

Chapter 431 Wetlands and other waters

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431.01 Introduction

This chapter presents policies to be followed when planning work in or near wetlands, waters of the state, or waters of the United States such as streams and tidal waters. It includes information on determining and delineating wetlands and other waters, determining impacts (adverse effects), compensating for unavoidable impacts, and links to related information.

Project teams should follow the guidance in this chapter and the step-by-step procedures on our [Wetlands and other waters](#) webpage.

WSDOT Secretary's Executive Order (EO) E 1102 *Wetlands Protection and Preservation* directs employees to protect and preserve Washington's wetlands, ensure no net loss of wetland acreage and function is caused by department actions, and to increase the quantity and quality of wetlands in the long term. These activities must be implemented in planning, designing, constructing, and maintaining the state's transportation system. WSDOT employees, contractors, and consultants must avoid impacts to wetlands and other waters where practicable; minimize wetland impacts when they are unavoidable; provide compensatory mitigation for unavoidable impacts; and protect, preserve, and maintain wetlands under department stewardship.

WSDOT's environmental policies direct employees to protect and preserve state natural resources while providing for cost-effective delivery and operation of transportation systems. Our [Strategic Plan](#) webpage details WSDOT's values, including integrity and sustainability, that reinforce protection and preservation of wetlands and other waters.

Common transportation project activities that may impact wetlands or other waters include:

- Filling wetlands
- Draining wetlands
- Altering natural drainage patterns
- Increasing or decreasing water levels
- Discharging sediment or toxicants in runoff
- Mechanically removing wetland vegetation
- Compacting wetland soils
- Using wetland and buffers as staging areas
- Altering wetland or stream buffer areas
- Shading impacts to wetlands
- Converting aquatic resource
- Excavating wetlands or streams
- Realigning stream channels

See [Exhibit 431-1](#) for a flow chart of work to be performed throughout the project phases, from Planning to Maintenance and Operations.

In 2024, CEQ revised its NEPA implementing regulations ([40 CFR 1500-1508](#)). Prior to this update, climate change was only required within cumulative effects analyses. However, climate change considerations extend beyond cumulative effects and should be discussed in discipline reports for each environmental discipline considered. The revised NEPA regulations require federal agencies to incorporate climate change considerations at multiple points throughout the environmental review process. These include the affected environment, impact assessment, transportation resilience, cumulative effects analyses and mitigation strategies sections of the documentation.

For incorporation of climate change in Wetland discipline reports, see the Wetland Discipline Report Checklist. Specific requirements for considerations of climate change are discussed in [Chapter 415](#). Contact the Environmental Service Office's Climate Mitigation and Adaptation Branch Manager for climate change support.

431.02 Applicable statutes, regulations, executive orders, and agreements

431.02(1) Federal

- 42 United States Code 4321 National Environmental Policy Act (NEPA) of 1969
- Clean Water Act of 1977 (Section 404 and 401) – Found on the US Army Corps of Engineers (Corps) [Regulations and Guidance](#) webpage and on the Washington State Department of Ecology (Ecology) [401 Water quality certification](#) webpage
- 2008 Final Rule on [Compensatory Mitigation for Losses of Aquatic Resources](#) (Federal Register webpage)
- Rivers and Harbors Act of 1899 (Section 10 and Section 408) – Found on the Corps [Regulations and Guidance](#) and [Section 408](#) webpages
- Title 23: Highways [Part 771 – Environmental Impact Related Procedures](#) (Code of Federal Regulations webpage) ([23 CFR 771](#))
- Title 33 Navigation and Navigable Waters, [Part 332 Compensatory Mitigation for Losses of Aquatic Resources](#) (Code of Federal Regulations webpage) ([33 CFR § 332.2](#))
- Title 40: Protection of Environment ([40 CFR § 1500 – Purpose and Policy, Part 1508 - Definitions](#))

431.02(2) State

- Environmental mitigation in highway construction projects – Public lands first or other sites that avoid loss of long-term, commercially significant agricultural lands ([RCW 47.01.305](#)) (on the Washington State Legislature webpage)
- Environmental mitigation – Exchange agreements ([RCW 47.12.370](#)) (on the Washington State Legislature webpage)
- Governor's [EO 89-10 Protection of Wetlands](#)
- Procurement of Goods and Services ([RCW 39.26](#)) (on the Washington State Legislature webpage)
- State Environmental Policy Act (SEPA)

- WSDOT Secretary's EO 1102 *Wetlands Protection and Preservation*
- WSDOT [Strategic Plan](#)
- Shoreline Management Act [RCW 90.58](#) and [WAC Title 173](#) (on the Washington State Legislature webpage)
- Optional Shoreline process [RCW 90.58.355](#) and [RCW 90.58.356](#) (on the Washington State Legislature webpage)
- Water Rights [RCW 90.03](#) and [WAC 173-152](#) (on the Washington State Legislature webpage)
- Water Pollution Control Act [RCW 90.48](#) and [WAC Title 173](#)

431.02(3) Local

- Growth Management Act [RCW 36.70A](#) directs counties and cities to designate critical areas that are then enforced through Shoreline ordinances, Critical Area ordinances, and Shoreline Master Programs (see local agency webpages).

431.02(4) Agreements

- [Interagency wetland mitigation guidance](#) (on Washington State Department of Ecology webpage): Wetland Mitigation in Washington State Part 1 – Agency Policies and Guidance and Part 2 – Developing Mitigation Plans
- [Joint Memorandum to the Field Between the U.S. Department of the Army, Corps of Engineers and the U.S Environmental Protection Agency Concerning Exempt Construction or Maintenance of Irrigation Ditches and Exempt Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act \(PDF 141KB\)](#) – provides information including terms and definitions as well as guidance for how both agencies will work together to apply these exemptions. This memorandum refers to citations 404(f)(1)(C) and 404(f)(2) of the Clean Water Act (CWA) as well as [33 CFR 323.4\(c\)](#).

431.03 Considerations during project development

431.03(1) Planning

If it is possible that there are wetlands or other waters, as defined in [RCW 90.48.020](#) and [WAC 173-226-030\(27\)](#), within the planning study area, then planners will notify the region environmental coordinator. The region environmental coordinator will initiate the environmental screening process for scoping as project-level information develops.

Planners engage in early coordination with the region environmental coordinator so they can avoid and minimize impacts during planning, perform corridor studies, and identify compensatory mitigation needs and opportunities during scoping. Early coordination aids in planning sustainable and effective watershed-based solutions and may expand the range of mitigation options for project impacts.

See the [Environmental guidance for planning studies](#) webpage for information on how to conduct environmental screening to identify existing WSDOT compensatory mitigation sites in a study area that will need to be avoided.

431.03(2) Scoping

A biologist should conduct a wetland and stream reconnaissance field survey to confirm the presence or absence of wetlands and other waters within the study area. If present, reconnaissance may include estimation of wetland category, stream water type, and buffers depending on the necessary level of information to address project needs. WSDOT staff can use reconnaissance to inform the preliminary design and identify avoidance and minimization opportunities, as well as evaluate potential mitigation needs and opportunities. Find information on how to conduct a reconnaissance survey during Scoping on the [Wetlands and other waters](#) webpage.

If the wetland and stream reconnaissance memo concludes no wetlands or other waters are present in the project area, no further wetland work needs to be done unless the project area changes. The Region/Modal Environmental Manager documents this in the Environmental Review Summary and Environmental Classification Summary (ERS-ECS) database.

If wetlands or other waters are present, the permit/environmental coordinators must identify permit needs and enter preliminary information into ERS. They continue the mitigation sequence (see [Section 431.08 Mitigation](#)) started during Planning and strategize to avoid and minimize impacts to wetlands and other waters.

The environmental coordinators may coordinate early with the Multi-Agency Permit Program (MAPP) team and regulatory liaisons to identify permit needs. Find information on how to determine who has jurisdiction and your permitting needs for the waters in your project area during Scoping on the [Wetlands and other waters](#) webpage.

Environmental coordinators should begin researching compensatory mitigation options as soon as they think unavoidable impacts to wetlands and other waters in the project area may occur. We follow the 2008 Final Rule on [Compensatory Mitigation for Losses of Aquatic Resources](#) (Federal Register webpage). The rule expresses a preference for using credit from mitigation banks as a first choice, credit from in-lieu fee programs as a second choice, and permittee-responsible mitigation as least desirable. Project specifics provide additional context for determining which mitigation option is the most suitable choice. Find information on how to research compensatory mitigation options during Scoping on the [Wetlands and other waters](#) webpage.

431.03(3) Design

If wetlands or other aquatic resources will be impacted by a transportation project, the permit application submittal will require a Wetland and Stream Assessment Report to be completed by a qualified wetland biologist. A Wetland and Stream Assessment is a detailed field study of wetlands and other aquatic resources within the project area. Find information on how to complete a wetland and stream assessment during Preliminary design on the [Wetlands and other waters](#) webpage.

The Corps and Ecology consider wetland delineations valid for five years from the date of the field work. If the project is delayed beyond the five-year time frame, the field work will need to be re-verified and the report updated before submitting the permit application.

Biologists and environmental/permit coordinators identify impacts to wetlands and other waters by comparing the surveyed wetland boundaries to the project footprint during environmental review. If an EA or EIS is being conducted, environmental coordinators are required to prepare a separate Wetland Discipline Report. A short description of wetland impacts would be included in the Wetland Discipline Report. If direct and indirect impacts to

waters of the state will be completely avoided, a wetland and stream reconnaissance memo is all that is required.

See [Interagency wetland mitigation guidance](#) (on Washington State Department of Ecology webpage): Wetland Mitigation in Washington State Part 1 – Agency Policies and Guidance for detailed definitions of the different types of impacts and when regulators may require compensatory mitigation.

Regulators may not require compensatory mitigation for unavoidable impacts for projects designed for aquatic habitat restoration or enhancement, such as projects specifically built for fish barrier correction, if they result in net increases in aquatic resource functions and values. These projects and compensatory mitigation requirements are assessed on a case-by-case basis.

Find information on how to:

- Document impacts and find the Wetland Discipline Report Checklist during Preliminary design on the [Wetlands and other waters](#) webpage.
- Write appropriately sized discipline reports during preliminary design on the [NEPA and SEPA](#) webpage.
- Prepare a Water Quality Monitoring and Protection Plan (WQMPP) on the [Stormwater and water quality](#) webpage.

See [Section 431.08](#) Mitigation for information on developing Mitigation Plans. Environmental Coordinators will submit a complete permit application to applicable agencies.

The design team shall consider the effects climate change to ensure the project is resilient to changes that may occur over the design life of the project. For more information on considerations of climate change, see [Chapter 415](#).

Environmental coordinators will submit a complete permit application to applicable agencies.

431.03(4) Construction

See [Chapter 600](#): Construction for considerations of wetlands and other waters during and at the end of construction including:

- Implement the WQMPP and spill prevention control and counter measures plan
- Environmental Coordinators will conduct compliance site visits in coordination with construction inspection staff to ensure consistency with permit conditions
- Submit a right-of-way plan
- Submit an as-built or as-constructed plan
- Initiate compensation site monitoring

Find information on how to initiate compensatory mitigation site monitoring or apply for a permit modification on the Final design tab on the [Wetlands and other waters](#) webpage.

431.03(5) Maintenance and Operations

The region or mode compensatory mitigation site manager coordinates with the wetland monitoring group throughout the monitoring period by:

- Reviewing the monitoring manager's proposed fieldwork schedule to coordinate management and monitoring activities (e.g. to make sure weed spraying isn't conducted just before or during the monitoring visit.)

- Sending documentation of management activities to the wetland monitoring group for inclusion in the wetland monitoring report.
- Responding to feedback from the wetland monitoring group regarding emerging problems at the site. For example, if the wetland monitoring group sees invasive weed species, they will notify the site manager so that weed control can take place.
- Reviewing draft monitoring reports before they are submitted to the permitting agencies.

The Environmental Services Office (ESO) wetland monitoring group:

- Coordinates compliance site visits and conducts monitoring activities for compliance with permits.
- Provides management recommendations based on site observations and monitoring data to inform the adaptive management cycle.
- Facilitates annual meetings with the regions/modes to review site development.
- Provides wetland monitoring reports for permit compliance.

At the end of the monitoring period, the wetland monitoring group documents that WSDOT has replaced the acreage and functions of the impacted wetlands and other waters. They request concurrence from regulators that permit obligations have been met.

The wetland monitoring group continues to monitor compensatory mitigation sites while waiting for either a release from further monitoring from the regulators or concurrence that permit conditions have been met.

WSDOT maintains permanent protection of most compensatory mitigation sites in perpetuity. Long-term site management needs will be outlined in an approved Long-term Management (LTM) Plan for the site. See [Section 431.08](#) Mitigation for WSDOT's long-term responsibilities for compensatory mitigation sites.

431.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements. Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

431.04(1) Analysis and documentation for NEPA

A Wetland and Stream Assessment Report is required to be submitted with all applicable aquatic permit applications. If impacts to wetlands or other waters will be unavoidable, then WSDOT will prepare a Wetland Discipline Report for NEPA documentation.

Further guidance on how to prepare a Wetland Discipline Report and the Wetlands Discipline Report Checklist can be found on the [Wetlands and other waters](#) webpage for Preliminary design.

WSDOT performs Section 404(b)(1) analysis as part of the NEPA document for Corps individual permits to submit with the Section 404 permit application.

For more information on considerations of climate change and climate impacts vulnerability assessment, see [Chapter 415](#) and [WSDOT's Guidance for NEPA and SEPA Project-Level Climate Change Evaluations](#).

431.04(2) Analysis and documentation for SEPA only (No federal nexus)

Analysis and documentation for SEPA-only projects are the same as for NEPA.

431.05 External engagement

For Nationwide Permits (NWP), the Corps will send the project description, impact numbers, and drawings out for a 10-day agency and 30-day tribal review. All tribal and agency comments must be addressed before the Corps can verify the work under a NWP.

For Individual Permits, the Corps will typically issue a joint public notice (15-30 days depending on the activity) with the Section 401 certifying agency or tribe once they have a complete application. Sometimes the public notice will only be issued from the Corps.

431.06 Internal roles and responsibilities

431.06(1) *Planner*

- Conducts environmental screening for potential wetlands and other waters.
- Notifies the region environmental coordinator if obvious wetlands or other waters are in the study area.

431.06(2) *Project Engineer*

- Works with environmental managers and permit coordinators to request a reconnaissance from a WSDOT regional or headquarters environmental office or consultant.
- Works with environmental managers and permit coordinators to request a wetland and stream assessment from a WSDOT regional or headquarters environmental office or consultant.
- Provides the biologist the project description, purpose, and location, project plan sheets including the study area or area of potential effect, written right of entry for access to non-DOT property, and survey crew.

431.06(3) *Region/Modal Biologists and Consultant Biologists*

- Performs wetland and stream reconnaissance and prepares the Wetland and Stream Reconnaissance Memo to provide to the project engineer, environmental coordinator, and permit coordinator.
- Performs wetland, stream, and other waters assessment, evaluates ditches, evaluates wetland and stream buffers, and prepares the Wetland and Stream Assessment Report.
- Writes the Conceptual Mitigation Plan.
- Writes the Draft and Final Mitigation Plan.
- WSDOT biology staff review and comment on consultant prepared reports/plans.

431.06(4) *Region Environmental Coordinator*

- Fills out the ERS/ECS
- Determines potential unavoidable impacts with Region Permit Coordinator and Biologist.
- Documents impacts in the environmental review document or a wetland discipline report.
- Plans for and documents avoidance and minimization of impacts.

431.06(5) *Region Permit Coordinator*

- Fills out the ERS/ECS.
- Determines potential unavoidable impacts with Region Environmental Coordinator and Biologist.
- Plans for and documents avoidance and minimization of impacts.
- Coordinates with regulatory agencies and applies for permits.

431.06(6) *Region/Modal Environmental Manager*

- Reviews and approves documentation that goes into ECS/ERS.

431.06(7) *Environmental Services Office Wetland Monitoring Group*

- Monitors WSDOT owned mitigation banks and compensatory mitigation sites.
- Communicates with site managers in the region/mode and restoration crews and provide site observations and data to inform adaptive management of compensatory mitigation sites to achieve permit requirements.
- Writes compensation site monitoring reports.
- Writes and submits emails to regulatory agencies to request closeout of permit monitoring requirements for WSDOT mitigation banks and compensatory mitigation sites.
- Performs long-term management inspections and coordinates with the maintenance division and environmental restoration crews on site management needs.
- ESO's Climate Mitigation and Adaptation Branch can provide technical assistance for incorporating considerations of climate change throughout the environmental review process.

431.07 *Applicable permits and approval process*

Apply for one or more of the following permits when work is in or over a wetland or stream:

- Navigable waters permit under Section 10 of the Rivers and Harbors Act
- Discharge of dredge or fill material permit under Section 404 of the CWA
- Administrative Order for impacts to non-federally regulated wetlands, including any alteration of the physical, chemical, or biological properties, of any waters of the state
- See [Chapter 436](#) for information about Hydraulic Project Approvals from the Washington State Department of Fish and Wildlife

See the graphic depiction of the [Limits of Corps Regulatory Jurisdiction](#) on the Corps webpage.

Permits under Section 10 of the Rivers and Harbors Act and Section 404 of the CWA require a Water Quality Certification per Section 401 of the CWA. See [Chapter 430](#) Surface Water for information about Water Quality Certifications and compliance with Section 401 of the CWA.

431.07(1) Section 10 of the Rivers and Harbors Act

The purpose of the Rivers and Harbors Act is to ensure the free flow of interstate commerce on our aquatic “highways”, or navigable waters. Navigable waters are tidally influenced or fresh waters currently or historically used to transport commerce, such as Puget Sound, Lake Washington, the Columbia River, and the lower sections of many rivers in the state. You will need a Section 10 permit from the Corps when you work on a structure in or over a navigable water of the US.

Check the lists of Navigable Waters in Washington State on the [Streams, Rivers, and Tidal Waters](#) page of the Corps Permit Guidebook to see if the Corps has Section 10 jurisdiction of the waterbody.

There are no maintenance exemptions under Section 10 of the Rivers and Harbors Act.

431.07(2) Section 408 of the Rivers and Harbors Act

Projects that make alterations to or use property federally authorized by the Corps must get permission from the Corps. Examples would be work that affects levees or navigation channels. Application information can be found on the Corps [Section 408](#) webpage.

431.07(3) Section 404 of the Clean Water Act

The purpose of the CWA is to regulate the discharge of pollutants into the waters of the U.S. and to regulate quality standards for surface waters. The object of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. Under Section 404, the Corps regulates the discharge of dredged or fill materials into waters of the U.S. See the [Seattle District Corps](#) webpage for more information.

431.07(4) Nationwide Permits

The Corps issues Nationwide Permits (NWP) which are programmatic permits covering activities that have minimal individual and cumulative adverse environmental effects every five years. The Corps will verify that projects fit under one or more of the NWPs. Permit coordinators can use Section 5 of the [Corps’ User Guide for 2021 Nationwide Permits in Washington State \(PDF 1.63MB\)](#) and the [Corps’ 2021 NWP Summary Chart \(PDF 110KB\)](#) to find out if an activity is covered by an NWP.

To be covered under an NWP, the work must also follow the:

- **National General Conditions** – broad conditions that apply to all NWPs nation-wide. See Section 4 of the User Guide.
- **Regional General Conditions** – Corps Seattle District conditions that apply to all NWPs for work in Washington. See Section 3 of the User Guide.
- **NWP-specific Regional Conditions** – Corps Seattle District conditions that apply only when work will be verified under that NWP. See Section 5 of the User Guide.

431.07(5) Individual Permits

Permit coordinators need to apply for an Individual Permit for work that cannot be verified under the NWP.

431.07(6) Regional General Permits

Section 404 of the CWA also allows the Corps and Ecology to issue 5-year Regional General Permits (RGPs) for certain types of activities, similar to the NWPs. There are currently no RGPs that WSDOT can use at this time.

431.07(7) Maintenance Exemptions from Section 404 Permits

The maintenance or repair of transportation structures that was previously authorized may be exempt from getting a new permit under Section 404 of the CWA ([33 CFR 323.4](#)). This can include bank stabilization, culvert repairs, culvert maintenance, bridge footing scour repairs, and other types of projects.

To be exempt, work must be consistent with the previously authorized work in the following ways:

- **Scope** – The purpose of the work must be the same as the purpose of the previous work.
- **Character** – The material must be of the same type and size (or one size larger) as was previously placed.
- **Size** – The footprint of the work must be the same as the previous footprint.

If you are not sure if the work is exempt, contact the MAPP team for help. If you are certain the work is exempt, it is not necessary to submit a permit application or request approval from the Corps. It is recommended to document the extent of the work in an internal memo to record the activities as exempt. The maintenance exemption does not apply to Section 10 waters.

431.07(8) Water Quality Certification

Under Section 401 of the CWA, an activity involving a discharge into waters of the U.S. authorized by a federal permit must receive a Section 401 Water Quality Certification. Certifying agencies (Ecology, EPA, Tribes with WQC authority) have issued WQC decisions for each NWP program to grant, grant with conditions, or deny. The certifying authority determines if a project meets the conditions and general conditions required to issue a programmatic Water Quality Certification. If a project does not meet the programmatic conditions, does not meet the state general conditions, or if a NWP was denied a programmatic water quality certification, then an Individual Water Quality Certification will be required. Permit coordinators can use Section 5 and 7 of the [Corps' User Guide for 2021 Nationwide Permits in Washington State \(PDF 1.63MB\)](#).

To be covered under a programmatic WQC, the certifying agency will determine if the project meets:

- **Ecology Section 401 WQC General Conditions** – broad conditions that apply to all NWPs state-wide. See Section 7 of the User Guide.
- **NWP-specific Programmatic Conditions** – Corps Seattle District conditions that apply only when work will be verified under that NWP. See Section 5 of the Corps NWP User Guide.

431.07(9) Individual Water Quality Certification

Permit coordinators need to apply for an Individual Water Quality Certification for projects that do not meet the programmatic NWP or general conditions for each certifying authority, or if a programmatic NWP Water Quality Certification was denied, or if the project has the potential for discharge under Section 10. See Section 7 of the Corps NWP User Guide.

431.07(10) Coastal Zone Management Act (CZMA)

The Coastal Zone Management (CZM) program applies to all areas of 15 coastal counties and extends three nautical miles into the Pacific Ocean and excludes federal and tribal lands such as all lands within national parks, national forest lands, and military and defense reservations. Ecology evaluates federal activities and permit applicants ([15 CFR 930.39](#)) to ensure consistency with the state's Coastal Zone Management Program. Ecology is the authority to review federal actions for consistency with the enforceable policies of Washington's CZM Program. For each NWP, Ecology issued a decision to concur, concur with conditions, or object. For NWPs where the decision is to concur, the project or activity does not require an individual decision. If a project or activity has a decision of concur with conditions or object, project proponent will need to coordinate with the Corps and Ecology. See Section 1 and 5 of the Corps NWP User Guide.

431.07(11) Non-federally regulated wetlands

For waters of the state under Ecology's jurisdiction, and where there is no Corps jurisdiction, Ecology will issue an Administrative Order (AO) that the work is consistent with the State Water Pollution Control Policy [RCW 90.48](#) and other state laws ([Chapter 430](#)). There are procedures on the [Wetlands and other waters](#) webpage to use during scoping to apply for an Administrative Order from Ecology, however early coordination with the MAPP Manager is recommended.. Coordinate with Ecology, tribes, and EPA early in the design process for work in waters of the state on tribal lands to determine timeline and information regarding application requirements. Refer to the [Interagency Wetland Mitigation Guidance Parts 1 and 2](#).

431.07(12) Shoreline permits and approvals

Shoreline permits and approvals may be required for work within 200 feet of a shoreline of statewide significance. Shorelines include floodways, wetlands, and all marine waters along the Puget Sound and Pacific Ocean.

Ecology is responsible for implementing the Shoreline Management Act, which directs local governments to develop Shoreline Master Programs (SMP). Local governments issue Shoreline permits and approvals, following their SMP. Types of Shoreline Permits and approvals:

- Substantial Development Permits
- Conditional Use Permits
- Variance
- Exemption Issued by Local Government
- Exemption (optional shoreline process for WSDOT only [RCW 90.58.355](#) and [RCW 90.58.356](#))

Many WSDOT projects within 200 ft. of shoreline jurisdiction qualify for the optional shoreline process under [RCW 90.58.355](#). The optional shoreline process allows WSDOT to perform certain maintenance, repair, safety, and replacement work without applying for a shoreline permit or approval. Check [RCW 90.58.355](#) to determine if your project meets the criteria for this process.

If the project does not require a permit and will cost more than \$1 million to plan and design, send written notification of the project prior to construction to all:

- Agencies, federal and state, with jurisdiction in the area, including the Ecology Regional Planner.
- Agencies with facilities or services that may be impacted by the project, including utility companies, transit systems, and schools.
- Adjacent property owners within 300 feet of the shoreline jurisdiction area.

If there are dozens to hundreds of property owners that require notification under the optional shoreline process or if the local agency's permit process is simple, consider applying for a shoreline permit or approval instead.

If your project doesn't meet the criteria for an optional shoreline process, apply for a shoreline permit or approval during final design. See the local SMP and coordinate with local government staff to determine which permit you need. Sometimes local governments have different criteria for different types of shoreline permits and approvals.

431.07(13) Water Rights

Ecology issues water right permits to applicants that need to withdraw any amount of surface water or groundwater ([RCW 90.03](#) and [WAC 173-152](#)).

WSDOT or the contractor may need to acquire a temporary water right permit for dust control or watering a mitigation site if potable water is not available near a site.

431.08 Mitigation

WSDOT Secretary's EO 1102 *Wetland Protection and Preservation* directs employees to mitigate for all adverse effects to wetlands in accordance with Governor's [EO 89-10](#) and [WAC 197-11-768](#).

WSDOT uses the mitigation sequence outlined in state and federal EOs and regulations. Mitigation sequencing requires the applicant to:

1. **Avoid** impacts to wetlands and other aquatic resources.
2. **Minimize** unavoidable impacts to the greatest extent feasible.
3. **Rectify** impacts by repairing, rehabilitating, or restoring the environment.
4. **Reduce** or eliminate impact over time.
5. **Compensate** for unavoidable impacts through required compensatory mitigation.
6. **Monitor** the impact and take corrective measures.

Avoidance is the preference because it has the greatest reliability and is the simplest, most effective way to preserve and protect wetlands and other aquatic resources.

The Federal Highway Administration Mitigation of Environmental Impacts section of the [Environmental Review Toolkit](#) webpage summarizes parts of [40 CFR § 1500](#), [1508](#), and [23 CFR 771](#) that pertain to mitigation.

431.08(1) *Selecting a compensatory mitigation option*

We follow guidance in the [Final Rule on Compensatory Mitigation for Losses of Aquatic Resources \(2008\)](#). We use mitigation credits established prior to project impacts first when possible. See the [Wetlands and other waters](#) webpage during Scoping for how to research compensatory mitigation options and during Final Design for how to purchase third-party mitigation credits. Regulatory agencies must approve mitigation bank and in-lieu fee program instruments, including identification of initial sites, before any credits are released for use.

If the impacts are not in the service area of an approved third-party mitigation bank or in-lieu fee program, permittee-responsible mitigation may be the only option. We use excess credit from previously implemented WSDOT compensatory mitigation before considering construction of a new compensatory mitigation site when possible.

Compensatory mitigation should make ecological sense in the landscape context in which it occurs. Find information about evaluating landscape and site scale environmental processes on Ecology's [Watershed Characterization](#) webpage and use the guidance on selecting wetland mitigation sites using a watershed approach on Ecology's [Wetland mitigation resources](#) webpage.

We can only use agricultural lands of long-term commercial significance for compensatory mitigation when there are no other options ([RCW 47.01.305](#)). Washington law directs WSDOT to consider public and private lands before using agricultural lands. We must make every effort to avoid net loss of commercial agricultural lands.

Existing wetlands and other waters must be documented prior to construction of permittee-responsible compensatory mitigation sites in a Wetland and Stream Assessment Report. The mitigation design team uses the baseline resource conditions to determine the area available for different types of compensatory mitigation (e.g. establishment, re-establishment, rehabilitation, enhancement, and preservation). The wetland monitoring group uses digital files (MicroStation design or Geographic Information System shapefiles) of the delineations of pre-existing wetlands or other waters to evaluate how many acres of each type of compensatory mitigation has been provided after the site has been constructed.

431.08(2) *Developing Conceptual and Draft Mitigation Plans*

Toward the end of the environmental review portion of the Design phase, biologists document the full mitigation sequence using Ecology's [avoidance and minimization checklist](#), including avoidance and minimization measures, unavoidable impacts and compensatory mitigation proposals in Conceptual, Draft, and Final Wetland and Stream Mitigation Plans.

A Conceptual Mitigation Plan contains general information to allow for discussion of the design alternatives and proposed mitigation. WSDOT staff can bring the Conceptual Mitigation Plan to the MAPP team meetings for early agency input, and append it to the environmental review document. See Ecology's [Interagency wetland mitigation guidance](#) webpage for information on what biologists include in a Conceptual Mitigation Plan.

State and federal regulatory agencies evaluate the mitigation concept to determine if it would adequately compensate for the expected project impacts. A commitment to the mitigation option must be made during the NEPA process, leaving sufficient time to develop an appropriate detailed Wetland and Stream Mitigation Plan and design for the application.

Biologists document how the project avoids and minimizes impact to wetlands or other waters in a Draft Wetland and Stream Mitigation Plan. They describe the project, the remaining unavoidable impacts, and the approach for providing compensatory mitigation. See the [Wetlands and other waters](#) webpage Preliminary design tab for WSDOT-specific guidance on writing Mitigation Plans, including a template mitigation plan that is consistent with the requirements outlined in Chapter 3.6 of Ecology's [Wetland Mitigation in Washington State: Part 1 - Agency Policies and Guidance \(Version 2\)](#).

Regulatory agencies will determine the adequacy of the proposed compensatory mitigation after they review the complete project proposal and Wetland and Stream Mitigation Plan.

Complete Wetland and Stream Mitigation Plans include:

- Details of impact avoidance
- Details of minimization
- Proposed compensatory mitigation for unavoidable direct and indirect impacts
- A plan for establishing a legal mechanism to protect the compensatory mitigation property in perpetuity
- A Long-term Management Plan to implement after the compensatory mitigation site permit obligations are met

In accordance with [40 CFR 230.94\(C\)](#) of the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (2008), the Corps requires Wetland and Stream Mitigation Plans to contain a commitment to develop a Long-term Management Plan. This requirement does not affect the ongoing requirement for perpetual stewardship of compensatory mitigation sites.

Additional work necessary to develop the Wetland and Stream Mitigation Plan for submittal with the application varies depending on the compensatory mitigation option(s) chosen.

Mitigation Bank and In-Lieu Fee Programs – A Mitigation Bank Credit Use Plan or an In-Lieu Fee Program Use plan must be submitted.

Advance Mitigation – Advance Mitigation Plans are approved at the time the site is authorized. It includes details of how the advance mitigation credit will be developed and used, briefly explains how the available credit compensates for project impacts and provides a ledger showing the debits and remaining credit value.

Permittee-responsible Mitigation – The Draft Mitigation Plan includes all the information needed for WSDOT to plan appropriate mitigation. It includes the rationale for selecting the site, data describing baseline (pre-construction) conditions, a detailed mitigation plan (including a grading plan and planting plan), and goals, objectives, and performance standards.

If WSDOT plans to develop more wetland area than needed for compensation of the project impacts, WSDOT can propose that the excess be available for use by other projects; see the [Wetland Mitigation in Washington State–Part 1 \(Version 2\)](#) Section 4.2 Permittee-responsible mitigation.

The permitting agencies won't approve the value for later use unless it is documented in the Wetland and Stream Mitigation Plan and the Corps permit verification that excess credit generated can be used for future projects.

See Ecology's [Interagency wetland mitigation guidance](#) webpage for information on how to write Conceptual, Draft and Final Mitigation Plans.

See the [Wetlands and other waters](#) webpage during Preliminary Design for information on how to:

- Use available WSDOT mitigation credits.
- Write Credit Use and Mitigation Plans
- Develop a Long-term Management Plan.

431.08(3) *Establishing the mechanism for compensatory mitigation site protection*

The 2008 [Final Rule on Compensatory Mitigation for Losses of Aquatic Resources](#) requires long-term compensatory mitigation site protection. Long-term site protection must be maintained in perpetuity. Another natural resource management entity may provide the long-term management with or without direct property transfer to their ownership.

We consider opportunities to develop partnerships in mitigation development with other natural resource management entities or local jurisdictions. If possible, we establish willing partners to transfer compensatory mitigation sites to manage long-term. Qualified natural resource entities must agree to restrict the use of the property to preserve the natural and beneficial values of the wetland ([RCW 47.12.370](#)).

We most often use recordings on the right-of-way plan or a sundry site plan that identify the property as a compensatory mitigation site with the Corps permit number as the long-term site protection mechanism. If the site won't be maintained for the long term in WSDOT ownership, another legal mechanism for long-term protection must be developed.

Environmental staff and project managers coordinate with the region real estate services office to develop the long-term protective mechanisms for land transferred to other ownership. Conservation easements, restrictive covenants, or other mechanisms may be suitable for long-term protection.

Project managers and environmental staff also coordinate with the region real estate services office and legal counsel as needed to develop any compensatory mitigation site transfer mechanism. See [RCW 47.12.370](#) on the Washington State Legislature webpage for the requirements for environmental mitigation exchange agreements. Regulatory agencies only allow transfer of compensatory mitigation site ownership to other parties for long-term management after the regulatory agencies concur that permit obligations have been met. There must be an agreement that the new entity will protect the on-site environmental resources in perpetuity.

431.08(4) *Final Wetland and Stream Mitigation Plan development*

Permit coordinators submit the permit application when further design refinements are not likely to change the wetland and other waters impacts. Reports supporting the application may include one or more Wetland and Stream Assessment Reports and a Draft Wetland and Stream Mitigation Plan. See the "Apply for Section 404/Section 10 permits and Administrative Orders" section on the Final design tab on the [Wetlands and other waters](#) webpage for MicroStation and AutoCAD application drawing pattern templates.

After the permit application has been submitted, WSDOT finalizes the Draft Wetland and Stream Mitigation Plan in coordination with the permitting agencies. The Final Wetland and Stream Mitigation Plan is completed after the appropriate agencies have provided authorization with or without conditions. WSDOT prepares the final mitigation design, approved by the permitting agencies, for contract during the design phase with development of the final Plans, Specifications and Estimates.

431.08(5) *Monitoring*

The ESO wetland monitoring group evaluates each compensatory mitigation site annually. They compare the site's performance to criteria established in the Wetland and Stream Mitigation Plan and environmental permits.

The wetland monitoring group collects quantitative and qualitative data to evaluate mitigation sites.

Find the Wetland Monitoring Reports on the [Wetlands and other waters](#) webpage under Tools, templates and resources.

431.08(6) *WSDOT's long-term responsibilities for compensatory mitigation sites*

WSDOT owns most of its compensatory mitigation sites. After monitoring is complete and all permit conditions have been met, the region or project office will follow the LTM Plan that was included in the approved Mitigation Plan. The LTM plan will include elements outlined in [33 CFR 332.7\(d\)](#). If a LTM plan was not included in the Mitigation Plan, then the site will be managed using the *Programmatic Long-term Management Plan* found on the [Wetlands and other waters](#) webpage under Final design. The Programmatic LTM Plan also includes the criteria for site LTM eligibility. Sites that do not meet those criteria do not require a LTM plan.

ESO Wetlands Program will coordinate LTM responsibilities and required actions with either the maintenance division or environmental restoration crews, as needed, after the regulatory agencies concur that permit obligations have been met.

We may transfer department-owned compensation sites to qualified entities that agree to restrict the use of the property consistent with the preservation of wetlands and other aquatic resources ([RCW 47.12.370](#)). Any such transfer must include an approved legal mechanism for long-term protection. WSDOT regions evaluate this option to reduce agency risk.

431.09 Abbreviations and acronyms

AO	Administrative Orders
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers
CZM	Coastal Zone Management
Ecology	Washington State Department of Ecology
ECS	Environmental Classification Summary
EO	Executive Order
ERS	Environmental Review Summary
HPA	Hydraulic Permit Approval
LTM	Long-term Management
NEPA	National Environmental Policy Act
NWP	Nationwide Permit
RCW	Revised Code of Washington
RGP	Region General Permit
SEPA	State Environmental Policy Act
SMP	Shoreline Master Program
WAC	Washington Administrative Code
WDFW	Washington State Department of Fish and Wildlife
WSDOT	Washington State Department of Transportation
WQC	Water Quality Certification
WQMPP	Water Quality Monitoring and Protection Plan

431.10 Glossary

This glossary provides reader friendly context for terms in this chapter. The associated links provide technical definitions. These terms may have other meanings in other chapters. Many of the terms below are included in the definitions in Title 33 Navigation and Navigable Waters, Part 332 Compensatory Mitigation for Losses of Aquatic Resources: [33 CFR § 332.2](#).

Advance Mitigation – Compensatory mitigation that is accepted by regulatory authorities as being established before an impact occurs. This is a form of permittee -responsible mitigation.

Buffer – An upland, wetland, or riparian area that protects or enhances wetlands or aquatic resource functions from disturbances associated with adjacent land uses.

Compensatory Mitigation – The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of wetlands or other aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Enhancement – Changing a wetland to improve specific aquatic resource functions. Enhancement results in a gain in aquatic function but does not result in a gain in wetland area.

Establishment – Converting an upland area to a wetland or other aquatic resource. Establishment results in a gain in wetland area and functions. (Equivalent to the term ‘creation’ used previously.)

Impact – Adverse effect, whether direct, indirect, temporary, or cumulative. Typical adverse effects to wetlands or other waters include filling, draining, altering natural drainage patterns, increasing or decreasing water levels, discharging sediment or toxicants from runoff, mechanically removing wetland vegetation, altering wetland or stream buffers, or compacting wetland soils.

In-Lieu Fee Program – A program administered by a governmental or nonprofit natural resources management entity that provides compensatory mitigation and sells mitigation credits. With regulatory approval, the obligation to provide compensatory mitigation is transferred from the permittee to the in-lieu fee entity when the credit purchase is complete.

Mitigation – Avoiding adverse impacts to wetlands, streams and other aquatic resources, where practical; minimizing unavoidable impacts; and compensating for all remaining unavoidable impacts.

Mitigation Bank – A property developed for the purpose of providing compensatory mitigation in advance of authorized impacts to aquatic resources where wetlands are established, restored, enhanced, or preserved. A mitigation bank may sell credits to and assume the mitigation obligations of third parties. With regulatory approval, the mitigation obligation is transferred when the credit purchase is finalized.

Mitigation Sequencing – An ordered approach to mitigation, pursuant to [WAC 197-11-768](#), that involves analyzing the affected environment and determining the effects of projects. Mitigation sequences as follows:

- Avoiding and minimizing adverse impacts,
- Rectifying the impact by repairing, rehabilitating, or restoring the affected areas,
- Reducing or eliminating the impact over time through preservation and maintenance over the life of the impact,
- Compensatory mitigation may be used to compensate for unavoidable adverse impacts.

An avoidance and minimization checklist is available at: <https://ecology.wa.gov/water-shorelines/wetlands/mitigation/avoidance-and-minimization>

Permittee-Responsible Mitigation – Compensatory mitigation for which the permittee retains full responsibility.

Preservation – Removing a threat to or preventing a decline of aquatic resources by implementing legal or physical mechanisms to provide permanent protection. Preservation does not result in a gain of wetland area or functions.

Restoration – Changing a site so natural or historic functions are returned to a former or degraded wetland. For tracking net gains in wetland area, restoration is divided into Re-establishment and Rehabilitation. Re-establishment results in a gain in wetland area; rehabilitation results in a gain in aquatic resource function, but not in area.

Waters of the state – Lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington ([RCW 90.48.020](#)).

Waters of the United States – see current EPA [Waters of the United States](#) webpage

Wetland – In general, wetlands are areas that are normally wet enough to support plants typically adapted for life in saturated soil conditions. Washington State ([WAC 173-22-030](#)) and federal ([Corps Regulatory Program](#)) jurisdictional definitions of wetlands are slightly different.

Wetland and Stream Assessment Report – Describes the location, classification, ratings and functional assessment for each wetland based on field work by a qualified wetland biologist and a land survey. The project area for this report should include all potential work areas so the report does not have to be updated unless the project area changes.

Wetland and Stream Mitigation Plan – Describes measures taken to avoid and minimize wetland impacts and the way compensatory mitigation will be accomplished. This plan may have several iterations and levels of detail depending on the stage of design and discussions with regulatory agencies. It is finalized as permits are issued, and often is incorporated into the permit conditions.

Wetland Discipline Report – Uses the wetland boundaries and categories in the Wetland and Stream Assessment Report and the project footprint for each alternative to estimate impacts to wetlands and other waters. It may be updated as design modifications change the adverse impacts.

Wetland Reconnaissance Memo – Describes the presence or absence of wetlands based on a brief field visit. The project area for this report should include the potential work areas for all alternatives.

Water Quality Monitoring and Protection Plan – A plan that is provided and used by the department of Ecology, or certifying agency, to track the progress in achieving compliance with the state water quality standards.

431.11 Exhibits

Exhibit 431-1 Wetlands and Other Waters Flow Chart

Wetlands and Other Waters Flowchart

