Chapter 431  Wetlands

431.01  Wetlands and Other Waters Policies, Regulations, and Agreements

431.02  Abbreviations and Acronyms

431.01  Wetlands and Other Waters Policies, Regulations, and Agreements

This chapter presents policies to follow when work is planned in or near wetlands or other waters of the state or United States. See our Wetlands page to find technical information on how to do wetland work for WSDOT projects.

Note that wetland policies continually change. Consult regulatory agencies' web sites for the most current information. Review our Determining jurisdiction of wetlands and other waters page to determine if a wetland or project activity is regulated. If a wetland doesn't fall under federal jurisdiction, it is still likely protected by state, local, or tribal laws. Contact the regulatory agencies if you need further guidance.

Coordinate early in your project's lifecycle with the regulatory agencies to ensure compliance and avoid penalties. They can collaborate with you to find solutions for successful mitigation of impacts to wetlands and other waters.

431.01(1)  WSDOT Policies

WSDOT's environmental policies direct employees to protect and preserve state natural resources while providing for cost-effective delivery and operation of transportation systems.

• Secretary's Executive Order E 1102.00 Wetlands Protection and Preservation directs employees to protect and preserve Washington's wetlands, to ensure no net loss of wetlands acreage and function caused by department actions, and to increase the quantity and quality of wetlands in the long term. Implement these activities in planning, designing, constructing, and maintaining the state's transportation system. Employees must avoid impacts to wetlands and other waters where practical; minimize impacts where you can't avoid wetlands; provide compensatory mitigation for unavoidable impacts; and protect, preserve, and maintain wetlands under department stewardship.

• Secretary's Executive Order E 1018.02 Environmental Policy Statement provides clear direction on meeting WSDOT's environmental responsibilities to "enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment" (Revised Code of Washington [RCW] 47.04.280(1)(e)).
431.01(2)  **Federal Policies**

- The **Clean Water Act** authorizes the Environmental Protection Agency (EPA) and United States Army Corps of Engineers (Corps) to determine what is or isn’t a water of the U.S. (WOTUS). See the EPA’s **Navigable Waters Protection Rule** web page for current information.

- **Clean Water Act Section 404**, regulated by the EPA and the Corps, requires a permit to discharge dredged or fill material into a WOTUS. See our **Determining jurisdiction of wetlands and other waters page** to determine if your project’s dredge or fill activities will require a 404 permit.

- **Clean Water Act Section 401** states that a federal agency may not issue a permit for discharge into a WOTUS unless Washington State Department of Ecology (Ecology), or a tribe if project activity occurs on tribal land, issues a Section 401 Water Quality Certification (WQC). Ecology or the tribe verifies that the project complies with existing water quality requirements or waives the certification requirement. See our **Determining jurisdiction of wetlands and other waters page** to determine if your project’s activities will require Section 401 WQC.

- The **Rivers and Harbors Act Section 10** ensures free flow of interstate commerce on our aquatic “highways”, or navigable waters. The Corps issues permits for structures or work in or affecting navigable WOTUS. See our **Determining jurisdiction of wetlands and other waters page** to determine if your project’s activities will require a Section 10 permit.

- The **National Environmental Policy Act (NEPA)** requires consideration of the effects of proposed projects on wetlands and other WOTUS. See our **NEPA & SEPA guidance** and **Wetland and Stream Reconnaissance and Assessment** pages for guidance on documenting environmental impacts for NEPA. The Federal Highway Administration (FHWA) **Environmental Review Toolkit** summarizes parts of **40 CFR § 1500, 1508**, and **23 CFR 771** that pertain to mitigation.

- The FHWA **Eco-Logical: An Ecosystem Approach to Developing Infrastructure Projects page**, in the Environmental Review Toolkit, articulates a vision of how infrastructure development and ecosystem conservation can integrate to harmonize economic, environmental, and social needs and objectives.

- The **Federal Coastal Zone Management Act** preserves, protects, develops, and restores or enhances coastal resources. Federal permits for project activities that affect wetlands within the 15 coastal counties of Washington must correspond with the enforceable policies of **Washington's Coastal Zone Management Program** regulated by Ecology with oversight from the National Oceanic and Atmospheric Administration.

431.01(3)  **Tribal Policies**

Each tribe may have their own policies and requirements. Check with the appropriate tribe if project activity will occur on tribal land.
Federal and State Joint Guidance

Ecology, the Corps, and the EPA developed joint guidance for Wetland Mitigation in Washington State. It compiles agency policies on mitigation and provides an overview of the roles the agencies play in regulating wetlands to help with compliance.

State Policies

- Wetlands that don't fall under federal Corps jurisdiction are regulated by Ecology under the State Water Pollution Control Policy (RCW 90.48) and other state laws. See our Determining jurisdiction of wetlands and other waters page to determine if your project's activities will require an Administrative Order from Ecology.

- The State Environmental Policy Act (SEPA) requires consideration of the effects of proposed projects on wetlands and other WOTUS. See our NEPA & SEPA guidance and Wetland and Stream Reconnaissance and Assessment pages for guidance on documenting environmental impacts for SEPA.

- The State Hydraulic Code requires Hydraulic Project Approval permits, issued by Washington Department of Fish and Wildlife, for projects in or near waters of the state.

- The Forest Practices Act (RCW 76.09) restricts harvest activities in and around wetlands. Washington Department of Natural Resources (WDNR) developed the Forest Practices Application Mapping Tool to help classify streams in Washington State. Use this tool when conducting stream assessments.

- The Aquatic Lands Act (RCW 79.105) requires authorization by WDNR to build proposed compensatory mitigation sites on or near state-owned aquatic lands.

- Follow the Procurement Reform Law (RCW 39.26) when purchasing mitigation credits. See our Wetland mitigation page for more information on how to purchase mitigation credits.

- Environmental mitigation in highway construction projects (RCW 47.01.305) directs us to use public lands before using land designated as agricultural land of long-term commercial significance. See our Wetland mitigation page for information on how to select a mitigation site.

- Follow Chapter 173-700 WAC for mitigation banking. See our Wetland mitigation page for information on how to use credit from a wetland mitigation bank.

- Follow Environmental mitigation-exchange agreements (RCW 47.12.370) when transferring WSDOT environmental compensation sites to another entity. See our Wetland monitoring page for information on how to transfer a compensation site.

- WSDOT partners with Ecology and other state agencies to complete the Wetland Program Plan, a six-year strategic plan for protecting Washington State wetlands.
431.01(6) **Local Policies**

- The *Shoreline Management Act*, regulated by Ecology and local governments, requires permits to ensure compliance with the local shoreline master plan.

- The *Growth Management Act*, regulated by Washington Department of Community Trade and Economic Development and local governments, requires protection of all wetlands, streams, and their buffers designated as critical areas. See our [Local Agency jurisdiction over wetlands & other waters page](#) for how to find out if a local permit is required.

431.02 **Abbreviations and Acronyms**

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>Corps</td>
<td>United States Army Corps of Engineers</td>
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<tr>
<td>Ecology</td>
<td>Washington State Department of Ecology</td>
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<tr>
<td>EPA</td>
<td>Environmental Protection Agency</td>
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<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<td>RCW</td>
<td>Revised Code of Washington</td>
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<tr>
<td>SEPA</td>
<td>State Environmental Policy Act</td>
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<td>WDNR</td>
<td>Washington Department of Natural Resources</td>
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<td>WOTUS</td>
<td>Water of the United States</td>
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<td>WQC</td>
<td>Water Quality Certification</td>
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