agency Decisions

Under certain circumstances, Ecology will **defer** to another agency, and that agency will take the lead on environmental review. In these cases, Ecology will also **adopt** their environmental review. This practice is consistent with EPA's NEPA Procedures at 40 CFR 6.201 *Coordination with other environmental review requirements*. These circumstances include:

- The other agency must be funding the same agreement and have a larger investment.
- The other agency would 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.

SEPA Exemptions and NEPA Categorical Exclusions

The SERP does not have any EPA formally approved exemptions. Ecology does understand that certain agreements – particularly Planning - may not have the level of details for a complete environmental review. In these cases, instead of an exemption, a partial review is possible, but a final determination may need to wait.

The action which triggers environmental review is the *financing* of an agreement. To exempt an agreement, Ecology needs to understand the level of risk our agency may be taking by abstaining from SERP.

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.

Update (2024): As a result of continued questions on this section, Ecology is only approving review requests for SEPA exemptions on the following:

- Refinancing an existing agreement
- Agreements for electrical upgrades
- Agreements for cured in place pipe cleaning.
- Approved planning agreements

Ecology will consider accepting a categorical exclusion (CatEx) on federally funded agreements where the EPA is the lead only after reviewing the documentation, including the list of Extraordinary Circumstances. The SERP requirements on public outreach and engagement still need to be met. There are restrictions on applying federal “programmatic” CatEx’s to SERP.

Directions for Exemptions/Exclusions

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

For EPA funded agreements with a federal CatEx the agreement details approved under the CatEx must be the same as Ecology’s agreement, or the CatEx does not apply. No extraordinary circumstances may apply. 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.

EID Walkthrough

It may help to move through this guidance while completing the corresponding section on the [SERP EID](#).

The first page of the document is a cover page with basic agreement information. Enter the agreement name and number. If you do not know your Ecology Project and Financial Manager, please say so in the form. The first page also asks about federal agency involvement, federal licenses or permits, or landowner approvals you may need. Fill out as applicable as this information is important in determining who may be the lead for environmental and/or cultural resources review.

The document continues with two sections: *Section A and Section B*. Section A of this guidance describes the minimum required information the Environmental Review Coordinator needs in an EID. These requirements apply to all CWSRF treatment works agreements (state and federal). Section B is applicable complex treatment works agreements and loans with federal funding. These agreements trigger additional regulations, dependent upon project type, design, location, type of financial assistance, land ownership and other factors.

Attach appropriate documents to the [SERP EID](#) or provide separately in your communication with your Ecology Project Manager and the Environmental Review Coordinator. Ecology can provide a secure Multiple File Transfer (MFT) link if needed. Do not upload sensitive documents to Ecology's Administration of Grant and Loans (EAGL) database. Use the MFT or email to the Environmental Review Coordinator.

Ensure all applicable sections and questions are addressed before submitting the [SERP EID](#) for review. Ecology can help 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

Figure 1 - Minimum Requirements for SERP EID

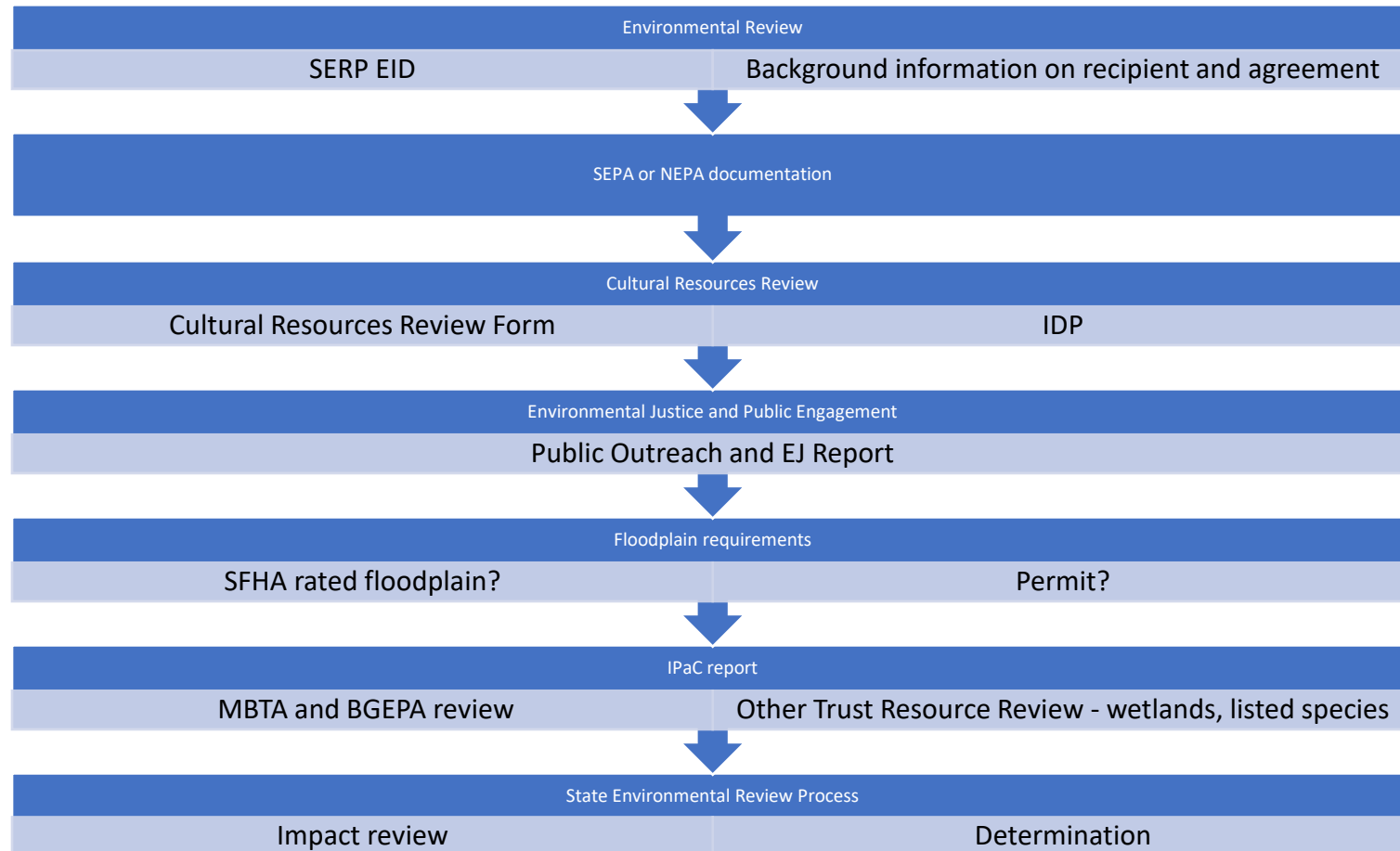
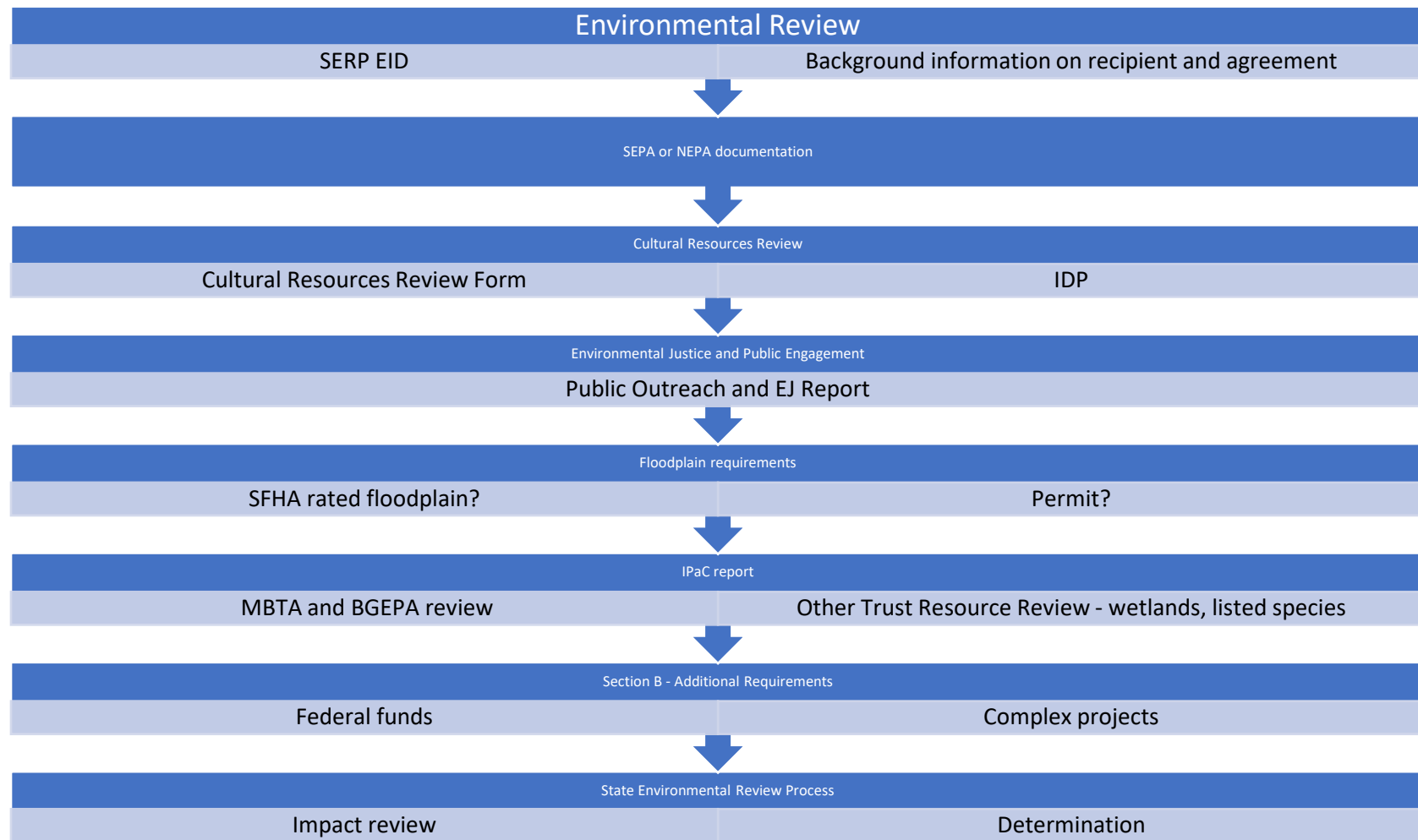


Figure 2 - SERP with additional permits, authorizations, approvals



Section A. Minimum Required Information for all CWSRF Agreements

This section will guide you through the Section A: Minimum Required Information the Environmental Review Coordinator requires for CWSRF agreements under the Washington Clean Water SERP.

A complete environmental review describing the potential impacts and alternatives of the project must be completed. This may be provided in the form of a previous State Environmental Policy Act (SEPA), National Environmental Policy Act (NEPA) or Tribal Environmental Policy Act (TEPA) review. If unable to submit this document, the Environmental Review Coordinator will need to complete the SERP review internally – note this will take additional time.

In addition to the baseline environmental document, Ecology also requires the following:

1. Environmental justice report and compliance with Title VI of the Civil Rights Act
2. Consultation with DAHP, affected Tribal Governments and other consulting parties under the National Historic Preservation Act
3. Compliance with current Floodplain Executive Orders, if applicable.
4. Appropriate public outreach and engagement, as described.

Other laws may be triggered based upon the project's location, landowner information, resources, wildlife or design.

Before you start - Verify the Lead Agency

The first section asks to verify the lead agency for environmental review. It is important to find out who the lead agency is before trying to ask an agency to take on environmental review. The lead agency is dependent upon several factors, including federal versus state investment, amount of investment, workload, and jurisdiction (see section on *Deferment*). Is Ecology funding the entire agreement, or only a portion of it? If Ecology is funding a portion of the agreement, note the other funding agency and how much of the agreement they are funding compared to Ecology – is it under or over fifty percent (50%)? Does the funding cover the same Scope of Work within the same phase of construction?

If you consider Ecology as the lead agency move to the next section.

Environmental Review Type

What type of environmental review process is right for the agreement? Non-project reviews are right for planning agreements and certain design agreements. Project level reviews are right 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. Select either project or non-project review.

Select the agreement type.

Please select the agreement type Ecology Water Quality Program is funding:

Step 1 (Planning) involves preparing a site-specific plan, which identifies cost-effective alternatives for addressing a water pollution control problem.

Step 2 (Design) involves preparing plans and specifications for use in construction

Step 3 (Construction) is the actual building of the facilities based on the approved design.

Step 4 (Design and Construction) in certain cases Steps 2 and 3 can be combined into one application. To qualify for Step 4, the project must be \$7,000,000 or less, and applicants must demonstrate they can complete the design and obtain approval by Ecology within one year of the funding agreement.

In addition to being one of four step agreements, an CWSRF project may also be federally funded, have stormwater facility program funding, be a reclaimed water facility, or be on the Small Community Project Priority List (SCPPL). Please explain any category that pertains to your agreement.

Other agreements, outside of the CWSRF, but subject to SERP, include the Sewer Overflow and Stormwater Reuse Municipal Grants Program (OSG), and the Environmental Contaminants (EC) fund. Projects funded by OSG or EC will follow the same requirements as the CWSRF.

Documentation, Phase and Impact

The documentation provided for a SERP review must cover the agreement's funded phases, stages and elements. For SEPA, **required** documentation includes the legal notice of publication

(Affidavit), SEPA checklist, signed Threshold Determination. Access any needed SEPA template documents [here](#)³.

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.

If the SEPA or NEPA review may trigger an Environmental Impact Statement (EIS), provide the Scoping Notice to Ecology's Environmental Review Coordinator to allow sufficient time (minimum of 30 days) for review. Ecology needs to make an informed decision prior to agreeing to fund a project that may have significant impacts on the human environment

Incorporation by Reference

Ecology supports the incorporation of additional studies outside of the current SEPA or NEPA document to reduce the overall length of an environmental document. Cite the reference material, and ensure the material is readily available. You may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment, including Ecology.

For non-federal agreements, report any local, state, federal or tribal environmental review requirements, the resources protected, and any mitigation required.

Note on 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](#). It is important to document mitigation clearly and explain why required. All mitigation commitments in documents developed during or part of the SERP process become revolving fund loan agreement conditions – *if they are required for the water quality outcomes to be successful*. Failure to

When is mitigation important for the agreement?

Question - Did the project trigger mitigation commitments *necessary for the agreement to be successful*? In other words, is the mitigation needed for the water quality improvements to occur?

If the answer is yes, with no alternative, the mitigation should become a part of the loan agreement.

Mitigation measures are reimbursable if they are necessary for the project to be successful.

³ [SEPA document templates - Washington State Department of Ecology](#)

comply with these conditions will result in withholding of payments and may require immediate repayment of the loan ([WAC 173-98-720\(3\)](#))⁴.

Permits often triggered by treatment works agreements are listed in Section B of this guidance (**Section B: EID Supplemental Guidance**). Ensure impacts are clearly identified. Attach associated documentation, such as geotechnical reports, Hydraulic Project Approval (HPA) permits, Critical Areas Surveys/Reports, Shoreline Management Permits, Floodway/plain surveys or permits, 401/404 permits or other authorizations. If needed, upload the documents to EAGL and make note the documentation is in the Environmental Review Form within EAGL.

The information in Sections A and B (if required) is used by the Environmental Review Coordinator, who completes an internal review. The internal review includes a final determination - the *SERP Determination*. The SERP Determination signals the end of the review process for that agreement. Changes to the Ecology-approved design, Scope of Work, agreement tasks, or a new funding agreement may trigger an additional review – dependent upon the details.

If you have questions on this or previous sections, contact the Ecology Environmental Review Coordinator, Liz Ellis at 360-628-4410 or liz.ellis@ecy.wa.gov

The next section will begin a high-level review of the laws and authorities listed in Section A of the EID Form.

Section A

- [Community Outreach and Public Engagement](#)
- [Environmental Justice and Title VI of the Civil Rights Act](#)
- [Section 106 of the National Historic Preservation Act](#)
- [Floodplain Protection](#)
- [Migratory Birds and Golden and Bald Eagle Protection Act](#)

⁴ [WAC 173-98-720 State Environmental Review Process](#)

Requirement: Community Outreach and Public Engagement

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF) .

Trigger: State Environmental Review Process (SERP)

Authorities with Expertise: Washington State Department of Ecology

Ecology and EPA agree the SEPA process does not offer an adequate public outreach process for the common Determination of Non-Significance (DNS). Ecology's SERP requires the recipient to provide an additional public outreach opportunity. A public meeting, City Council meeting or similar venue is acceptable – if the meeting presents the preferred alternative, environmental, technical, and financial issues of the project. Any barriers to participation must be removed, and the public given an opportunity to comment.

For agreements with a NEPA review, if the public outreach meets SERP requirements, additional outreach will not be required.

Benefits of public outreach

An earnest public participation program can improve the planning process and reduce the chance of delays due to public controversy. Incorporating your environmental justice and public engagement requirements can streamline the questions on engaging any identified, disproportionately impacted sectors within the community.

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.

When is the best time to start public outreach?

In Ecology's experience, the planning phase of developing an engineering report is a good time to consider public outreach. Follow this link to a [diagram](#) which 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.

Public Outreach Requirements

The public outreach is a specific requirement under 40 § 35.3140 (b)(4). Ecology and EPA require the public be given a formal public comment period outside of the 14-day period associated with SEPA.

A public hearing or meeting is required (40 CFR 35.3140(b)(4)(iii). Give the community adequate notice, access to details, and the opportunity to ask questions or provide input on the agreement. During the public meeting, include the following:

- Present alternatives explain why the preferred alternative should be selected.
- Explain any potential financial impact of the project to utility rates. Offer options.
- Review potential environmental impacts the project may have – including **cumulative impacts**.
- Review mitigation to offset any environmental impacts.
- Review required real estate transactions, such as land acquisitions. The Community may be aware of land uses/conflicts of which you are not aware.

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.

Tip: Advertise your SERP Public Outreach meeting at the same time you start your SEPA. Integrate your SEPA Public Comment period (14 days) within this 30-day period. This will streamline your public comment period down to 16 days.

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:

Submit the legal affidavit (notice in newspaper) 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 EID or public outreach report. Ecology supports signage and webpages, but these alone may not be adequate to contact the community.

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 *Revitalizing Our Nation's Commitment to Environmental Justice For All* 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 (See next section, ***Environmental Justice Review***).

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.

Public Meetings and Hate Speech

To avoid issues with hate speech at public meetings, follow the strategies offered by the [MRSC for handling hateful public comment](#).

The most common mistake on this section is not providing the full 30 days for a public comment period. Ecology will start returning EIDs that do not provide evidence or state a 30-day period was provided for public comment.

Ecology seeks public comment on SERP Determinations

Ecology provides public comment opportunities on SERP Decisions in June and July of each year, which notices on Determinations under List of SERP Determinations at:

<https://ecology.wa.gov/water-shorelines/water-quality/water-quality-grants-and-loans/environmental-review>

Ecology welcomes feedback on public outreach approaches, what works and what does not work. We can provide examples of public outreach plans to you, if requested. Contact the Environmental Review Coordinator or your Project Manager.

Requirement: Environmental Justice Review and Title VI of the Civil Rights Act

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF).

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](#)

Update (2024): Effective July 1, 2024, Environmental Justice requirements are *formally codified* in NEPA. The NEPA effects analysis must address any disproportionate and adverse effects on communities with environmental justice concerns whether direct, indirect, or cumulative. The NEPA process will identify and assess reasonable alternatives to proposed actions to avoid or minimize adverse effects of these actions. EPA EJScreen has also been updated to Version 2.3. Updates include adding an indicator on Nitrogen Dioxide, Drinking Water Non-Compliance, updating the Demographic indicators, and adding new map layers on extreme heat, drinking water area boundaries, drinking wells, and cancer risks.

SERP is based in the NEPA process. In Washington State, Environmental Justice (EJ) is (and has been) a requirement of the SERP process. Environmental Justice can be combined with the SERP public engagement to ensure the community has early and meaningful involvement in the environmental review process.

This EJ requirement is separate from a state level Environmental Justice Assessment (EJA) as required by the Healthy Environmental for All (HEAL) act. EJAs must be completed by state agencies.

An additional requirement, Title VI of the Civil Rights Act, ensures that this agreement does not discriminate on the basis of race, color, or national origin.

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)."

The current working definition of Environmental Justice from [EPA's website](#) is:

"Environmental justice" means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

- are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices

Goal: This guidance is geared to ensure the community is part of the decision-making process, so the recipient and Ecology, make an informed decision on all CWSRF agreements. The process works to ensure members of the public have the opportunity for early and meaningful involvement in the environmental review process rather than waiting for an impact to occur.

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 the 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 the 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 agreement complies with the current Title VI and 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](#)

Recipients can download [EPA's Procedural Safeguards Checklist for Recipients: Federal Non-Discrimination Obligations and Best Practices \(2020\)](#). The Checklist provides technical assistance for EPA financial assistance recipients in establishing the foundational aspects of their nondiscrimination programs as required by federal civil rights laws and EPA's non-discrimination regulation at 40 C.F.R. Parts 5 and 7.

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 or review: [Ecology Non-discrimination policy](#)

Environmental Justice Report

To ensure the agreement complies with the current EJ requirements, complete a robust public outreach (above), and supplement with Environmental Justice Report using a tool below. Alternatively, follow any template, such as the [WDOT EJ template](#), or develop your own. For examples of Public Engagement and EJ reports completed by other CWSRF Recipients, contact the Environmental Review Coordinator for copies of approved reports complete by small, medium and large municipalities, with and without consultants.

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](#)⁵, the [WA DOH Washington Tracking Network](#), another tracking tool, or a combination.
 - 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).
- Review the Critical Service Gaps, Climate Change, Sociodemographic, Environmental Justice layers (EJScreen version 2.3) and additional layers (wells, drinking water service areas, water features, toxic RSEI). Note which, if any, apply to the Service Area.
- Is the Service Area part of a [Disadvantaged Community](#) under the Inflation Reduction Act?
- Are there any financially challenged segments to this community – low-income, elderly, or otherwise? Is there a rate hike resulting from this project which could impact this segment of the community?
- 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?
- Document the EJ report results separately, or include in the **Community Outreach, Public Engagement and Environmental Justice** section of the SERP EID, [Ecology](#)

Streamlining Tip



If an equity or environmental justice report for or related to the project has been completed as part of an earlier planning process for this project, such as Integrated Planning, Long Term Control Plans (LTCP) as part of the National Pollutant Discharge Elimination System (NPDES) permitting requirements for Combined Sewered Overflow (CSO) communities, or a similar requirement, recipients may submit that plan provided it is current and meets the requirements listed in this document.

⁵ For instructions, see [How to use EJ Screen](#)

[Publication ECY 070-421](#) – if you do not provide a separate report, keep the data on hand in the event Ecology requests it.

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 address this. Start with ensuring they are aware and involving them during public outreach. This gives everyone ample time to find a reasonable solution. If concerns remain, follow up with the Ecology Environmental Review Coordinator.

References and Resources:

[Office of Equity & Environmental Justice - Washington State Department of Ecology](#)
[EPA's Procedural Safeguards Checklist for Recipients: Federal Non-Discrimination Obligations and Best Practices \(2020\)](#)

[EPA Civil Rights and non-discrimination](#)

[Environmental Justice | US EPA](#)

[EPA Inflation Reduction Act Disadvantaged Communities Mapping Tool](#)

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

[EJ Screen Help \(version 2.3\)](#)

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

Questions: Contact ejc_coordinator@cdc.gov

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

[Washington Tracking Network](#)

Questions: Contact 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. Learn more about EPA's Inflation Reduction Act work here:

<https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-environmental-and-climate-justice-program>

Requirement: Section 106 of the National Historic Preservation Act

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF).

Trigger: CWSRF agreements, potential to modify or disturb any cultural or historic resource, with or without ground disturbance.

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

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

The National Historic Preservation Act (NHPA) of 1966, as amended, 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 call for consultation between the agency and relevant state or tribal historic preservation officers (SHPOs and THPOs, respectively) and other interested parties.

Clarification: Determining whether an undertaking has an impact does not rely upon ground disturbing activities. Trimming the branches of a culturally modified tree does not involve ground disturbing activities but is clearly a potential adverse effect. Determining whether an undertaking has an impact occurs early, during planning or design, when no disturbance is happening at all.

In addition, an Ecology Cultural Resources Review form and the Recipient must receive written notice from Ecology is required before any reimbursable action may be taken on behalf of the Recipient during Design and Construction agreements. This is to ensure that Section 106 consultation is implemented at the correct time. Consulting parties must be given the opportunity to view the undertaking through the lens of cultural resources review and consultation prior to any action that may have the potential to effect historic or cultural resources not yet identified.

The Clean Water State Revolving Fund (CWSRF) is covered by a Nationwide Programmatic Agreement⁶ (nPA) covering the steps for Section 106 compliance on SRF agreements. In this Agreement, the EPA delegates specific duties for 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.

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. EAGL does not protect confidential information.**

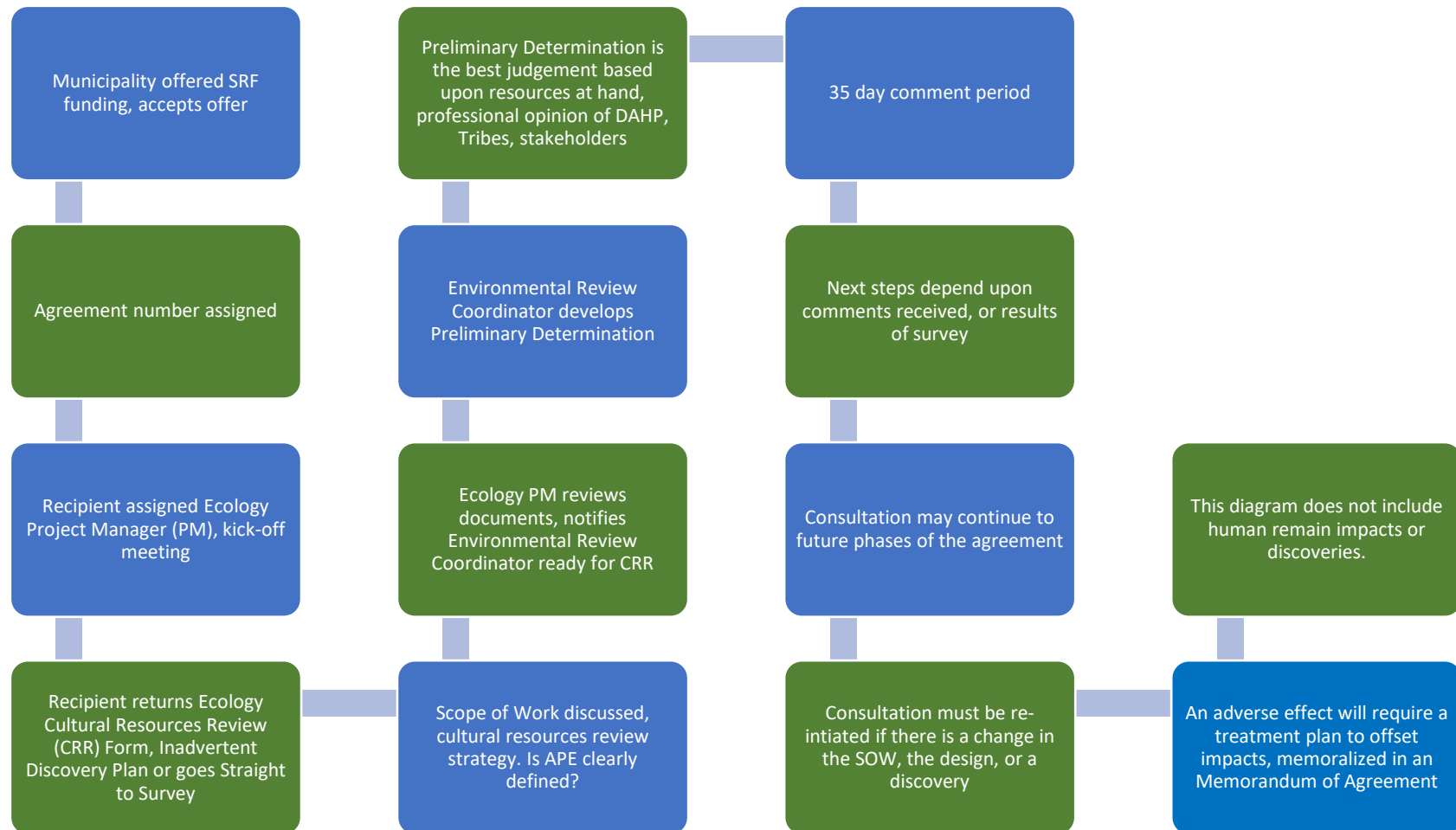
If you have determined that your infrastructure is over 50 years in age, you may be required to complete an Historic Property Inventory (HPI) form for DAHP, if asked. Ecology will coordinate this process with you. Be aware this may require the hiring of a professional with appropriate qualifications, education and professional background, such as an architectural historian.

⁶ *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).*

Table 1.0 CWSRF Cultural resources compliance roles, in general

Recipient	Ecology Project Manager	Environmental Review Coordinator
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



Tips and Tools

Straight to Survey

If a recipient is working in a highly sensitive area, or in an area known to be of significant concern to an affected Tribe, utilizing the Straight to Survey process may make sense. This recommendation may also come up in pre-consultation.

The *Straight to Survey* approach allows the recipient to address the risk and concern of their APE by contracting with a professional archaeologist to complete a survey, without waiting and being required to. The benefit of this approach is that by being initiative-taking and completing a survey for a sensitive area, this reduces up to 30 days off the consultation process. In addition, the possibility of an inadvertent discovery within the project area may be reduced.

With this approach, the [Ecology Cultural Resources Form](#) and survey must be submitted to Ecology as a draft for review. Ecology will create a project in WISAARD, upload the draft survey, and submit the survey for comment to the consulting parties. The contracted archaeologist is expected to accept all comments and incorporate them into the survey for the survey to be finalized. This last step will not necessarily create a delay for the project – it is all dependent on whether Ecology, DAHP, Tribes and consulting parties are dependent on the edits to develop a determination.

It must be clarified that as stated earlier, no activities that have the potential to modify or disturb cultural resources can be approved for reimbursement until cultural resources review has been completed. Requests for concurrent geo-technical exploration during a survey will be denied unless approved by DAHP and consulting parties as part of a pre-consultation meeting.

Pre-Consultation: Pre-consultation is the process of Ecology informally consulting with DAHP and/or affected Tribes on a project and its APE prior to initiating Section 106 consultation. This process may involve:

- Gathering information from WISAARD.
- Talking to DAHP and affected Tribes.
- Seeking or requesting information to include in the preliminary determination.
- Collaborating with the recipient on alternative options.
- Site visits.

Pre-consultation can be helpful with most all projects, but it is an especially valuable tool when:

- There is little information available on the APE in WISAARD or elsewhere.
- The APE is close to an archaeological site(s) or is in a sensitive area as previously expressed by an affected Tribe.
- When the project seems complex.
- When the project encompasses a large area, such as an entire watershed.

Pre-consultation helps in different ways. If additional information is gathered ahead of time, the recipient and Ecology can develop a better strategy for consultation. The pre-consultation dialogue may also reduce the need for a second review period, or the amount of time needed. This approach also helps to build trust among consulting parties and develop a better understanding of the proposed project ahead of time.

Pre-consultation does NOT include forming a determination and seeking feedback. That step is referred to as the preliminary determination (PD) and requires a formal comment period. Formal recommendations should be shared with all consulting parties.

References:

[Ecology Executive Order Cultural Resources Review](#) form

[Ecology Inadvertent Discovery Plan](#)

[Inadvertent Discovery Training Field Staff video](#)

[Ecology diagram of the cultural resources review process](#)

[Focus on Water Quality Grants and Loans Cultural Resources Review](#)

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

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

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

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

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

Requirement: Floodplain Protection

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF).

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.

Washington is one of the most flood-prone states in the nation, with nearly 30 presidential disaster declarations related to flooding since 1953. Ecology assists local governments with reducing their flood risk through planning and regulation in special flood-hazard areas (SHFAs), also called floodplains. To learn more, visit [Floodplain Management](#).

Floodplain Protection and Insurance

Floodplains are the lowland, 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). Flooding is a natural occurrence. Flooding of structures is a problem caused by people.

Federal regulations set the minimum required standards for floodplain protection. State regulations and local regulations may be even stricter. The burden of floodplain protection lies with the community. The community's ability to comply helps to determine the eligibility and cost of floodplain insurance.

For Ecology's CWSRF environmental review, provide evidence of compliance with local regulations, state ([Chapter 86.16 RCW Floodplain Management](#)) and federal requirements for development in [special flood hazard areas](#) (SFHA). A SFHA, or floodplain, is Zone A-type or V-type on a FEMA flood insurance risk map (FIRM). These zones

Special Flood Hazard Areas

An area having special flood, mudflow or flood-related erosion hazards and shown on a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM) Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE or V. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. For the purpose of determining Community Rating System (CRS) premium discounts, all AR and A99 zones are treated as non-SFHAs. Source: [FEMA Glossary](#)

must have some level of protection under the National Flood Insurance Program's (NFIP's) floodplain management regulations. If development occurs, the mandatory purchase of flood insurance will apply.

Local governments administer floodplain regulations through their Shoreline Master Program, or by identifying *Frequently Flooded Areas* as a critical area (WAC 365-190-110). Local governments may develop ordinances that directly address floodplain standards.

Floodplain 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.

In 2021, the following were incorporated into Washington's construction regulations:

- [RCW.19.27.031](#) requires the use of IBC (International Building Code) which describes flood resistant construction.
- [WAC 51-50-003](#) requires the use of the 2021 IBC (effective October 29, 2023).
- Incorporation of [ASCE 24](#).
- [Flood-resistant provisions of the 2021 Internal Codes \(fema.gov\)](#).

Key Terms (Source: nfipguidebook, Region 10, FEMA, 2009):

Base Flood Elevation or BFE: The base flood, sometimes referred to as the 100-year flood, has a 1% chance of occurring in any given year. The BFE is the elevation (usually expressed in feet above sea level) which the base flood is expected to reach at any given location.

SFHA types

AE: 1% (100-year) floodplain with BFE (older FIRMs use A1-30); derived from detailed study.

VE: 1% (100-year) floodplain with BFE; coastal high hazard areas with wave effects (some firms use V).

A: 1% (100-year) floodplain with or without BFE; derived from basic level engineering.

AO: 1% (100-year) floodplain with shallow "sheet" flow.

AH: 1% (100-year) floodplain with shallow ponding.

X(shaded): 0.2% (500-year) floodplain (older FIRMs use B).

X(unshaded): Outside of the FEMA floodplain (older FIRMs use C).

D: area of unknown flood hazard (hasn't been studied).

Special Flood Hazard Area (SFHA) or floodplain: For purposes of the NFIP, the area that would be inundated by the base flood is also called the special flood hazard area (SFHA), or simply the floodplain.

Floodway: The floodway includes the channel of a river or stream and the overbank areas adjacent to the channel. The floodway carries the bulk of the floodwater downstream and is usually the area where water velocities and forces are the greatest and most destructive. Regulations require that the floodway be kept open so that flood flows are not obstructed or diverted onto other properties.

Flood fringe: The area on either side of the floodway, also subject to inundation by the base flood. The fringe conveys very little or no velocity.

Fill: By nature, floodplains are low-lying areas that invite filling activities. Filling is included under the NFIP definition of “development” and therefore requires a floodplain development permit.

Development: Development in a SFHA floodplain means any person-made change to improved or unimproved real estate – any manipulation of the land surface. This includes but is not limited to, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment of any kind. No development is allowed within the immediate floodplain itself without a permit.

Ecology requires documentation of any approved development in the floodplain and subsequent conditions or mitigation. The local floodplain administrators’ permit file is not required, only records that indicate analysis, justification, mitigation, and approval. This may include the following:

- Engineering designs to ensure the minimization or elimination of sewage into flood waters. Septic systems need to be located to avoid impairment to them and avoid contamination of flood waters.
- Copy of the approved application

No Rise Analysis

A project in a floodway, including a riverine floodplain where the floodway has not been mapped, may not cause an increase in flood heights. An engineering analysis must be conducted prior to the local government issuing a permit to approve development. The analysis must certify no increase (rise) will occur.

The No Rise analysis must be supported by technical data and completed by a registered professional engineer.

For more information, contact [Ecology’s Floodplain Contacts](#).

- Copy of the approved floodplain permit – must show the site is reasonably safe from flooding (nfipguidebook, 5th edition, FEMA).
- Any substantial damage caused by flooding must be repaired and bring the structure up to current flood hazard area building standards.
- Include applicable supporting documentation, such as a No Rise analysis, requirements associated with the Puget Sound Biological Opinion with FEMA, such as the Floodplain Habitat Assessment and Mitigation requirements, when applicable.

The goal in providing the documentation is to ensure Ecology and EPA Region 10 can understand how permitted development within a floodplain was justified, and to ensure they know the design meets the standards for the SHFA zone it is within. For assistance, please contact:

[Ecology Floodplains Management Contacts](#)

Resources:

[Washington State RiskMap Program](#). Website.

[FEMA Flood Map Service Center](#). Website.

FEMA, nfipguidebook, 5th Edition.

FEMA Region X: Puget Sound BiOp Floodplain Habitat Assessment Worksheet

Northwest Regional Floodplain Management Association ([NORFMA](#)). Website.

Frequently flooded areas: Critical Areas Ordinance [Ecology guidance](#). Website.

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.](#)

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

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF)

Trigger: Potential disturbance of Bald Eagles (*Haliaeetus leucocephalus*) and Golden Eagles (*Aquila chrysaetos*) including removal of occupied or unoccupied eagle nests. Potential removal by lethal means of listed, natural, native Migratory Birds without approval through the USFWS.

Authorities with Expertise: U.S. Fish and Wildlife

Bald and Golden Eagle Act: Prohibits the take of or disturbance to a Bald or Golden Eagle without a permit.

The Bald and Golden Eagle Protection Act ([16 U.S.C. 668-668d](#)), enacted in 1940, and amended several times since, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts (including feathers), nests, or eggs.

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](#)).

In February 2024 the USFWS published a final rule creating a new permitting system and revised existing regulations for take of Bald and Golden Eagles. The regulations authorize the take of bald eagles or golden eagles by disturbance; however, permits to authorize disturbance associated with hazing of eagles or eagle nest take, are not authorized. See [Eagle Disturbance Take Permits and Nest Take Permits](#) for more information.

The Bald and Golden Eagle Protection Act [permitting system](#), allows take, transportation and possession permits for scientific, educational, depredation, religious purposes of American Indian tribes, and for the protection of other interests in a specific locality.

Disturbance permits are issued for activities that may interfere with an eagle’s normal breeding behavior.

Table 2.0 USFWS Eagle Sensitivity Ranking

Nest Building – Most sensitive to human disturbance, most prone to abandoning nest site.
Egg laying – Very sensitive, limited duration activities may cause abandonment
Incubation and early nestling – Very sensitive, less likely to abandoned, but flushing adults from nest impacts eggs.
Nestling – Moderately sensitive, nestlings may miss feedings as adults disturbed
Late nestling through fledgling – Very sensitive, trying to fly, may leave nest prematurely, die.

Eagle Sensitivity to Humans

Eagle sensitivity to humans and other sources of disturbance varies depends highly upon what phase they are in during breeding season. Eagles are most sensitive to disturbance during the egg laying and incubation and late nestling phases (Table 2). Sensitivity also varies among individual eagles and pairs of eagles within each phase. Any negative impacts to productivity caused by disturbance (including failed nesting attempts, damage or loss of eggs, and injury to young, including due to weather effects or malnourishment) constitute take under the [Bald and Golden Eagle Protection Act](#)

Recommendations to avoid disturbance – Bald eagles:

To avoid disturbing nesting bald eagles, (1) avoid certain activities during the nesting season (defined as January 1 through August 15 in Washington) to the extent practicable, (2) conduct certain activities at recommended distances from in-use nests, and (3) maintain natural forested or vegetative buffers around nest trees or make use of topographic buffers. The buffer

areas should be applied to both in-use and inactive, alternate nests and serve to minimize visual and auditory impacts associated with human activities near nest sites. For more detail, see:

[Bald Eagle Nesting & Sensitivity to Human Activity | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/bald-eagle-nesting-sensitivity-to-human-activity)

The activity specific guidelines (Table 3) are based upon visibility of the activity from the nest. The horizontal axis (header row) represents the degree to which similar activities are ongoing in the vicinity of the nest. The management recommendations list how far away from the nest an activity should be located to avoid disturbing the eagles. The numerical distances shown in the tables are the closest the activity should be conducted relative to the nest – **it is not the size of the buffer.**

Table 3.0 Activity Specific Guidelines

General Construction and roads, 0.5 acres and under (Category A) and over 0.5 acres (Category B). All other activities see the National Eagle Guidelines, 2007.

	If there is no similar activity within 1 mile of the nest	If there IS similar activity within 1 mile of the nest
If the activity will be visible from the nest	660 feet. Landscape buffers recommended.	660 feet, or as close as existing tolerated activity of similar scope. Landscape buffers recommended.
If the activity will NOT be visible from the nest	<p>Category A (under 0.5 acre): 330 feet. Clearing, external, construction and landscaping between 330 feet and 660 feet should be done outside of the breeding season.</p> <p>Category B (over 0.5 acre): 660 feet buffer.</p>	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping within 660 feet should be done outside breeding season.

The USFWS Eagle Disturbance Permit Program will only issue authorizations for take when it is associated with, but not the purpose of, an activity, and the take cannot practicably be

avoided. There are two types of permits offered through the permit program – General Permits and Specific Permits.

The Program offers general permits for bald eagles only, but not golden eagles. General permits are same-day automated permits issued through ePermits.fws.gov, and require compliance with [standard permit conditions](#). The general permits cover:

1. Building construction and maintenance
2. Linear infrastructure construction and maintenance
3. Alteration of shorelines and water bodies
4. Alteration of vegetation
5. Controlled burns
6. Motorized recreation [in-use nests only]
7. Nonmotorized recreation [in-use nests only]
8. Aircraft operation within 1,000 feet [in-use nests only]
9. Loud, intermittent noises (e.g., blasting) within one-half-mile [in-use nests only]

[Standard conditions](#) are within the permit which apply to each activity, including the dates of the breeding seasons for each area bald eagles are known to breed in. If standard permit conditions cannot be practicably met, [Specific Permits](#) are available to authorize disturbance. Avoidance and minimization must occur to the maximum extent practicable for a permit to be issued. Golden eagles are more sensitive than bald eagles, and any disturbance of a golden eagle nest may require compensatory mitigation.

See [Do I need an eagle take permit? | U.S. Fish & Wildlife Service \(fws.gov\)](#) for more information.

Table 4.0 Summary of the potential disturbance permit requirements

Distance	Time of Year	Activity	Recommendation	Recommendation
Under 660 feet from nest	Any time	All except for blasting and loud activities	No Disturbance Take Permit	Follow Eagle Guidelines
330 – 660 Feet if similar activity within 660 feet	Breeding Season	All	Disturbance take permit may not be recommended if eagles are tolerant of past disturbance, contact USFWS for assistance	Follow Eagle Guidelines to minimize disturbance

330 – 660 Feet if NO similar activity within 660 feet	Breeding seasons	All	Disturbance take permit recommended; contact USFWS for assistance	Follow Eagle Guidelines to minimize disturbance
330 to 660 feet	Outside of the breeding season	Activity that will not be noticeable when bird return, such as tree trimming or pipe installation	Disturbance take permit likely not recommended, contact USFWS for assistance	Follow Eagle Guidelines to minimize disturbance
330 to 660 feet	Outside of breeding season	Tree clearing, building structures	Disturbance take permit likely recommended, contact USFWS for assistance	Follow Eagle Guidelines to minimize disturbance
Over 330 feet	Breeding season	All	Disturbance take permit recommended, contact USFWS for assistance	Follow Eagle Guidelines to minimize disturbance

Recommendations to avoid disturbance - Golden Eagles

Golden eagles (*Aquila chrysaetos*) are a global species and number roughly 30,000 in the United States. Golden eagles are typically found in open country, in the vicinity of hills, cliffs and bluff. Golden eagles are sensitive of human activity, often avoiding developed areas.

Golden eagles build nests on cliffs or in the largest trees of forested stands that provide an unobstructed view of the surrounding habitat. They may also nest on human-made structures such as towers. Their nests are usually sticks and soft material added to existing nests or new nests that are constructed to create strong, flat or bowl-shaped platforms. Nests are very large and heavy, sometimes being 5 to 8 feet in diameter, 3 to 20 feet deep and weighing thousands of pounds. Pairs will often use and enlarge the same nest each year, but golden eagles may also have one or more alternate nests within their breeding territory.

Golden eagles generally have one brood, laying between one and four eggs. Hatching occurs after 41 – 45 days, and the eaglets will leave the nest (fledge) anywhere from 7 – 12 weeks after hatching. The eaglets may continue to use the nest for an additional 4 – 6 weeks after hatching, before leaving the nest.

To avoid or minimize disturbance to golden eagles, follow the conservation measures described above for any golden eagles within or near the project area, and see Directions, below. The golden eagle nesting season in Washington state is January 1 through August 31.

Directions:

If a recipient will require an Eagle Disturbance Take Permit or any type of Eagle Permit, coordination will be required with the USFWS, WDFW and the Ecology Environmental Review Coordinator. A survey will be required following the [USFWS Eagle Nest Survey Protocol](#) prior to applying for a permit. The WDFW has [general recommendations for avoiding](#) the need for a disturbance permit, but defers to the USFWS if a permit is required. The link to the National Bald Eagle Management Guidelines is available on the WDFW website. These guidelines apply to the Bald Eagle, not the Golden Eagle, who is more sensitive to disturbance.

If a Golden eagle is nearby, consider applying for a disturbance permit when activities (except blasting) are occurring within 1 mile of a Golden Eagle nest when visible from the project site, or 0.5 mile of a Golden Eagle nest when not visible from the project site. The USFWS uses a 2-mile buffer when blasting or other loud, intermittent noises are occurring. Contact the USFWS for more information on the Golden Eagle.

Ecology Role: The eagle (Bald, Golden) and the nest are both protected. The recipient must determine whether the activity is disturbing the eagle(s), the nest, an alternate nest, and explain clearly why disturbance cannot be avoided. If the USFWS approves of the explanation and permit, Ecology will support the recipient in the application of a take permit. If the USFWS requires additional conservation or mitigation measures, it is incumbent upon the recipient to comply.

Ecology has the discretion to review all applications for take permits to ensure we are funding an approved activity and agree it is an appropriate strategy which will not impact the approved design. We retain the discretion not to fund any activities which have reasonable alternatives to the take of fish or wildlife. Clarification: Ecology will not coordinate the MBTA or BGEPA for the recipient as there is no “lead agency” role.

Resources:

[Eagle Disturbance Take Permits and Nest Take Permits](#)
[Regulations for the Incidental Take of Golden Eagles](#)
[USFWS Eagle Management](#)

Migratory Bird Treaty Act of 1918: The Migratory Bird Treaty Act of 1918 ([16 U.S.C. 703-712](#)) implements four international conservation treaties the United States entered into with [Canada in 1916](#), [Mexico in 1936](#), [Japan in 1972](#), and [Russia in 1976](#). The Migratory Bird Treaty Act (MBTA) prohibits the take (intentional or unintentional) which includes killing, capturing, selling, trading, and transport) of protected migratory bird species without prior [authorization](#) by the Department of Interior (DOI) U.S. Fish and Wildlife Service (USFWS) (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)).

This includes disturbing active nests, harassment of birds during the courtship and nesting seasons, or retaining feathers without a permit. There is no allowance for incidental take - USFWS uses enforcement discretion. In the words of Federal Judge Valerie Caproni, “It is not only a sin to kill a mockingbird, it is also a crime.” (Missouri v. Holland, August 11, 2020)

Migratory Bird Treaty Act - Which birds are protected and why?

The list of migratory bird species protected by the law is based on bird families and species included in the four international treaties. The Migratory Bird Treaty Reform Act of 2020 clarified which birds this Act applied to, and publishes lists of [birds covered by the Act](#), [and excluded](#). Currently the Act focuses on native birds occurring naturally in the United States – this is important to remember as there are many birds in the United States which have been introduced, including entire families.

Many of the over 1,100 species of birds now protected under the MBTA continue to experience population declines even though the fad of feathers in a hat has ended. Of the over 1,100 species, 89 are listed under the Endangered Species Act. An additional number of species are “[Birds of Conservation Concern](#)” meaning they are a top priority for USFWS. Human caused sources of mortality contributes cumulative or combined effects to the declining populations. Millions of acres of habitat are lost or degraded every year due to development, agriculture, and forestry practices. The only acceptable mitigation is habitat restoration and protection. In addition, millions of birds are directly killed by human-caused



In the early 1900's bird species began to decline in the United States because women wanted feathers in their hats. The trafficking of illegal birds skyrocketed. The federal government passed The Migratory Bird Treaty Act, to help stem the illegal trade of birds. For more, see [Hats Off to Women Who Saved the Birds](#), NPR History, July 15, 2015.

sources such as collisions with human-built structures. All this mortality is exacerbated by the landscape alterations resulting from climate change. Read more at: [Threats to Birds | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/threats-to-birds)

What does “Unintentional or Intentional Take” mean?

Incidental take means the taking or killing of migratory birds that results from, but is not the purpose of, an activity. The USFWS will assess whether an activity violates the MBTA, considering case law, including the case law applicable in particular jurisdictions. The definition of “take” in the MBTA and the ESA are different (Compare 16 U.S.C. 1532(19) and 50 CFR 17.3 with 16 U.S.C. 703(a) and 50 CFR 10.12).

The Migratory Bird Treaty Act (MBTA) states: “No person may take (kill), possess, import, export, transport, sell, purchase, barter, or offer for sale, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit...” It is unlawful to destroy an active nest that has eggs or chicks in it or if there are young birds that are still dependent on the nest for survival unless authorized to do so. Conversely, inactive migratory bird nests (excluding eagles) are not protected and may be removed without authorization. It is, however, illegal for anyone to possess a nest they take out of a tree or salvage a nest they find on the ground unless they have a permit to do so issued by the U.S. Fish and Wildlife Service.

Due to the biological and behavioral characteristics of certain migratory bird species, destruction of their nests entails an elevated risk of violating the MBTA. For example, colonial nesting birds are highly sensitive to disturbance; destruction of their nests during or near the nesting season could result in a significant level of take. Should human visitors to rookeries get too close, nesting activities may become disrupted, resulting in take since young birds may be frightened, leaving their nests prematurely, potentially dying from starvation.

Certain nests are hard to see and identify, making them more vulnerable to inadvertent destruction. Birds that nest on the ground in sandy or rocky areas are particularly difficult to see and identify, as are birds that nest in tree cavities or holes in the ground. In these cases, there may be no typical nest structure like what a tree nesting species might build. An example of this is a shorebird nest that may appear to be just a small depression or scrape in the ground, lined with twigs, stones, or shells, that can be very hard to identify as a nest. Another example is a ground cavity-nesting species, such as burrowing owl or bank swallow. It can be difficult to detect whether birds or viable eggs are in a cavity. If these species are in the project area, the

USFWS recommends consulting with an expert who can determine if adults, eggs or chicks are present or using a nest.

The USFWS recognizes that pursuing enforcement for all activities that result in unintentional or incidental take is not feasible or effective. Instead, the USFWS focuses their resources on specific types of activities that both foreseeably cause incidental take and where the proponent fails to implement known beneficial practices to avoid or minimize incidental take.

The Service prioritizes the following types of conduct for enforcement:

Incidental take that is the result of an otherwise illegal activity; or
Incidental take that:

- results from activities by a public- or private-sector entity that are otherwise legal;
- is foreseeable;
- and occurs where known general or activity-specific beneficial practices *were not* implemented.

The construction, upgrade, and/or maintenance of a treatment facility, including any associated activities, does fit into Category 2. It is legal, the take is often foreseeable, and it is possible that beneficial practices are not implemented.

The USFWS does not consider a priority for enforcement:

- A public- or private-sector entity conducting activities in accordance with applicable beneficial practices for avoiding and minimizing incidental take.

Source: [Director's Order 225, October 5, 2021](#)

What are beneficial practices?

The Migratory Bird Program maintains a comprehensive website of beneficial practices (BPs), conservation measures (CMs), and decision support tools. Beneficial practice means an action implemented to avoid and minimize the incidental take of migratory birds. BPs can be incorporated into planning and implemented during the construction, operation, and maintenance activities.

It is recommended recipients begin with the [Nationwide Standard Conservation Measures](#), which are the minimum protections. Apply the CMs for your project type with the goal of

reducing impacts to birds and habitat. There are three sections of CM: *General, Habitat Protection, and Stressor Management*. If you are not able to apply a CM which is clearly applicable to the project, document why it is not possible to apply it. **Example:** If clearing vegetation is impossible outside the rearing season, document why (and cost may not be seen as a good reason). The disturbance associated with vegetation removal is a stressor for adults and fledgling chicks.

Additional information on species-specific beneficial practices may be found on the [Beneficial Practices](#) page of the Avian Knowledge Network. A list of project specific BPs may be helpful. Industries worked on BPs to develop a permitting system in 2022 (which never came to fruition). However, that information is still available for use. If your project has any of the following elements listed below, apply relevant industry BPs to further avoid or minimize the potential for take:

1. Install large structures, towers, guy wires – See [Incidental Take Beneficial Practices: Communication Towers | U.S. Fish & Wildlife Service \(fws.gov\)](#)
2. Lighting – See [Threats to Birds: Collisions - Nighttime Lighting | U.S. Fish & Wildlife Service \(fws.gov\)](#)
3. Install new power lines – [Incidental Take Beneficial Practices: Power Lines | U.S. Fish & Wildlife Service \(fws.gov\)](#)
4. Install a new road, other transportation related project – [Incidental Take Beneficial Practices: Transportation | U.S. Fish & Wildlife Service \(fws.gov\)](#) which focus on disturbance during the construction phase (similar to treatment works projects – vegetation removal, ground disturbance, maintenance).
5. Gas flares – Facilities may occasionally flare off unwanted gas. Birds can fly through this superheated gas, or flame, resulting in feather damage or scalding of lungs or other tissue. Birds can also be killed or injured if they perch on burner pipes. If you facility flares, or will flare, read [Incidental Take Beneficial Practices: Gas Flares | U.S. Fish & Wildlife Service \(fws.gov\)](#)

If you do not see any applicable BPs listed, please review the Avian Knowledge Network's Beneficial Practices Resources at: [Beneficial Practices – Avian Knowledge Network](#) which houses known activity and species-specific beneficial practices for birds. These measures can be used by the public, federal and state agencies, industry and others seeking to avoid and minimize impacts to birds in their daily activities.

The recipient should document which BPs and CMs they have applied or attempted to apply, including those which were considered but not feasible (and why). Provide a copy of this MBTA

Conservation Plan as part of the EID. Continue with the steps below. This plan and the results below will be key in determining whether the USFWS will require a permit or not.

If further information is required, see [Avoiding and Minimizing Incidental Take of Migratory Birds | U.S. Fish & Wildlife Service \(fws.gov\)](#)

What birds may be present at the Project Location?

The following steps are required for any location:

Run IPaC and include a list that shows all federal trust resources (wetlands, facilities, migratory birds, eagles – USFWS Trust Resources).

If any migratory birds are present, check to see if they are Birds of Conservation Concern (BCC). These birds represent the highest conservation priorities for reasons including threats to breeding grounds, and population trends.

If you have any BCC birds, or eagles, in the project area, download *“Supplemental Information for Migratory Birds and Bald and Golden Eagles that may Occur in a Project Area in IPaC”* before closing IPaC down. Read and follow the instructions as they apply to your project.

For BCC Birds only, obtain detailed information using [eBird](#) or the tool: Research the Birds of Conservation Concern using the [Avian Knowledge Network Rapid Avian Information Locator \(AKN RAIL tool\)](#). [This data is derived from a growing collection of survey, banding and citizen science datasets](#). The RAIL Tool allows the user to query a specific geographic location and return a list of birds that are known to occur in that area based on the underlying data in the AKN, along with a wealth of information about those birds including their conservation status and population size at various scales. This tool allows the finite details of breeding time frame, habitat, abundance, and other information which would help determine if a species may truly be present in each area. Ensure you enter your project location as instructed in the directions below, or you will receive a large list of birds in your query.

Directions for RAIL:

- 1) Go to Rapid Avian Information Location (RAIL)
- 2) Enter the project location, with a slight buffer to capture any adjacent species
- 3) Draw the polygon
- 4) Section “Get Results”

- 5) The list may be large. Hit “Filter Results”, select “Migratory Bird Treaty Act”-Listed. To the left, select “Yes, bird is a BCC”. Now, the number of birds has been narrowed down. Review the list again.
- 6) Select one of the birds and review the information presented by selecting “Detail” (drop down arrow). Categories of information include a physical description of the bird, habitat preferences, population trends and numbers, biology (food, nesting information, breeding time frame), conservation status, presence in the area (breeding, migration, etc.), phenology graph (probability of presence in each month).
- 7) This information may provide the user with a better idea of whether there is habitat or resources to support the bird species, and if they are, how long the bird may be there. For example, if the project area supports water, fish, and has a pond or lake, there is a possibility a kingfisher may be present between the months of March and late July. Kingfishers also nest in burrows in banks along the water. Understanding this may help determine whether a bird survey is required prior to construction to gather further information

Directions for eBird:

Another tool that may be helpful is [eBird](#). To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list).

For example, if you have a project near Liberty Lake, Washington, your BCC list will include the Calliope Hummingbird, Cassin’s Finch, and Olive sided flycatcher. But are any of those within the project area? Go to E-Bird and enter those birds, one at a time, and then enter your project location.

The sightings of Calliope Hummingbird show up surrounding the Lake to the north, southwest and northeast, nothing to the west. If you click on one of the sightings, a life list will come up and you can see other birds sighted. None of the sightings are within the project area of Liberty Lake sewer.

The Olive sided flycatcher has been seen only at the southern end of the lake (repeatedly, over the years) at the park. The Cassin’s Finch has been seen here repeatedly as well. The Cassin’s Finch has also been at the north end and the eastern edge.

None of the birds have been seen within the project area by local birders. This helps project managers and discerning planners better understand what birds may be present, which is helpful for areas where a probability present may suggest birds could be present, but

the location does not seem to present any nesting habitat – as in a location with impervious surfaces.

These tools (RAIL and eBird) are designed to assist the recipient with a better understanding of what birds may be present during the construction season and help inform the recipient as to whether a full survey would be required. These data sources are not intended to replace a survey, or provide definitive presence/absence data by species, but may assist in building a list of species present.

General Requirements

Impacts to migratory birds should be identified in environmental review documents, such as this EID for SERP, State Environmental Policy Act (SEPA) or National Environmental Policy Act (NEPA) documents. Agencies and projects should work cooperatively to identify and, as appropriate, require implementation of beneficial practices to avoid and minimize the incidental take of migratory birds.

Avoid destruction of any nest and bird-supporting habitat. Follow the directions above to show what [conservation measures](#) were implemented and [beneficial practices](#) were taken to avoid any take of migratory birds. If nesting birds are encountered during construction, contact USFWS for next steps.

For eagles, comply with the appropriate permitting conservation measures, as required. If a [permit](#) is applied for, coordinate with Ecology and submit a copy of the permit to the Ecology Project Manager and Environmental Review Coordinator. Nests of bald and golden eagles are also always protected under the Bald and Golden Eagle Protection Act. Destruction of these nests always requires a permit, whether or not they are occupied and in-use. The Bald and Golden Eagle Protection Act regulations allow the U.S. Fish and Wildlife Service to [permit take of bald or golden eagles](#) when specific criteria and conditions are met.

All “take” involving birds is subject to approval by Ecology/EPA/USFWS. It must be shown, prior to Ecology approving the funding of a project that finances “take”, that all nonlethal measures were taken to avoid take. Take may only be authorized after all nonlethal measures have failed, and it is the only option left, approved by the USFWS. Mitigation will be required. EPA/Ecology must have the opportunity to review/approve of the any mitigation and conservation plan. Compensatory mitigation may be required to offset eagle take authorized under an incidental eagle take or disturbance permit. If mitigation is needed to offset bald eagle take, the standard ratio for mitigation is 1:1, but may vary depending on circumstances. As there is evidence that

golden eagle populations may be declining, for golden eagles there is a regulatory requirement for a mitigation ratio of at least 1.2:1. More information is available on the [USFWS eagle permit website](#).

The recipient must apply and pay for the USFWS application processing fee.

Ecology has the discretion to review all take permits to ensure we approve funding of the activity resulting in the take, and agree it is an appropriate strategy. We retain the discretion not to fund any activities which have reasonable alternatives to the take of fish or wildlife.

Contact Liz Ellis, Environmental Review Coordinator, at (360) 292-5442 or liz.ellis@ecy.wa.gov if you need assistance.

Resources:

[Migratory Bird Treaty Act](#)

[Bald and Golden Eagle Protection Act](#)

[WDFW: Reporting on the Bald Eagle](#)

[USFWS and Bird Nests](#)

[Incidental Take Beneficial Practices: Data and Tools | U.S. Fish & Wildlife Service \(fws.gov\)](#)

[eBird - Discover a new world of birding...](#)

[RAIL - Rapid Avian Information Locator \(pointblue.org\)](#)

[IPaC: Home \(fws.gov\)](#)

[Beneficial Practices – Avian Knowledge Network](#)

Section A is Complete – Please Review

The minimum required documentation components for a CWSRF agreement are:

- Verify the lead agency; describe if other funding agencies are involved.
- Select the agreement type.
- Summarize documentation included
- Address any adoptions
- Address public outreach and public engagement.
- Address Title VI of the Civil Rights Act and Environmental Justice requirements
- Ensure compliance with Section 106 of the National Historic Preservation Act, as amended, is complete or in process.
- Completed the steps to document whether there are potential impacts to any floodplains (Special Flood Hazard Areas).
- Review USFWS IPaC and document result for Federal Trust Resources (covers wetlands, listed species, birds). Attach documentation if needed. See Section B for further information.

If the project funded by the agreements happens to trigger additional permits, authorizations, and approvals, move to Section B. See Table 5 for examples.

Table 5.0 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
SRF-Fed	Safe Drinking Water Act
SRF-State, SRF-Fed	Protection of Wetlands
SRF-Fed	Coastal Zone Management Act
SRF-Fed	Farmland Conversion
SRF-State, SRF-Fed	Wild and Scenic Rivers Act
SRF-State, SRF-Fed	Impacts to protected species and habitats

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.

Continue to Part B: Additional Requirements

Complex treatment work projects located in sensitive locations have been known to trigger local and state permits and approvals such as those listed in Part B. Ensure you have addressed whether your project requires any of those approvals, or ones not listed.

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. In addition to these laws being triggered by federal financial assistance, they may be triggered by the presence of a federal permit, federal land or federal easement. 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), Wild and Scenic Rivers Act, and executive orders on the protection of wetlands. For federal assurances, 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 these laws and ensuring compliance.

Instructions: Review Section B of this guidance document for potential local, state, and federal regulations applicable to the CWSRF agreement. This guidance document lists the more commonly encountered permits and approvals associated with treatment works agreements. For future details on these regulations, refer to the contact information provided beneath each section, or select “Authorities with Expertise.”

As Part B of the EID Form is completed, check if a regulation applies or does not apply. 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.

Section B: Environmental Information Document Supplemental Guidance

This section assists recipients with how to complete the EID and provide information for additional requirements that may apply. The requirements may be triggered by type of financial assistance, additional federal permits, oversight, land ownership, location, design, and/or resource impacts.

Each section addresses 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 on potential resource impacts, including relevant attachments describing impacts the project may have.

Include 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 and Regulation of Wetlands](#)
- [Coastal Zone Consistency Certification \(no longer required\)](#)
- [Farmland Conversion](#)
- [Designated Wild and Scenic Rivers](#)
- [Endangered Species, Priority Habitats and Species, Take Prohibitions, Critical Areas Requirements](#)

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

Requirement: Considering Potential Air Pollutants and/or Odor Control

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF)

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

Authorities 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 attainment areas in Washington can be 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](#),

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

[WAC 173-400-930](#) – Emergency engines.

[ATSDR CDC Odor Control](#)

Requirement: Impacts to surface or ground water

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF)

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

Authorities with Expertise: Ecology Water Resources Program, Ecology Water Quality Program , U.S. Environmental Protection Agency

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

Water resources include surface water, groundwater and drinking water, wetlands, and 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.

Protection of Aquifers and Groundwater

Groundwater provides drinking water through wells and base flows for streams and rivers. Base flows are important for fish during dry summer months. Groundwater is water that collects or flows beneath the earth's surface, percolating through and filling the porous spaces in soil, sediment, and porous rocks, as well as fractures in hard rock. Groundwater originates from rain, melting snow and ice, irrigation, surface water, and infiltrated stormwater. Groundwater fills aquifers so that wells can withdraw water and emerges at the land surface as springs. Humans shape the level of the groundwater table by accessing deep water using wells, or intercepting water for irrigation. Humans also impact the quality of groundwater when chemicals infiltrate the soil, or septic systems leak.

Over 60 percent of Washington residents get their drinking water from groundwater. Groundwater is also used for irrigation, agriculture, and industry.

Any potential change to an aquifer which supports public water supplies must be evaluated carefully as part of the environmental review process. The location and extent of drinking water supply aquifers have been mapped by most GMA-planning communities. Critical Aquifer Recharge Area maps are delineations of where a community's groundwater supply meets criteria such as susceptibility, potential for contamination, and priority. Critical Aquifer Recharge Areas (CARA) are protected under the Growth Management Act, so ensure that the quality and quantity of public water supplies are protected ([RCW 36.70A.070: \(1\)](#) and [WAC 365-196-485 \(1\)\(d\)](#)).

For guidance on critical areas, see [Ecology's Critical Aquifer Recharge Area's Guidance \(2021\)](#) which provides information on protecting functions and values of critical aquifer recharge areas, best available science, how to work with state and local regulations and adaptive management. County agencies, health departments and partnerships are good sources of information on local groundwater conditions.

Safe Drinking Water Act – Federally Funded treatment work agreements

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. The EPA often authorizes state governments 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. Sole-source drinking water aquifers exist 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

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF)

Trigger: Potential impacts to state or federally protected wetland habitat

Authorities 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 artificial wetlands created from non-wetland sites, including wastewater lagoons and stormwater ponds. The definition is found at [RCW 37.70A.030](#)¹.

Wetlands — commonly called marshes, swamps, or bogs — are land areas that are saturated or covered with water for at least a continuous portion of the growing season. Wetlands are critical to the overall health of watersheds. 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. Ecology works to protect, restore, and manage the state's remaining wetland resources because of their key role in watershed health.

Locating Wetlands: A wetland can be found at the edge of a river, lake, or marine waterbody. Wetlands can be shallow emergent ponds or shrubby swamps, marshy fields or forested bogs. Despite the variety of wetlands, they have three characteristics in common:

1. Hydric soils – water saturates soils long enough to produce anaerobic conditions.
2. Water tolerant plants – hydrophytic plants that tolerate anaerobic conditions are present.
3. Water – present at or near the land surface periodically or continuously during the growing season.

Wetlands vary widely because of regional and local differences in soils, topography, climate, hydrology, water chemistry, vegetation, and other factors, including human disturbance.

Different methods or classification systems can be used to identify wetland types and characteristics. Review [Ecology's Rating Systems website](#) and [Ecology's Wetland Classification On-Demand Training](#).

Ecology participates in the [National Wetland Condition Assessment](#), a survey of Washington's wetlands and their condition. This survey is repeated every five years. The Washington Natural Heritage Program has a [map viewer](#) for identifying wetlands considered Wetlands of High Conservation Value by Washington's wetland rating system because of the presence of rare plants and rare or high quality plant communities.).

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 potential wetlands should be verified on the ground, ideally with an onsite wetland determination or delineation.

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 at the federal level, contact the U.S. Army Corps of Engineers (Corps).

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](#) process to identify potential wetland-related concerns early in the environmental review and permitting process⁷. [Our wetland staff](#) review applications for projects that have the potential to affect wetlands and other waters of the state.

Regulations are only one tool to protect wetlands. There are many nonregulatory opportunities to conserve wetland resources. Comprehensive wetlands protection includes voluntary wetland stewardship actions taken by landowners and local communities. These actively preserve, restore, and enhance existing wetlands. Visit Ecology's [Wetlands webpage](#) and learn more.

For Ecology's Financial Assistance Agreements, if environmental review is required, wetland impacts must be reported so Ecology staff can make an informed decision about funding the agreement. Ecology's internal policy is to ensure protection of wetlands to minimize the destruction, loss, or degradation of wetlands, including waters of the United States, and to

⁷ 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.

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, you may need a jurisdictional determination, wetland delineation, or both to identify the appropriate authorities for wetland regulations. Wetlands meeting the current criteria for [waters of the United States](#) are regulated by the Corps and the EPA⁸.

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.

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 a water of the state. The best way to determine when laws and rules apply to a particular wetland or activity is to consult with all appropriate agencies.

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, 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

⁸ 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.

Federal permit coordinator
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](#)

Wetlands Education and Training [here](#)

Mitigation resources [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](#)

Washington State Wetland Mapping - [Mapping resources - Washington State Department of Ecology](#)

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

Requirement: Coastal Zone Consistency Certifications

No Longer Applies to: Federally funded Agreements

Trigger used to be: Federally funded CWSRF agreements located in a coastal zone county that require a federal permit or license

Authority 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. Projects occurring in these counties must meet CZMA requirements when they require a [listed](#) federal license or permit. Projects on federal or tribal lands that may affect our coastal uses or resources must also meet CZMA requirements.

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.

Recent changes have been made to Washington's Coastal Zone Management's Program. Washington state no longer considers Federal Financial Assistance as a "federal action" that triggers CZM consistency. CWSRF recipients and EPA are no longer required to ensuring compliance with federal consistency requirements.

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

360-407-6076

Questions about CZM Federal Consistency

Loree' Randall

Federal Consistency Policy Lead

loreer.randall@ecy.wa.gov

360-485-2796.

Teresa Pucylowski

CZM Federal Consistency Manager

Teresa.Pucylowski@ecy.wa.gov

360-764-0546

Questions about Washington's CZM Program operation and implementation

Henry Bell

henry.bell@ecy.wa.gov

360-628-2750

Requirement: Farmland Conversion

Applies to: Federally funded treatment works agreements

Trigger: Acquisition and conversion of important farmlands to nonagricultural use

Authorities 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.

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

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.
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: Designated Wild and Scenic Rivers; (Wild and Scenic Rivers Act)

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF)

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

Authorities 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 may be designated Wild and Scenic 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 – Along the Washington/Idaho Border from the Nisqually John HMU Recreation area South to the WA/OR/ID border)

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

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.

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.

Useful references

[National Wild and Scenic River System | Rivers.gov](#)

[Wild Rivers Coalition](#)

[American Rivers](#)

Requirement: Endangered Species Act, Take Prohibitions, Priority Habitat and Species, Critical Area Protections

Applies to: All treatment works agreements (OSG, Environmental Contaminants, Emergency SRF, state and federally funded SRF)

Trigger: Presence of protected, listed species and/or habitat, sensitive areas, critical habitat.

Authorities with Expertise: Local Governments, Washington Department of Fish and Wildlife, National Marine Fisheries Service, U.S. Fish and Wildlife

Background

This section reviews how local, state and federal laws protect listed species and their habitat. If a species or its habitat is present within the project area, and will be impacted, this effect must be disclosed as part of this review.

Critical Areas Protection

Counties that plan under the Growth Management Act (GMA) must use Best Available Science (BAS) to locate and designate critical areas, such as wetlands, floodways and geologically hazardous locations. These areas have protection as high or higher than state and federal protections, through local Critical Area Ordinances (CAO). Any use or development other than that considered a “reasonable use” is subject to a permit, such as a shoreline permit or floodplain permit. Local governments may require a Critical Area Survey (CAS) to better understand how to protect functions and values of critical areas. State regulations provide guidance to local governments on how to develop protections for critical areas, which include the use of regulatory and non-regulatory measures (See [WAC 365-196-830 Protection of critical areas](#)). Ecology will afford protection to Critical Areas if required for a water quality project to be successful, and if avoidance is not an option (See Note on Mitigation).

Priority Habitat and Species

Fish and wildlife habitat conservation is the management of land for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. The Washington Department of Fish and Wildlife (WDFW) [Priority Habitats and Species \(PHS\) Program](#) provides relevant information on important fish, wildlife, and habitat

resources in Washington. The PHS Program is the agency's primary means of conveying fish and wildlife information from resource experts to local governments, landowners, and others who use it to protect habitat. PHS information is used 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. The WDFW manages the [Hydraulic Project Approval \(HPA\)](#) for projects in or near state waters, to minimize impacts to fish and aquatic habitat.

Questions for State Funded Agreements

1. Are there any critical areas within or adjacent to the project location? Attach any critical areas survey or checklist to the EID.
2. Are priority habitats or species present? 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.
3. Other resources: The Governor's Salmon Recovery Office (GSRO) coordinates salmon recovery. The [GSRO and Recreation and Conservation Office website](#) provides links to the salmon recovery plans, monitoring efforts, policies, and the lead entities that coordinate salmon recovery locally.
4. A project may also be required to conform with the Washington Hydraulic Code via issuance of a WDFW [Hydraulic Project Approval \(HPA\)](#), include as attachments with the EID.

Application of ESA for State and Federally Funded Agreements

For agreements with federal funding, in addition to the questions above, the federal Endangered Species Act (ESA) is triggered.

The purpose of the Endangered Species Act is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such endangered species and threatened species.

[Section 9](#) (Take Prohibitions) of the Endangered Species Act (ESA) apply to everyone, not just federal agencies. Take is defined as *“To harass, harm, pursue, hunt, shoot, would, kill, capture, or collected or attempt to do so.”* “Harm” is broadly defined as: *“An act which 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.”*

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. Ecology will want to approve any potential Take prior to funding the agreement.

Section 7 charges federal agencies to aid in the conservation of listed species and a consultation process is laid out to ensure their activities are not likely to jeopardize the continued existence of listed species (ESA; 7 U.S.C. § 136, 16 U.S.C. § 1531 et seq). Projects with a federal nexus can use this project to obtain concurrence from the Services that their project will not result in take, or if it will result in take, may receive an Incidental Take Statement (ITS).

Outside of the federal government, private and public entities must coordinate through the Washington Department of Fish and Wildlife (WDFW) to discuss any options. The WDFW has state delegated authority to develop conservation recommendations for many federally listed species. If it is determined that a take permit is required, this will trigger [Section 10 of the ESA](#) which may involve a Candidate Conservation Agreement, or Habitat Conservation Plan.

Process for Federally Funded Agreements

For federally funded CWSRF agreements, federal ESA consultation (Section 7(a)(2)) is triggered. Ecology manages agreements with federal funds passed down from the U.S. Environmental Protection Agency (EPA), such as equivalency agreements, Sewer Overflow and Stormwater Municipal Reuse Grants (OSG) or Environmental Contaminant Grants (EC). The federal nexus here is the relationship between the funding and the EPA. Normally, the EPA would step in and handle consultation because of the federal funding:

“...each Federal agency shall, ensure that any action authorized, funded or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction of adverse modification of habitat of such species...after consultation as appropriate...”

The EPA has delegated Ecology as its non-Federal representative for [ESA Section 7 Consultation and Essential Fish Habitat Consultation](#) (per [50 CFR 402.08](#)). Ensure that the required information is provided with the EID to prevent delay. Ecology will submit the Cover Letter on behalf of EPA to the Services to initiate consultation. EPA will be included in the consultation.

Requirements for Informal and Formal Consultation

Information requirements for [informal consultation](#) and [formal consultation](#) are found here: [Information Requirements for Section 7 Consultation | FWS.gov](#)

Informal consultation is an optional process that includes all discussions, correspondence, and information between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. A written request for concurrence with a Federal agency's *not likely to adversely affect* determination shall include information similar to the types of information described for formal consultation at [§ 402.14\(c\)\(1\)](#) sufficient for the Service to determine if it concurs.

Formal consultation is required when an action may affect listed species or its critical habitat. If this determination is made, the EPA will coordinate with Ecology and the Services to complete formal consultation. Formal consultation will start at the earliest possible time.

Normally, projects that have ***no effect*** determinations will not send any documentation to the Services. However, on rare occasions a federal agency (or the designated non-federal representative) may initiate informal consultation and request a concurrence letter on a no effect determination from the Services for large, potentially controversial projects.



It is our recommendation that if the agreement does not have any listed species, any critical habitat, and is therefore clearly a *No Effect*, **Ecology will not consult** with the Services.

Biological Assessment Requirements (formal consultation only): If initiating formal consultation, you will need a Biological Assessment with 6 required sections in a BA -These requirements are explained in detail, under [40 CFR 402.14, section c](#).

1. Description of the Proposed Action or DOPA.
2. Maps.
3. Information on the listed species and the designated critical habitat.
4. Description of the effects of the action and cumulative effects.
5. Summary of relevant information.
6. Additional information as needed.

These sections have subsections, so consider reviewing the requirements or reviewing an example such as ***WSDOT Template - Chapter 3.0 Components of a Biological Assessment***.

Ecology is often the Lead Agency on federal Ecology funded agreements

Ecology is EPA's designated non-federal representative for federal Endangered Species Act consultation. The information must be reviewed for accuracy, completeness and to ensure the legal requirements are met. Ecology will review the suggested Effect Determination, and either agree (affirm) or work with the Recipient to develop a different/improved determination.

WSDOT suggested guidelines for an effect determination include:

Is the documentation supporting consultation or not?

- If no species or habitat are present, it is not necessary to request consultation.
- If species or habitat are present, but other details of project activities and action area question the value of consultation, the route would be to request concurrence through informal consultation, not ignore consultation completely.

Is the documentation recommending ***May Affect, but Not Likely to Adversely Affect?***

- Does the BE or BA have all the information outlined in [§ 402.14\(c\)\(1\)](#) ?
- Has the design been approved? Last minute changes may require reinitiation of consultation, which could change the outcome of this determination.
- Has a biological survey been completed to determine the presence/absence of species within the Action Area?
- Were other experts contacted about species and habitat outside of IPaC? Experts include:
 - a. Local tribal biologists
 - b. WDFW area habitat biologists
 - c. WDNR biologists
 - d. Watershed council members
 - e. Researchers from local universities or academic institutions
- Were each of the individual project elements considered with an effect determination made separately and cumulatively (see 13.2 of WSDOT Guidance).

Note on In-water work

- Was in-water work, if any needed, correctly documented? The Washington hydraulic code stipulates that all activities that alter the bed or flow of state waters require a [HPA permit](#) from WDFW. To minimize impacts on species and avoid take, clear conditions are stipulated in the permits WDFW issues to project proponents, including in-water work windows. The general timing restrictions stipulated in these documents are then modified by area biologists, based on their knowledge or observations of site-specific conditions, to provide sufficient habitat protection and minimize potential impacts on species.

The timing of the in-water work window as defined by WDFW in an HPA can differ from the window defined by NMFS and USFWS, as the guidance used by WDFW habitat biologists in

determining in-water work windows has not been formally approved by NMFS and USFWS. Document in the BA whether the in-water work window was approved by all three agencies (USFWS, NMFS, and WDFW). Learn more about the HPA process here [HPA application process | Washington Department of Fish & Wildlife](#)

To reach a ***May Affect, but Not Likely to Adversely Affect (NLAA)*** determination for an in-water project (such as outfall replacement or repair), include one or more of the following:

- The work is below the Ordinary High-Water Mark, but no ESA listed species are present during the approved work window and no spawning habitat will be disturbed (without mitigation).
- All work is conducted within the WDFW stipulated in-water work window
- All work occurs outside of rearing and spawning areas
- The project does not degrade the environmental baseline

To reach a ***May Affect and Is Likely to Adversely Affect (MALAA or LAA)*** determination for an in-water project (such as outfall replacement or repair), you will see one or more of the following:

- The project requires work in water where resident steelhead, residual Chinook salmon or other rearing listed salmonids are present.
- The project requires moving or handling listed fish species.
- The project requires in-water work and has the potential for a direct take of listed species, including electrofishing or handling of listed fish.
- The project involves disturbance or filling of wetlands that are hydrologically connected (i.e., have a seasonal surface flow connection) to salmonid-bearing streams and provide rearing or refugia habitat for listed salmonids, whose habitat is in short supply in the watershed.
- The project requires dredging, and there is a high potential for materials to enter listed fish-bearing waters when listed fish are likely to be present.

If listed fish species are present in the project action area during construction, or if rearing or spawning habitat is present and will be damaged or affected by project activities, it is likely that in-water work will warrant a *likely to adversely affect* determination. In listed bull trout spawning subwatersheds, the presence of bull trout can be assumed year-round due to the variety of life history forms that exist.

Once the consultation package is ready (biological assessment, survey if required, any other documentation), provide to Ecology's Environmental Review Coordinator, who will review and draft a formal cover letter to initiate consultation on behalf of the EPA. For informal

consultations, the letter of concurrence comes soon if it is shown that the agreement is not likely to adversely affect the species or modify the critical habitat. For formal consultations, the Services have 135 days to complete the entire consultation. 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 Statement (ITS).
 - e. The final Incidental Take Statement (ITS) 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 ITS will be necessary for the SERP Environmental Information Document (EID) as these terms will become part of the financial agreement.
 - f. The Environmental Review Coordinator and the recipient will review the conditions set forth in the ITS. Conditions such as changing the project footprint may require re-initiation of ESA consultation.

It may be necessary to re-initiate consultation once the ITS 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.
- [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)
- USFWS Critical Habitat – select [Critical Habitat Reports](#)
- [USFWS IPaC - Information for Planning and Consultation](#)

WDFW

- WA Department of Fish and Wildlife priority habitats and species: [WDFW PHS](#)
- WA Department of Fish and Wildlife [Living with Wildlife](#)
- WA Department of Fish and Wildlife [Resources for Fish Friendly Hydraulic Projects](#)
- WA Department of Fish and Wildlife [Construction and Environmental Review](#)

End of EID Guidance

Questions or Further Information:

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Appendix A: 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.

Appendix B: Helpful Diagrams from 2024 Advanced SERP Training for Project Managers and Environmental Review for Recipient Training

Environmental review is a process

From a plan to construction

- **Planning**

- Best time to do public outreach
- Best time to get feedback on those alternatives
- Landowner approvals?
- City/County approvals
- Start SERP/Cultural Review if possible
- Goal: 30% design at best

- **Design**

- Focus on design
- Focus on permits
- Cultural Review
- Consultation, mitigation requirements
- Landowner approvals
- Goal: 90% design

- **Construction**

- Be ready to go!
- Everything ready to move forward
- No approvals needed
- Focus on going to bid



Planning Agreements

- Good time to do public outreach and EJ
- Non-project SEPA often required
- Did the recipient present their alternatives analysis during public outreach?
- Planning agreements can be exempt from SERP if discussed with environmental review coordinator (Form needed)
- Determination may exempt agreement, or for partially complete EID state No Further Review needed.

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Design or Design and Construction Agreements

- Project level SEPA often required
- Plans and specs (and design changes) approval
- Landowner approvals
- Acquisition and site selection, use authorization (DNR)
- Permits, approvals -any mitigation – will the design change?
- SERP Determination must be issued before breaking or disturbing any ground (field activities)

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Construction/Implementation

- SERP must be completed before the agreement is signed
- Should be ready to go with all permits in hand from design
- Follow through on mitigation measures from design (roll over into construction agreement)
- Design EID can be incorporated if no substantive changes
- Changes to the design require revisiting the EID and re-initiating cultural resources review

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