

# Chapter 2 Design for Permitting and Environmental Review

<b>Chapter 2</b>	<b>Design for Permitting and Environmental Review</b>	<b>2-1</b>
<b>2.1</b>	<b>Key Terms</b>	<b>2-1</b>
2.1.1	Abbreviations	2-1
<b>2.2</b>	<b>Introduction</b>	<b>2-3</b>
2.2.1	What are Permits, Approvals, and Environmental Reviews?	2-3
2.2.2	When and How Should I Start?	2-4
2.2.3	What is Environmental Compliance?	2-4
<b>2.3</b>	<b>City of Seattle</b>	<b>2-6</b>
2.3.1	Department of Neighborhoods	2-6
2.3.2	Seattle Department of Construction and Inspections	2-6
2.3.3	Seattle Department of Transportation	2-10
2.3.4	Seattle City Light	2-12
2.3.5	Seattle Department of Parks and Recreation	2-13
<b>2.4</b>	<b>King County</b>	<b>2-13</b>
2.4.1	King County Department of Permitting and Environmental Review	2-13
2.4.2	Department of Natural Resources and Parks	2-14
2.4.3	Seattle-King County Department of Health	2-14
<b>2.5</b>	<b>Other Jurisdictions</b>	<b>2-14</b>
2.5.1	Railroads	2-14
2.5.2	Seattle Public Schools	2-15
<b>2.6</b>	<b>State of Washington</b>	<b>2-15</b>
2.6.1	State Environmental Policy Act	2-15
2.6.2	State Environmental Review Process	2-16
2.6.3	Office for Regulatory Innovation and Assistance	2-17
2.6.4	Washington State Department of Ecology	2-17
2.6.5	Washington State Department of Health	2-18
2.6.6	Washington State Department of Natural Resources	2-19
2.6.7	Washington Department of Fish and Wildlife	2-19
2.6.8	Washington State Department of Archaeology and Historic Preservation	2-20
2.6.9	Washington State Department of Transportation	2-21
<b>2.7</b>	<b>Puget Sound Clean Air Agency</b>	<b>2-21</b>
<b>2.8</b>	<b>Federal</b>	<b>2-22</b>
2.8.1	Federal Aviation Administration	2-22

## Chapter 2 Design for Permitting and Environmental Review

2.8.2	Federal Emergency Management Agency.....	2-22
2.8.3	National Environmental Policy Act.....	2-22
2.8.4	National Ocean and Atmospheric Administration Fisheries and U.S. Fish and Wildlife Service.....	2-22
2.8.5	U.S. Army Corps of Engineers.....	2-24
<b>2.9</b>	<b>Resources .....</b>	<b>2-25</b>

# Chapter 2 DESIGN FOR PERMITTING AND ENVIRONMENTAL REVIEW

This chapter of the Design Standards and Guidelines (DSG) describes commonly encountered permits, approvals, and environmental reviews for Seattle Public Utilities (SPU) capital projects and operation and maintenance activities. The primary audience for this chapter is SPU engineering and project management staff. DSG standards are shown as underlined text.

Regulatory requirements are critical-path considerations that strongly influence project risks, schedules, and costs. Constructing without meeting regulatory requirements could result in violations that cost SPU money and time—and could involve possible civil or criminal penalties. SPU’s policy ensures all work meets all applicable regulatory requirements while minimizing environmental impacts. Where appropriate, this chapter provides basic guidance on how to avoid or otherwise mitigate those impacts and points to commonly encountered regulations.

## 2.1 KEY TERMS

Abbreviations and definitions given here follow either common American usage or regulatory guidance.

### 2.1.1 Abbreviations

Abbreviation	Term
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers
CWSRF	Clean Water State Revolving Fund
DAHP	Washington State Department of Archaeology and Historic Preservation
DNR	Washington State Department of Natural Resources
DNS	Determination of Non-Significance under SEPA
DOH	Washington State Department of Health
DON	Seattle Department of Neighborhoods
DPER	King County Department of Permitting and Environmental Review
DR	Director’s Rule
Ecology	Washington State Department of Ecology
EIS	environmental impact statement (under SEPA and NEPA)

## Chapter 2 Design for Permitting and Environmental Review

Abbreviation	Term
ECA	environmentally critical area
EFH	Essential Fish Habitat
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FAA	Federal Aviation Administration
FEMA	Federal Emergency Management Agency
FPA	Forest Practices Act
HPA	Hydraulic Project Approval
IP	Individual Permit (uncommon; takes about 1 year)
JARPA	Joint Aquatic Resources Permit Application
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MUP	Master Use Permit
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOAA	National Ocean and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NWP	Nationwide Permit
ORIA	State of Washington Governor's Office for Regulatory Innovation and Assistance
OTC	over-the-counter permits
PSCAA	Puget Sound Clean Air Agency
RCW	Revised Code of Washington
RHA	Rivers and Harbors Act
ROW	right-of-way
RUP	Revocable Use Permit
SAC	SEPA Administrative Coordinator
SBC	Seattle Building Code
SBE	Seattle Biological Evaluation
SCL	Seattle City Light
SDCI	Seattle Department of Construction and Inspections
SDOT	Seattle Department of Transportation
SEPA	State Environmental Policy Act
SERP	State Environmental Review Process
SIP	Street Improvement Permit
SMA	State of Washington's Shoreline Management Act

Abbreviation	Term
SMC	Seattle Municipal Code
SMP	Shoreline Master Program
SPR	Seattle Department of Parks and Recreation
SPS	Seattle Public Schools
SPU	Seattle Public Utilities
SRO	SEPA Responsible Official
SUP	Street Use Permit
TCP	Traffic Control Plan
UMP	Utility Major Permit
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WSDOT	Washington State Department of Transportation

## 2.2 INTRODUCTION

SPU obtains all necessary federal, state, and local permits when constructing and maintaining its infrastructure. The Permitting and Compliance Toolkit found on the Wiki-PDEB (formerly SPU Forms) internal website includes additional, but uncommon, requirements. This chapter is a starting point to help you determine what permits a project may require, why they are required, and how to obtain them. However, this guide should not be the only resource used in determining permitting responsibilities. It will be useful to review the actual regulations and may be essential to work with an SPU permitting specialist or a consultant specializing in permitting (see DSG section 2.9). Updating guidance material is a continuous process due to the ever-changing nature of laws and regulations. It is the user's responsibility to use the most current information available.

### 2.2.1 What are Permits, Approvals, and Environmental Reviews?

City, county, state, and federal governments have statutes, regulations, rules, guidance, and policies that require permits and approvals, particularly for activities that may affect air, land, and/or water resources. A *permit* is a document required by law that authorizes a specific type of activity under certain conditions. For example, the U.S. Army Corps of Engineers (Corps) issues Clean Water Act (CWA) Section 404 Individual Permits (IPs). An *approval* means any document or process other than a permit that needs a signature by someone in authority at an agency having jurisdiction or control over an activity. An approval may also include documentation, certification, concurrence, easement, or license. For example, Section 106 of the National Historic Preservation Act (NHPA) requires no permit but does require consultation with, and concurrence by, the State Historic Preservation Officer at the Washington State Department of Archaeology and Historic Preservation (DAHP). *Environmental review* generally refers to the process of complying with provisions of the State Environmental Policy Act (SEPA)

and the National Environmental Policy Act (NEPA). Environmental reviews evaluate and disclose possible environmental impacts that may result from any specific governmental decision.

### 2.2.2 When and How Should I Start?

Start early! Early consideration of permitting and environmental review issues could help your project avoid future delays and increased costs. For example, a project's selected location may be a wetland; subsequent disturbance to that wetland might trigger expensive compensatory mitigation. Certain project activities (such as potholing or geotechnical exploration) conducted early in a project must still obtain all required permits and approvals and comply with all applicable environmental review provisions.

Virtually every SPU capital project and maintenance activity (except for purely planning projects) must consider permits, approvals, and environmental reviews. Contact an SPU permit and environmental review specialist (see DSG section 2.9) when a project or maintenance activity is first conceived—no later than the start of options analysis. Invite the permit specialist to meet with the project manager, design engineer, and other members of the project team, as appropriate. At the meeting, provide project information, including location(s), design options and any known information on existing environmental issues and pertinent location factors. The group should review the Permit Matrix Excel worksheet in SPU's Permitting and Compliance Toolkit to identify whether any listed federal, state, and local permits apply. If the group is unsure whether a permit is applicable, they should include it as *may be applicable* in that worksheet. It is acceptable to guess; this is the project's preliminary list.

Discuss with the permit specialist how the SEPA process might work. Consider whether the proposed activity is ~~possibly~~ exempt from SEPA or, if not, when the SEPA environmental review process might start and who would author the project's SEPA environmental checklist. The permit specialist may involve SPU's SEPA Responsible Official (SRO) and project manager in necessary follow ups.

The permit specialist may conduct further assessment to refine the list of potential permits. This might require additional information from team members. Findings from this assessment may change as new information becomes available and if project elements change. Once the list is refined, this information is transferred to the Permit and Approvals Tracking Table Excel worksheet, including ~~may be~~ *any pending, applicable* permits. The Tracking Table is used throughout project design and updated as applicable permits are identified and as the status of specific permits evolves. Consider moving permits and approvals determined to be *not applicable* to a location below the original tracking list to document their status and keep the Tracking Table complete.

During options analysis or while selecting locations and layouts, the project team should always be aware of permit requirements. The permit specialist provides direction and support and, depending on the permit type, may apply for the permit on behalf of the project manager and design engineer. The design engineer supports acquisition of permits by providing information, calculations, and plans in formats required by the regulatory agency.

### 2.2.3 What is Environmental Compliance?

In the context of an SPU project, environmental compliance simply means adhering to all environmental commitments made by SPU through all phases of project delivery. It includes

complying with the provisions of various federal, state, and local rules and regulations as well as the specific stipulations in permits and approvals issued under these authorities. Environmental compliance also means adhering to internal SPU policies, procedures, and standards, as well as interagency agreements, on a variety of environmental matters. Compliance satisfies the needs of the regulatory community and the affected public to ensure SPU is a good steward of the environment.

SPU may delegate some of its environmental responsibilities to contractors during the construction phase of project delivery. Therefore, it is critical that SPU contractors clearly understand the environmental requirements for which they are responsible. Project environmental commitments can be divided into two categories: commitments the Contractor is responsible for implementing per contract terms and commitments that SPU is responsible for implementing. As stated in the City of Seattle's (the City's) [Standard Specifications](#) section 1-07.1, the project engineer is responsible for enforcement of the contract.

The City's policy is to ensure all environmental commitments are achieved prior to project close-out. In addition, there are times before or during construction when the previously obtained environmental permits or approvals may not cover changes to project scope or a request from the Contractor, such as:

- Added work
- Change orders
- Changed site conditions (e.g., water levels higher than anticipated)
- Project delays (e.g., extending in-water work or a permit expiration date)
- Unexpected discoveries (e.g., cultural resources or contamination)
- Contractor requests (e.g., staging, withdrawing water from a stream, disposal)

These are all legitimate justifications for potentially modifying a permit, but the effects of the change must be evaluated to determine whether SPU must obtain permit modifications or re-evaluate impacts to comply with NEPA/SEPA, the Endangered Species Act (ESA), Section 106 of the NHPA, and so forth. Projects so affected should immediately contact SPU's permit specialists as soon as a project modification is proposed. The permit specialists should contact the appropriate regulatory agencies to describe the change to determine whether a permit modification or new permit is necessary. If the change requires a permit modification or new permit, the permit must be secured before the Contractor can begin the proposed work.

Although SPU may delegate environmental requirements to contractors, SPU is ultimately responsible for environmental compliance as the project owner. If an SPU project causes damage to the environment or surrounding community, the public will lose trust in the agency. Therefore, it is critical SPU staff understand environmental regulations, know how to recognize environmental issues in the field, and have confidence to report non-complaint events. This awareness, combined with a high degree of responsiveness, ensures environmental compliance.

**Tip:** *The Resources section at the end of this chapter includes links for many of the mentioned regulatory agencies. In addition, the Permit Matrix (available on the Wiki-PDEB internal website ) includes a more complete list of permits and approvals than those summarized in this chapter. The Permit Matrix also identifies key factors triggering those permits.*

## 2.3 CITY OF SEATTLE

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The City is responsible for regulating development within its municipal limits and does so by requiring that certain proposed activities obtain permits and approvals—typically pertaining to land use (zoning and shoreline development), construction (building and grading codes), historic and cultural resources, and street use.

### 2.3.1 Department of Neighborhoods

Seattle Department of Neighborhoods (DON) manages the City’s Historic Preservation program, which includes historic landmarks and historic districts. More than 450 landmarks (individual sites, buildings, vehicles, vessels, and street clocks) and eight historic districts are subject to protection by City ordinance. In accordance with processes and criteria established by ordinance, any activity proposing to alter the appearance and/or historical integrity of a designated landmark, or which is located in a historic district, is reviewed and approved by either DON staff, a citizen board, and/or the Landmarks Preservation Board, depending on the nature and scope of the proposed alteration. ~~Even~~ Proposed disturbance of elements, such as granite curbs and brick paving require prior review and approval from DON staff.

A Certificate of Approval is required for any project that would alter the appearance, which includes demolition of a protected feature of a designated landmark or a property located in a historic district. This process requires submittal of an application to DON and review by the Seattle Landmarks Preservation Board or the historic district’s review committee. [DON’s website](#) provides additional information and district boundary maps for the eight historic districts:

1. [Ballard Avenue](#)
2. [Columbia City](#)
3. [Fort Lawton](#)
4. [Harvard-Belmont](#)
5. [International District](#)
6. [Pike Place Market](#)
7. [Pioneer Square](#)
8. [Sand Point](#)

### 2.3.2 Seattle Department of Construction and Inspections

#### 2.3.2.1 Environmentally Critical Areas

The City’s environmentally critical areas (ECA) Code (Seattle Municipal Code [SMC] Chapter 25.09) governs areas of Seattle that provide critical environmental functions, such as protection of water quality and fish and wildlife habitat, or that present particular challenges for development due to geologic or other natural conditions. ECAs include:

- Steep slopes, known landslide areas, and landslide-prone areas
- Liquefaction-prone areas
- Flood-prone areas

- Seismic and volcanic hazard areas
- Wetlands
- Riparian corridors
- Peat settlement-prone areas
- Fish and wildlife habitat conservation areas
- Abandoned landfills
- Any buffers associated with these areas

Proposed development in these ECAs and their buffers typically requires preparation of a surveyed site plan and submittal of additional information on ECAs and their buffers as part of the application and review process. In some cases, Seattle Department of Construction and Inspections (SDCI) may allow exemptions to the ECA regulations or modifications to the submittal requirements. For projects that are exempt from the City's ECA provisions (under SMC 25.09.045), the ECA Code allows City departments to self-regulate for the applicable ECA provisions. Therefore, those departments do not need to obtain ECA Code review and authorization from SDCI before conducting work in ECAs. For self-regulated departments exempting work from the ECA Code, the code requires that those departments comply with the spirit and applicable provisions of the code. Typically, departments document their exempt projects' compliance with ECA provisions in a formal memorandum to the project files. If a department's project is not exempt from the City's ECA Code (under SMC 25.09.045), that project must apply for ECA review and obtain SDCI's approval or permit before proceeding.

### **2.3.2.2 Shorelines**

The State of Washington's Shoreline Management Act (SMA) is designed to manage development of the shoreline of the State, including all marine areas and larger streams and lakes. The SMA emphasizes protecting shoreline resources, accommodating all reasonable and appropriate uses, and protecting the public's right to shoreline access. SMA goals are implemented by local governments through policies and regulations established in their local Shoreline Master Programs (SMPs).

The City's SMP (SMC 23.60A) regulates use and development on and adjacent to (within 200 feet [ft] of) all shorelines of the State (marine waters and certain large freshwater bodies, including Lake Washington, Lake Union, Lake Washington Ship Canal, Duwamish River and Waterway, Green Lake, and their associated wetlands and floodplains). SMP regulations affect land use, structure bulk and setbacks, public access and view requirements, bulkheads, docks, piers, and construction practices. Some types of projects are exempt from SMP provisions, but those projects must apply for a Shoreline Exemption from SDCI. Projects not exempt from the SMP provisions must typically obtain a Shoreline Management Substantial Development Permit, a Shoreline Management Conditional Use Permit, or a Shoreline Management Variance. The Washington State Department of Ecology (Ecology) reviews all shoreline conditional use and variance permits issued by local governments. Ecology then issues its final decision after an associated public notice and appeal period. The Washington State Shorelines Hearings Board considers any appeals of Ecology's shoreline permit decisions.

### 2.3.2.3 Trees

The City values trees, which are regulated in a variety of ways. These regulations focus on three main categories of trees:

1. Trees over 6 inches in diameter, measured 4.5 ft above the ground (standard height)
2. Exceptional trees having significant value because of their size and species (as defined in Director's Rule [DR] 16-2008]) or because of their unique historical, ecological, or aesthetic value
3. Hazardous trees posing a high risk of damage to persons or property

Seattle Department of Parks and Recreation (SPR) manages trees located on SPR property; construction disturbance to trees on SPR property requires coordination with SPR. Trees located in a right-of-way (ROW) are managed by Seattle Department of Transportation (SDOT), which requires an Urban Forestry Permit (also known as a Street Tree Permit) for planting, pruning, removal, or other activity involving street trees. See DSG section 2.3.3 for more details regarding SDOT regulations of ROWs. For preservation of, as well as removal and replacement of, existing street trees in a ROW, SDOT requires posting a public notice. SDOT may allow variances from standard tree retention requirements as a component of a construction project permit based on the health of the tree or conditions on-site or in the ROW warranting relocation or removal and replacement.

SDCI protects trees on parcels by enforcing the Tree Protection Ordinance (SMC 25.11) and the ECA Code (SMC 25.09), which prescribes requirements for properties on or adjacent to certain ECAs, such as steep slopes, wetlands, streams, and shorelines. Certain activities on parcels are exempt from the Tree Protection Ordinance (SMC 25.11.030) and ECA Code (SMC 25.09.045).

Generally, disturbance to vegetation (shoot and root pruning, root disturbance, and tree removal) are managed by City Standard Specifications section 8-01.3(2)B and Standard Plans 132a, 132b, and 133. City Standard Plan 030 prescribes minimum tree clearances and offsets relative to aboveground and underground utilities. City Standard Plans 100a, 100b, 100c, 101, 110, 111, 112, and 113 prescribe planting and spacing details.

Tree removal or construction-related tree death typically triggers a mitigation requirement, whether involving SPR, SDOT, or SDCI. [Mayor's Executive Order 2023-03 \(Tree Replacement\)](#) directs City departments to replace every tree removed from City-owned property or ROWs with two or three new trees, depending on the removal circumstances. SPU complies with this executive order unless other City department requirements exceed this replacement goal. In addition, certain trees or groups of trees that have special wildlife habitat importance, such as those containing an active bald eagle nest or great blue heron communal roost, are regulated by additional statutes or rules. For example, the federal Bald and Golden Eagle Protection Act (administered by the U.S. Fish and Wildlife Service [USFWS]) regulates activities near active eagle nest trees. The federal Migratory Bird Treaty Act regulates the timing of SPU's land-clearing activities. SDCI DR 5-2007 (Great Blue Heron Management Plan) regulates activity in or near active heron rookeries.

### 2.3.2.4 Site Development, Side Sewer, and Grading Permits

SDCI reviews and evaluates applications for construction projects on parcels for compliance with:

- City stormwater code (SMC 22.800-22.808)

- Grading code (SMC 22.170)
- Side sewer code (SMC 21.16)
- Side sewer permit for temporary discharge

The City's stormwater regulations protect people, property, and the environment from damage caused by stormwater runoff. These regulations also satisfy the City's obligation to comply with its municipal separate storm sewer systems (MS4) National Pollutant Discharge Elimination System (NPDES) permit, issued by Ecology. The stormwater code (SMC 22.800-22.808) and associated DR are administered jointly by SDCI and SPU. The DRs comprise the City's Stormwater Manual. The stormwater code and Stormwater Manual address:

- Drainage control submittal and review requirements
- Discharge location for stormwater from your construction or development site
- Green stormwater infrastructure
- Erosion control requirements for your project during construction and grading activities
- Flow control and stormwater treatment requirements
- Enforcement

SPU's public works are exempt from the requirement for a grading permit (SMC 22.170.060 B.11). But all projects must meet the minimum requirements for City projects (SMC 22.800.07). The design engineer and project manager must incorporate all requirements of both the stormwater and the grading codes into the project.

For projects entirely within a ROW, SDCI may require permits for work on side sewers, including temporary discharges to the sewer or storm drain. The City's side sewer code (SMC 21.16) provides the design, construction, and permitting requirements and regulations for side sewer work. Side sewers are privately owned pipe systems used for wastewater or drainage discharges on private property and/or in a ROW. If an SDCI permit is not required, it is important the project submit record drawings for all changes to privately owned side sewers.

### **2.3.2.5 Construction (Building) Permits**

The City regulates construction on non-ROW parcels through the Seattle Building Code (SBC), which provides minimum requirements for design and construction of new buildings and alterations to existing buildings. The City has adopted the 2018 International Building Code, with amendments specific to the City. Consult SDCI's [tips for general construction requirements](#) to determine the requirements for a project. Pre-pandemic, permit advising and application services were obtained by visiting SDCI's Applicant Service Center (Seattle Municipal Tower, 20<sup>th</sup> floor) but are now provided via the Seattle Services Portal, phone, email, or chat. Consult with SDCI early in the design process for assistance in determining which permits (if any) are required for construction.

### **2.3.2.6 Demolition and Deconstruction Permits**

Demolition and Deconstruction permits are required to remove structures, including accessory structures with more than 120 square feet of projected roof area, including overhangs, as specified in SBC Section 106. Demolition generally encompasses removal of the entire structure. Although in some cases the foundation may remain to stabilize a site.

Deconstruction is the systematic disassembly of a structure to recover and salvage reusable building materials and recycle materials that cannot be reused. SPU has limited ability to remove, demolish, or deconstruct residential structures and must comply with SMC 23.40.006. Demolition or deconstruction of designated landmarks is subject to the provisions of SMC 23.40.008.

Project teams must also acknowledge that demolition or deconstruction usually involves more than just removing the structure. Other items to consider include the variety, location, and abandonment of utility services; underground storage tank decommissioning and remediation; hazardous materials, such as lead and asbestos, abatement; and waste diversion from landfill. When a city-owned structure must be removed, SPU's priority is to minimize disposal for the materials and maximize recovery. The best way to do that is through deconstruction.

### **2.3.2.7 Master Use Permit**

SDCI issues a Master Use Permit (MUP) for those projects requiring a construction permit and located on non-ROW parcels. Generally, if no construction permit is required, no MUP is required. If a construction permit is required, SDCI must issue the MUP before issuing the construction permit. The MUP is a single, umbrella land use permit that integrates the process, procedures, and review of all non-appealable and appealable land use decisions made by SDCI. The MUP generally includes discretionary land use decisions associated with a given development or use proposal, and it provides for the consolidated appeal of those land use decisions. Examples of common types of discretionary decisions made by SDCI include short plats, variances, conditional uses, shoreline substantial development, design review, and environmental review under SEPA. The land use code classifies land use (MUP) decisions into five categories based on the level of discretion and impact associated with each decision. Procedures are distinguished according to who makes the decision. For example, the Director of SDCI or the City Council), the type and amount of public notice required, and whether appeal opportunities are provided. For purposes of SEPA environmental review conducted under SDCI's MUP process, SPU typically retains its role as SEPA lead agency (see DSG section 2.6.1) along with the authority and responsibility that comes with that role. SDCI then uses SPU's SEPA environmental review documents to process MUP applications and uses its own substantive authority under SEPA to reopen SPU's SEPA DNS for SEPA conditioning during the MUP process.

### **2.3.2.8 Noise Control**

The City regulates noise through enforcement of its Noise Ordinance (SMC 25.08), which provides specific information on exterior sound level limits as well as sounds exempted from regulation. This ordinance regulates maximum noise levels when construction occurs in the evening (daytime construction noise is exempt). SPU's operation, maintenance, and capital construction projects must comply with these provisions or otherwise obtain a variance from SDCI.

## **2.3.3 Seattle Department of Transportation**

Seattle Department of Transportation (SDOT) requires permits for construction in City ROWs to manage the ROW's condition, use, and safety. ROWs encompass land platted, dedicated, condemned, established by prescription, or otherwise legally established for use by pedestrians,

vehicles, and/or utilities. SPU is required to apply for and obtain permits for its work in a ROW. SPU projects use ROWs in many ways:

- Sewer, storm, and water extensions or repairs
- Driveway, sidewalk, curb and gutter installation or replacement
- Installation of structures and utilities
- Natural drainage systems, green stormwater infrastructure, and landscaping
- Paving
- Any other excavation, staging, or pertinent installation

Street permits are not required for improvements to Seattle public ROWs that are part of a project authorized by the Director of SDOT.

### **2.3.3.1 Street Use Permits**

SDOT issues Street Use Permits (SUPs) for certain short-term, minor work or occupation in ROWs. Generally, SPU's contractor obtains the SUP.

### **2.3.3.2 Street Improvement Permits**

SDOT issues Street Improvement Permits (SIPs) to cover installation of major ROW improvements such as street paving, curbs, and sidewalks in conjunction with private or public developments on parcels. Proposed development extending into the City's ROW may require a SIP. For example, SDOT may require a SIP for a development proposing a short plat that needs a water main extension and fire hydrant. Another example might be installation of buried combined sewer tanks.

[Appendix 3I](#) of [DSG Chapter 3, Design for Construction](#) includes SIP notes, which are modified from SDOT's General Notes and have been approved by SDOT staff. Appendix 3I is a set of Sample General Notes for use with projects that must obtain a SIP. Thus, for SIP drawings, an SPU project can substitute this SPU notes set in place of SDOT's General Notes set, which were designed for private projects.

### **2.3.3.3 Utility Over-the-Counter Permits**

SDOT issues Utility Over-the-Counter (OTC) Permits for work in a ROW involving installation, repair, or extensive maintenance on a utility that affects infrastructure and does not exceed the minimum requirements triggering a Utility Major Permit (UMP).

### **2.3.3.4 Utility Major Permits**

SDOT issues UMPs for installation of underground and overhead utility mains and services in a public ROW. UMPs are distinguished from Utility OTC Permits by their greater length and/or by scope elements that require enhanced technical review. Generally, SDOT issues a UMP when the proposed work meets one or more of the following criteria:

- Work resulting in 100 or more contiguous lineal ft of ground-disturbing activity
- Work resulting in 300 or more cumulative lineal ft of spot ground-disturbing activity
- Work resulting in ground-disturbing activity within a marked or unmarked crosswalk or within an intersection

- Construction including new curb or sidewalk and/or modifications to existing curbs
- Alterations of existing grades
- Projects where scope and/or location trigger a SEPA review
- Installations involving directional drilling, regardless of length
- Utility work that requires review from an agency other than SDOT, such as SPU, Seattle City Light (SCL), or King County

### 2.3.3.5 Shoreline Street End Permits

Shoreline Street Ends are those platted streets in a ROW that run into water and provide public access and views of Lake Washington, Lake Union, the Duwamish Waterway, or Puget Sound. The City has 149 [designated shoreline street ends](#), many of which are already open to the public. City Resolution 29370 (September 1996) identified shoreline street ends as a scarce and valuable public resource that should be open for the enjoyment and benefit of the public. SDOT issues Shoreline Street End Permits (Ordinance 119673) to regulate temporary or permanent public and private uses of shoreline street ends.

### 2.3.3.6 Traffic Permits

SDOT issues Traffic Permits to establish temporary No Parking Zones that restrict regular parking spaces, thereby providing curb space for purposes such as construction, moving vans, or to clear a street for special events such as a parade. These temporarily restricted areas are not intended to be used for parking of personal vehicles and are enforced by SDOT.

### 2.3.3.7 Traffic Control Plan

A Traffic Control Plan (TCP) is a safety plan for specific project or maintenance work in the ROW. A TCP is typically developed by a project contractor for specific work and then submitted to the City department that owns the project and to SDOT for review and approval. The approved TCP would then be used by all individuals and companies engaged in that specific work. Although a TCP is not a permit or approval per se, the TCP provides safe and effective work areas for people driving, walking, and biking near the construction activity. TCPs also warn, control, protect, and facilitate flow of vehicular, bicycle, and pedestrian traffic. Typically, SDOT requires that a TCP is submitted with permit applications for SUP, SIP, and UMP, particularly if the proposed work affects an arterial street in a ROW and/or significantly affects traffic.

### 2.3.3.8 Urban Forestry Permits

SDOT issues Urban Forestry Permits for tree planting, tree pruning, and tree removal/replacement in a ROW. Permit requirements are based on specific site conditions and individual tree species.

## 2.3.4 Seattle City Light

### 2.3.4.1 Pole Attachment Permit

Seattle has more than 100,000 utility poles, most owned by SCL and many jointly owned between SCL and other parties. Federal Communication Commission rules allow attachments to these poles by third parties. As a result, SCL issues Pole Attachment Permits to regulate use of

their utility poles. Prior approval from SCL is required for the relocation, modification, temporary support, and temporary or permanent use of SCL poles.

## 2.3.5 Seattle Department of Parks and Recreation

### 2.3.5.1 Revocable Use Permit

SPR issues Revocable Use Permits (RUPs) for non-park uses of its parklands when those uses limit or diminish the public's ability to use or enjoy those areas, even temporarily. SPR is responsible for preserving and protecting Seattle's parklands, such as parks, playgrounds, viewpoints, greenbelts, and other land under SPR's jurisdiction, including certain designated park boulevards in the City (e.g., Lake Washington Boulevard). To preserve the public character of parklands and assure their availability for public use and enjoyment, SPR attempts to eliminate and prevent unauthorized non-park uses on lands under SPR jurisdiction and to limit authorized non-park uses to the fullest extent practicable. RUPs are issued for making repairs or changes to non-park structures located on parklands, installing or replacing utility lines, staging materials, and adding or removing landscaping. RUPs are issued pursuant to SPR's Policy for Non-Park Uses of Park Property (endorsed by City Council Resolution 29475 [1996]). SPR usually issues RUPs with a daily fee provision. Those fees can quickly accumulate over time, which incentivizes projects to minimize impacts to SPR parklands.

Some Seattle streets are formally designated as park drives or boulevards or 'park boulevards' and are under the jurisdiction of SPR as part of the City's extensive parkland system. These streets may or may not have the term boulevard in their name. A complete listing of streets under the jurisdiction of SPR is available as [Appendix I to Title 15 SMC](#). Through an agreement between SPR and SDOT, SDOT is responsible for issuing permits for uses affecting the paved street surface of park boulevards. Any disturbance to unpaved areas of park boulevards is subject to SPR review and approval, usually in the form of a RUP.

Projects potentially affecting SPR properties are typically required to present early designs to SPR's Pro-View Committee to identify issues before the design progresses substantially. However, prior to the Pro-View Committee's review, projects must be reviewed by SPR's Property Committee, which is composed of SPR staff and makes decisions about use of SPR property. The Property Committee reviews conceptual proposals and determines whether a project should be reviewed by the Pro-View Committee.

## 2.4 KING COUNTY

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### 2.4.1 King County Department of Permitting and Environmental Review

King County Department of Permitting and Environmental Review (DPER) issues land use and building permits for property located on parcels in unincorporated King County, including Shoreline Management Program permits, clearing and grading permits, critical area alteration exemptions, ROW permits, stormwater code (drainage) permits, and many other kinds of permits. Refer to DPER's [Customer Information Bulletin 28 \(clearing and grading permits\)](#) and DPER's [Customer Information Bulletin 31 \(ROW use permits\)](#). If construction is under, on, or

over a King County ROW or County-owned parcels, projects must coordinate early with King County Real Estate Services in the Facilities Management Division. Consult the King County permitting fees link in DSG section 2.9 to help with project cost projections and budgeting.

## 2.4.2 Department of Natural Resources and Parks

### 2.4.2.1 Wastewater Treatment Division

The Wastewater Treatment Division of King County Department of Natural Resources and Parks issues two types of permits:

- **Connection to a King County sewer main.** If a project needs to physically connect to a King County sewer main, approval must be obtained from King County. There are many King County mains in the city. The design engineer must coordinate directly with the County's Wastewater Treatment Division to determine specific requirements for plans, for design review, for inspections, and to determine whether a permit or approval is required.
- **King County industrial wastewater discharge approval.** A project or facility proposing to send stormwater, wastewater, or industrial waste to the King County sewer system, either during construction or as part of the completed project, must obtain a King County industrial wastewater discharge approval or permit. King County may condition the approval or permit to limit chemical constituents, temperature, and physical attributes (e.g., total solids) of the proposed discharge.

## 2.4.3 Seattle-King County Department of Health

The Seattle-King County Department of Health is the permit authority for plumbing and gas piping, including plumbing and pumps for rainwater harvesting. Pre-pandemic, there was walk-in service in SDCI's Applicant Services Center at the Seattle Municipal Tower, 20<sup>th</sup> floor, but those services are now obtained through the Department of Health's online portal. The Department of Health also issues Solid Waste Operating Permits for recycling and transfer stations and landfills.

## 2.5 OTHER JURISDICTIONS

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SPU operates infrastructure or owns properties in areas outside of the City's municipal limits. Design engineers need to know what county and other local jurisdictions their project is located within and comply with all applicable regulations and laws of those jurisdictions. Tukwila, Shoreline, Mercer Island, Bellevue, Renton, and King County are examples of neighboring jurisdictions in which SPU operates facilities or has assets.

### 2.5.1 Railroads

Railroads and federal marshals strictly enforce federal railroad safety provisions. All project personnel working in or within a certain distance (e.g., 25 ft.) of the centerline of the nearest track are required to be certified-trained in railroad safety or be accompanied by railroad safety personnel. For construction or maintenance of utility assets within the railroad ROW, railroads

require adherence to certain ROW or encroachment policies (e.g., Burlington Northern Santa Fe's (BNSF) Utility Accommodation Policy) or more typically require certain permits (e.g., BNSF's Temporary Occupancy Permit). Project teams should coordinate with railroads early in a project because identifying and resolving permit issues involves multiple steps and typically requires long lead times. Three railroads operate within Seattle's municipal limits: BNSF, Union Pacific Railroad Company, and the short-line Ballard Terminal Railroad.

## 2.5.2 Seattle Public Schools

All work on or near public school properties requires coordination with both administrators for the local school(s) and the Seattle Public Schools (SPS) district staff. For certain encroachments or rights-of-entry, SPS may require a memorandum of understanding or, if an exchange of money is required, a memorandum of agreement. Project teams should coordinate early with SPS, as resolving permit issues involves multiple steps and typically requires long lead times.

## 2.6 STATE OF WASHINGTON

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### 2.6.1 State Environmental Policy Act

SEPA and SMC 25.05, and the similar federal NEPA, direct state/local and federal agencies, respectively, to contemplate environmental impacts in their decision-making. These statutes attempt to ensure a fully informed and well-considered decision supported by critical thinking and reasoned analysis of the potential environmental consequences of a proposed agency action. This goal is pursued by means of a formal environmental review process that evaluates and discloses potential environmental effects of a proposed action and specifically identifies effects that may be significant.

Unless a project is a purely planning effort or is specifically determined to be exempt from SEPA provisions, essentially all SPU projects, adopted policies, adopted plans, and programs must be evaluated under SEPA for potential effects on the natural and built environments. Agency decisions subject to SEPA and/or NEPA environmental review may be related to issuing permits for constructing public facilities, private projects, or adopting regulations, policies, or plans. Information provided during a project's environmental review allows agency decision-makers, applicants, and the public to understand how a proposal might affect the environment. This information could be used to change a proposal to reduce likely impacts or to condition or deny a proposal when significant adverse environmental impacts are identified.

This environmental review covers elements of the environment as diverse as land, air, water, plants, and animals, as well as impacts related to noise, traffic, utilities, aesthetics, recreation, cultural resources, and housing. This formal review assesses and discloses environmental impacts that may be reasonably expected from the City's decision making on which projects, activities, or options to move ahead.

For purposes of SEPA compliance, SPU is the lead agency for conducting environmental reviews of its actions. Certain types of proposed activities are exempt or excluded from provisions of SEPA and/or NEPA, respectively. SPU policy requires that SPU's SRO makes and documents all exempt determinations for purposes of SEPA compliance. The lead federal agency makes determinations related to exclusions from NEPA provisions.

Under NEPA, a federal agency would be the lead agency for conducting environmental reviews of SPU projects. With some important exceptions, NEPA engages for an SPU project when that project involves a federal nexus such as federal funding, certain federal permitting, or certain federal approval of the proposed action. Projects excluded from NEPA review may still require SEPA review. In addition, note the SEPA (and NEPA, if applicable) environmental review or exemption review process must be completed before certain permits can be issued by their regulatory agencies.

Like all City departments, SPU is self-regulating for environmental reviews conducted for SEPA compliance, which means the project team typically prepares the environmental documentation--an exemption memorandum, an environmental checklist, or environmental impact statement[EIS]--and submits it to SPU's SRO for review, concurrence, and public notification, if required. The project manager is responsible for ensuring the project complies with the environmental review and procedural provisions of [SEPA](#) and/or [NEPA](#).

Typically, the project manager begins planning for environmental review during the Options Analysis phase (see [DSG Chapter 1, Design Process](#)). Early consideration of potential environmental effects is critical to maintaining transparency and trust with regulatory agencies, community groups, and stakeholders. Projects should maintain a decision log to document how those adverse effects have been and would be avoided, minimized, or mitigated. Electronic and paper records should support the decision log in terms of tracking how decisions were made, agency and public comments, and SPU's responses to those comments, to document how opposing views were considered during project development and design.

Certain proposals may be determined to have probable significant environmental impacts and would thus be required to prepare an EIS. However, most of SPU's projects are determined to have non-significant adverse impacts on the environment or are determined to be exempt. Those non-exempt projects must undertake publication of a Determination of Non-Significance (DNS), which includes both public comment and appeal periods. Both SEPA and NEPA processes require citizen participation that should build on previously completed community outreach. For example, the SEPA/NEPA process should be coordinated with public engagement for facility siting to identify comments already addressed, avoid duplication of work, and present a streamlined process to the public. However, SEPA and NEPA environmental review processes are not considered community outreach processes or substitutes for such outreach.

### 2.6.2 State Environmental Review Process

State Environmental Review Process (SERP) is a NEPA-like process required for any project that may receive federal funds through the Clean Water State Revolving Fund (CWSRF) administered by Ecology or the Drinking Water SRF administered by the Washington State Department of Health [DOH]. Requirements include SEPA documentation, cost effectiveness analysis, public participation, and compliance with identified federal laws, known as crosscutters) NEPA compliance may substitute for required SEPA compliance. If a federal agency has already reviewed a project against the federal crosscutters, the applicable state agency may adopt that agency's analysis. In particular, SERP requires compliance with Section 106 of the NHPA or [Washington State Executive Order 21-02](#), which may require substantial time to acquire. The SEPA, NEPA, and/or SERP processes can be redundant, so early identification of likely funding sources is important and can ensure a more efficient process.

### 2.6.3 Office for Regulatory Innovation and Assistance

State of Washington Governor's Office for Regulatory Innovation and Assistance (ORIA) is an excellent source of information on permitting in the State of Washington. Their [Regulatory Handbook](#) contains information about local, state, and federal environmental permits, approvals, and licenses, providing:

- In-depth information about environmental permits, approvals, and licenses
- Explanations of why and when each permit is needed
- Links to state and federal statutes authorizing each permit

### 2.6.4 Washington State Department of Ecology

Ecology issues several kinds of permits intended to protect the quality of the state's ground and surface water resources. The primary permits and regulations for this are NPDES permits, well-drilling permits, water rights permits, CWA Section 401 certification--related to Corps permitting--and coastal zone management consistency determinations.

**NPDES construction stormwater general permits.** If a project disturbs more than 1 acre of ground or there is the possibility that, during construction, stormwater could runoff from the site and into surface waters or conveyance systems leading to surface waters of the state, coverage under Ecology's Construction Stormwater General Permit is required. Coverage may also be required, regardless of project size, if it discharges to a CWA Section 303d impaired water body. Consult the Frequently Asked Questions on the SPU Forms internal website, under Permit Assistance, for a summary of requirements.

**Water rights.** The waters of Washington State collectively belong to the public and cannot be owned by any one individual or group. Instead, individuals or groups may be granted rights to use them. A water right is a legal authorization to use a pre-defined quantity of public water for a designated purpose. This purpose must qualify as a beneficial use. Beneficial use involves application of a reasonable quantity of water to a non-wasteful use, such as irrigation, domestic water supply, or power generation. State law requires certain users of public surface or ground waters to receive approval from Ecology prior to using water, in the form of a water right permit or certificate. A temporary water right may be required in certain instances, such as needing to control dust during construction.

**Well-drilling permits.** Ecology regulates installation and decommissioning of wells of most types, including:

- Water wells
- Instrumentation wells
- Monitoring wells
- Observation wells
- Geotechnical soil borings
- Piezometers
- Vibrating wire piezometers
- Spill response wells
- Remediation wells

- Injection points
- Vapor extraction wells
- Ground source heat pump boring and grounding wells.

Ecology must be informed by means of a Notice of Intent at least 72 hours in advance of any work that constructs or decommissions a regulated well. For geotechnical or environmental work completed in-house, SPU's Geotechnical Engineering group typically hires a licensed driller who informs Ecology and files the Notice of Intent on behalf of SPU. When a geotechnical or environmental consultant is used, it may be prudent to confirm the consultant's drilling subcontractor has completed this task. The drilling subcontractor files follow-up documentation (well or boring logs) with Ecology. Investigational soil borings and wells used only for groundwater monitoring, soil and vapor sampling, or geotechnical information are exempt from all drilling fees but must still comply with Ecology's notification requirements. Wells installed or decommissioned in wetlands or other waters of the U.S. may require permits under Sections 401 and 404 of the CWA, Section 10 of the Rivers and Harbors Act (RHA), or other federal and/or City permits or approvals. All well installation and decommissioning activity must also satisfy SEPA environmental review provisions.

**CWA Section 401 water quality certification and coastal zone management consistency determination.** In the State of Washington, the U.S. Environmental Protection Agency (EPA) has delegated its review and approval authority, under the CWA Section 404 and the Coastal Zone Management Act, to Ecology. Ecology has pre-certified some Corps Nationwide Permits (NWP) for these federal statutes, but some NWPs and all Corps IPs do not include Ecology's prior-certification. For those latter NWPs and all IPs, a Joint Aquatic Resources Permit Application (JARPA) must be submitted to Ecology for approval. The Corps and Ecology recommend that a project always submit a JARPA application to Ecology at the same time it is submitted to the Corps. Issuance of a Section 401 certification means that Ecology has reasonable assurance the applicant's project will comply with state water quality standards and other aquatic resources protection requirements under Ecology's authority. Conditions of the 401 certification become conditions of the federal permit or authorization, which subsequently become project environmental commitments. Construction activities located in coastal counties, including King County, that need a federal permit or will receive federal funds require certification that they are consistent with Washington's Coastal Zone Management Program.

### 2.6.5 Washington State Department of Health

DOH works closely with local health jurisdictions, other agencies, private-sector practitioners, and citizens to develop and implement standards for on-site sewage treatment and disposal systems and certain public drinking water systems. DOH standards cover performance, application, design, operation, and maintenance. DOH provides consultation on siting, design, installation, operation, and maintenance for the following SPU infrastructure: backflow devices and unfiltered surface drinking water supplies (described further in the sections below).

#### 2.6.5.1 Backflow Devices (Potable Water)

In backflow conditions, contaminants may enter a drinking water supply through unprotected cross-connections. Sometimes the contaminant is confined to the customer's plumbing system.

At other times, the contaminant may enter the distribution system. DOH maintains a listing of acceptable backflow devices.

### **2.6.5.2 Unfiltered Surface Drinking Water Supplies**

DOH regulates drinking water supplies, including SPU's South Fork Tolt River municipal supply, Cedar River municipal water supply (an unfiltered surface water supply), and Highline well-field. DOH typically reviews and informally approves all significant construction projects affecting drinking water sources or water supply treatment systems. The design engineer should contact SPU's Director of the Water Line of Business for assistance with design issues and interactions with DOH.

## **2.6.6 Washington State Department of Natural Resources**

### **2.6.6.1 Activities on State-Owned Aquatic Lands**

Washington State Department of Natural Resources (DNR) requires approval for any work affecting state-owned aquatic lands, which include navigable lakes, rivers, streams, marine waters, and many beaches and tidelands. If a project is on state-owned aquatic lands, DNR may require a lease or other approval. SPU's Facilities and Real Property Services usually works with project teams to obtain this authorization. Any activity situated on state-owned aquatic lands should be raised immediately to the project manager and SPU management for a policy determination.

### **2.6.6.2 Forest Practices Act Permit**

DNR administers the Washington State Forest Practices Act (FPA) and may require a permit for certain forest practices such as harvesting timber, salvaging standing and down wood, constructing forest roads, opening or expanding a rock pit on forestland for forestry use, installing and replacing water crossings on forest roads, and applying forest chemicals with an aircraft. Some FPA approvals, such as forestland conversions, are delegated to counties, including King County.

## **2.6.7 Washington Department of Fish and Wildlife**

Washington's State Hydraulic Code (Revised Code of Washington [RCW] 77.55 and Washington Administrative Code [WAC] 220-110) is intended to protect all fish life from damage by construction and other activities in all waters of the state. The code is implemented through a permit called the Hydraulic Project Approval (HPA), obtained from the Washington Department of Fish and Wildlife (WDFW). An HPA is typically required for any construction activities that will use, divert, obstruct, or change the natural flow or bed of any such waters, including culvert work, stream realignment, bridge replacement, and any work within, over, or near waters of the state. This includes bed reconfiguration and all construction or other work waterward, under, and over the ordinary high-water line (OHWL), including dry channels, and may include projects landward of OHWL (e.g., activities outside OHWL that will directly affect fish life and habitat, falling trees into streams or lakes, bridge maintenance, and dike construction). Issued HPAs typically include permit provisions that become environmental commitments for the project. Culvert and bridge projects involving watercourses and waterbodies must comply with [WDFW's](#)

[fish and flow passage design requirements](#) for those structures. Stormwater and combined sewage outfalls must comply with the hydraulic code for outfall structures (WAC 220-110-170).

## 2.6.8 Washington State Department of Archaeology and Historic Preservation

Generally, SPU projects must consult with a professional archaeologist—and then implement his/her recommendations—to comply with RCW Chapter 27.53.060 (Disturbing archaeological resource or site—Permit required—Conditions—Exceptions—Penalty). Professional archaeologists explain it thusly: *“As soon as you disturb any historic or prehistoric archaeological resource or site—whether or not you had prior knowledge such resources were present— you are immediately in violation of this RCW unless you have a permit from DAHP for those disturbances. If you disturb such resources without a permit and had prior knowledge, or had a professional recommendation to do pre-construction investigations or monitor construction and do not follow such recommendations, then the risk of penalty is high.”* The RCW implements independently; that is, there need not be any federal nexus and no need for SEPA linkages or similar.

Most SPU projects that disturb native soils or soil sediments require review for cultural resources before work commences. This includes early project activities such as geotechnical borings and test pits. Additionally, many SPU projects require review for historic properties or potentially historic structures. SPU’s permit specialists coordinate this archaeological and historical research for SPU and assist SPU in complying with state and federal laws that apply to sites; historic structures; and state, federal, and tribal consultation. SPU’s program is largely consultant-supported, making architectural historians and professional archaeologists available to project managers. For review and permitting of all cultural resources and historic properties, the design engineer should directly consult SPU’s permit specialists (see DSG section 2.9).

[DAHP’s website](#) summarizes laws and regulations affecting archeological and historic properties. Some requirements are listed in City Standard Specifications section 1-07.5(6). In addition to the requisite general review for cultural resources and historic properties, projects may require the following approvals or permits:

**NHPA Section 106 review.** DAHP and affected tribes must be consulted when projects are subject to review under NHPA Section 106. Section 106 requires that all federal agencies account for the effect of their actions on historic properties. Requirements of Section 106 consultations apply to any project with a federal nexus. A federal nexus exists when a project or activity involves direct or indirect federal funding, including federal funds provided through the state, needs a federal permit or approval, involves federal lands, or participates in a federal program. DAHP and affected tribes are consulted to determine whether the site has been previously surveyed, whether there are identified historical resources on-site, and whether the property is listed or eligible for listing on the National Register of Historic Places. This review is required for any federal action, including issuance of federal permits such as may be required by Section 404 of the CWA or Section 10 of the RHA.

**Archeological Excavation and Removal Permit.** RCW Chapter 27.53.060 (Disturbing archaeological resource or site—Permit required—Conditions—Exceptions—Penalty) requires that an Archaeological Excavation and Removal Permit must be obtained before any excavation that may alter or remove an archaeological resource, native Indian graves, cairns, or painted or glyptic records. This permit is required under the Washington State Archaeological Sites and Resources Act and Indian Graves and Records Act—statutes intended to preserve and protect

Washington’s cultural heritage. Excavation permits from DAHP apply only to SPU projects without a federal nexus. This permit is not required for cultural resource investigations conducted to comply with NHPA Section 106.

**Inadvertent discovery plan.** To plan for unanticipated discoveries, all SPU projects involving ground disturbance in native soils or sediments should have either: 1) a project-specific Inadvertent Discovery Plan (IDP) or Monitoring and IDP (MIDP) (prepared by a professional archaeologist) or 2) SPU’s generic IDP (typically completed by the PM). The plan should clearly describe what would be done if archaeological materials or human remains are discovered during construction. SPU’s permit specialists have examples of such plans and can connect your project to a professional archaeologist who would prepare the plan for your project. The IDP/MIDP is typically included in a project’s Project Manual and should be on-site for the duration of all ground-disturbing activities during construction.

## 2.6.9 Washington State Department of Transportation

Washington State Department of Transportation (WSDOT) regulates all work in, using, or otherwise affecting its fee-owned property and ROWs using a permit program that includes developer agreements, construction agreements, franchise agreements, Access Connection Permits, Limited Access Break, general permits, Transit Permits, and Survey Permits. General permits are typically issued for miscellaneous work to be conducted in WSDOT ROWs. The type of work covered under a general permit would include landscaping, mowing, hazard tree removal, surveying, and soil testing for hazardous waste contamination. Franchise agreements are required for occupancy of a WSDOT ROW by utilities that cross the highway and for utility installations 300 ft or less longitudinal to the highway. Allow long lead time for permit issuance.

WSDOT also requires establishment of a franchise for occupancy of a highway ROW by utility facilities that continue longitudinal to the highway for more than 300 ft. Projects requiring a franchise should anticipate a long lead time for issuance.

## 2.7 PUGET SOUND CLEAN AIR AGENCY

Puget Sound Clean Air Agency (PSCAA) regulates the handling of asbestos, as well as other hazardous air pollutants such as lead, wood smoke (and other fine particulates), and air toxics. Historically, a wide variety of construction materials contained asbestos. Asbestos is most commonly found in pre-1985 buildings and various underground piping and conduits. If left undisturbed, asbestos is not a hazard. However, if disturbed through deterioration, demolition, or deconstruction, asbestos fibers may be released and become a human health hazard and environmental pollutant. For example, asbestos fibers have been associated with lung cancer. Anyone who works or has the potential of working with products containing asbestos must fully comply with all regulatory requirements and make a Notification of Construction to the PSCAA. In addition, the Washington State Department of Labor and Industries requires notification 10 days prior to starting an asbestos removal project involving more than 48 square ft of material (or 10 linear ft of piping or ducting).

## **2.8 FEDERAL**

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### **2.8.1 Federal Aviation Administration**

The Federal Aviation Administration (FAA) administers Title 14 of the Code of Federal Regulations (14 CFR) Part 77 with the prime directive of promoting air safety and efficient use of navigable airspace. To accomplish this mission, aeronautical studies are conducted based on information provided by project proponents on FAA Form 7460-1 (Notice of Proposed Construction or Alteration). Projects or equipment located on an airport or meeting or exceeding height thresholds that may affect navigable airspace (such as water storage tanks and cranes) must file Form 7460-1. The FAA also exercises jurisdiction over construction or establishment of landfills near public airports and over the construction of hazardous wildlife attractants, such as wetland mitigation projects, near airports.

### **2.8.2 Federal Emergency Management Agency**

Floods are a common hazard in the Seattle area. Flooding effects can be localized, impacting a neighborhood or community, or large and affecting entire river basins. Overland flooding occurs outside a defined river or stream, such as when a levee is breached, but can be destructive. Flooding can also occur when a dam breaks, producing effects similar to flash floods.

Many creeks, lakes, and rivers in Seattle have Federal Emergency Management Agency (FEMA)-designated and mapped floodplains and floodways; however, some do not. SMC strictly regulates building in floodplains, primarily through its ECA provisions [SMC 25.09]. Development in these areas requires preparation of a surveyed site plan and submittal of additional information relating to critical areas and their buffers as part of the application and review process.

### **2.8.3 National Environmental Policy Act**

As described in DSG section 2.6.1, NEPA is a federal environmental law that sets procedural requirements for all federal agencies to prepare categorical exclusions, Environmental Assessments (EAs), and EISs. EAs and EISs contain statements of the environmental effects of proposed federal agency actions. NEPA applies to all projects with a federal nexus, which exists if a project involves federal funds, requires a federal permit, or is located on federal land. A federal nexus requires the lead federal agencies to conduct NEPA environmental review of their federal agency actions. NEPA review usually suffices for SEPA review. If a project has no federal nexus, then that project must comply only with the environmental review provisions of SEPA.

### **2.8.4 National Ocean and Atmospheric Administration Fisheries and U.S. Fish and Wildlife Service**

#### **2.8.4.1 Endangered Species Act**

ESA establishes criteria for the listing and protection of threatened and endangered plant and animal species. National Ocean and Atmospheric Administration (NOAA) Fisheries (also known

as National Marine Fisheries Service or NMFS) and the USFWS administer the ESA. USFWS regulates listed plants, terrestrial animals, non-marine aquatic species, and marine mammals while on shore. NOAA Fisheries regulates listed marine mammals while in the ocean, marine species (including plants and wildlife), and anadromous fish. ESA compliance is required only if there is a federal nexus, which means that another type of federal element is involved with the project, such as a federal permit, federal funding, and federal property. A JARPA submitted to the Corps for federal permits triggers ESA review if any ESA-listed species and their designated critical habitat could be affected by the proposed project.

To streamline ESA review for City projects located in and adjacent to the City’s municipal limits, federal agencies and City departments cooperated to establish the Seattle Biological Evaluation (SBE). Because the SBE does not contain information outside of the City’s municipal limits, individual biological evaluations or biological assessments must be prepared for those projects outside the City’s municipal limits. Any City department can use the SBE for projects or activities within or adjacent to the city municipal limits and if all of the following criteria are met:

- Needs a Corps permit
- Needs a biological evaluation or biological assessment
- Uses any of the 13 construction methods or activities described in the SBE

#### **2.8.4.2 Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) is the primary federal law governing management of marine fisheries in U.S.-jurisdictional federal waters. Federal agencies such as the Corps are required to consult with NOAA regarding actions that are authorized, funded, or undertaken that may adversely affect Essential Fish Habitat (EFH) for certain fisheries. Consultation with NOAA is required if an action could adversely affect EFH. SPU develops materials for agency review. The federal agency must provide NOAA with an assessment of the action’s impacts on EFH, and NOAA provides the federal agency with EFH conservation recommendations to avoid, minimize, mitigate, or otherwise offset resulting adverse effects. Federal agencies must provide a detailed written explanation to NOAA describing which recommendations, if any, it has not adopted.

#### **2.8.4.3 Migratory Bird Treaty Act**

The Migratory Bird Treaty Act (MBTA) makes it unlawful for anyone, at any time, by any means or in any manner, to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to federal regulations. The migratory bird species protected by the MBTA are listed in 50 CFR 10.13. USFWS has statutory authority and responsibility for enforcing the MBTA, which implements conventions between the U.S. and four countries (Canada, Mexico, Japan, and Russia) for the protection of migratory birds. Anyone harming a migratory bird without a permit is subject to potential prosecution.

Generally, SPU’s land-clearing activities are most vulnerable to violating this statute because they may destroy nests and hatchlings. Removing nests from SPU assets such as pump stations, warehouses, and so forth may also violate the MBTA. Wildlife biologists recommend conducting such activities outside of the breeding bird season, which generally begins on March 1 and ends on August 31 in the Seattle area. Otherwise, a qualified wildlife biologist should conduct on-site nesting surveys or the project must obtain a permit from USFWS.

#### **2.8.4.4 Bald and Golden Eagle Protection Act**

The Bald and Golden Eagle Protection Act (BGEPA) makes it illegal to import, export, or take bald or golden eagles or to sell, purchase, or barter their parts or products made from them, including their nests or eggs. The BGEPA defines *take* as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Generally, SPU project activities vulnerable to violating this statute are land-clearing and noisy construction activities within 660 ft of an active nest site. In those cases, SPU must coordinate with USFWS to determine construction conditions, including any construction timing windows. A usual construction blackout period begins January 1 and ends August 15 in the King County area.

### **2.8.5 U.S. Army Corps of Engineers**

#### **2.8.5.1 Clean Water Act**

CWA provides for relatively comprehensive federal regulation of water pollution. CWA Section 404 regulates discharges of dredged and fill material into waters of the U.S., which include special aquatic sites such as wetlands. The Corps administers Section 404 and authorizes or permits all discharges of dredged or fill materials in federal waters by issuing IPs, letters of permission, authorizations for use of NWPs, or programmatic or regional permits. NWPs streamline Section 404 permitting for specific activities. Only the Corps can determine what resources and proposed activities come within their regulatory jurisdiction and what type of authorization or permit is required.

In permitting or authorizing CWA-jurisdictional activities, the Corps must implement various legal requirements, which may entail consulting or coordinating with other federal agencies, states, tribes, the public, and other parties. In particular, the Corps is required to ensure its permitting and authorization activities comply with other applicable federal statutes, including NEPA, ESA, MSFCMA, Section 106 of the NHPA, and Coastal Zone Management Act (all of which are discussed in previous sections of this chapter). The Corps must also consult with the relevant state or tribal historic preservation officer(s), as appropriate.

SPU has established pre-application opportunities to encourage early consultation with the Corps. Engaging these opportunities is usually a critical step for projects that may need a Corps permit or authorization. The design engineer should not try to interpret federal codes but should work with the project manager and have an SPU permit specialist lead this process. To apply for a Corps permit or authorization, projects must submit a JARPA. Conditions of any Corps-issued permit or authorization become project environmental commitments. SPU and its responsible employees face possible individual civil and criminal liability for violations of the CWA and/or CWA permit or authorization conditions.

#### **2.8.5.2 Rivers and Harbors Act**

Section 10 of the RHA regulates work in navigable waters or when projects would create obstructions (including excavation and fill activities) to the navigable capacity of waters of the U.S. Any work in, over, or under a navigable water of the U.S. may require a Section 10 permit. Navigable waters are a subset of waters of the U.S. and generally include all marine waters plus the lower portions of rivers and major tributaries.

The Corps administers the RHA and authorizes or permits regulated activities in those navigable waters by issuing IPs, letters of permission, authorizations for use of NWPs, or programmatic or

regional permits. The Corps determines the type of authorization or permit needed based on information provided in the JARPA and any other documents and discussions that have been provided. A JARPA is used to apply for an RHA Section 10 permit. Conditions of any Corps-issued permit or authorization become project environmental commitments. SPU and its responsible employees face possible individual civil and criminal liability for violations of the RHA and/or RHA permit conditions. If both an RHA Section 10 and CWA Section 404 permit are required, the Corps issues a single permit or authorization covering both sets of requirements.

## 2.9 RESOURCES

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### SPU Permitting and Environmental Review Specialists

Certain SPU staff specialize in environmental review and permitting. They assist with early and continued scoping and technical support for local, state, and federal environmental permitting and environmental review. They also manage various consultant contracts and inter-agency agreements to support SPU's efforts to obtain required permits and approvals.

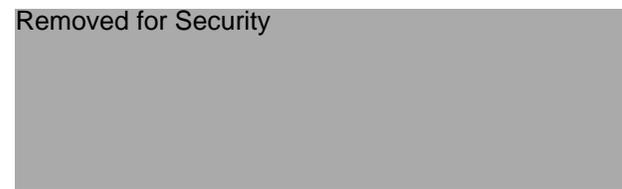
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### SPU Contacts for SEPA

As stated above, certain SPU staff assist in SEPA assessment, coordination, and document preparation. Other SPU staff with SEPA roles include the SRO and the SEPA Administrative Coordinator (SAC). Permit specialists and the project manager/lead work with the SRO in developing the SEPA strategy and documenting approval, and with the SAC on required timing and document issuance and filing.

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### Federal and Seattle Department Agreements

**EPA - delegated lead agency authority.** EPA has delegated SPU as lead agency for compliance with Section 106 of the NHPA for certain types of SPU projects. This authority includes assessment, reporting, and consultation with DAHP and tribes on archeological and historical preservation issues. A similar authority exists for compliance with the ESA. SPU is delegated lead agency authority only when a specific SPU project has an EPA-related federal nexus and is not likely to affect historic or cultural resources. Consult an SPU permitting specialist to determine whether a project meets requirements of these delegated authorities.

**SDCI agreement.** SPU manages an agreement with SDCI to provide two facilitators, one each from the Land Use and the Engineering Services groups (as of April 2023, Carly Guillory for land use permits and Andrew Sandberg for construction [building] permits). Access to the facilitators

is described in Wiki-PDEB internal website, under SDCI Permitting Assistance. Facilitators provide early project input, assistance with SDCI permit applications, coaching, internal coordination and expedited review for SDCI permits. As part of the agreement, SPU projects pay for facilitator services.

**SDOT agreement.** SPU manages an agreement with SDOT that allows SPU to fund SDOT staff to facilitate and coordinate application and receipt of SDOT permits for SPU projects. These services include assistance with permit applications and coordination for expedited reviews. More information is available on SPU Wiki-PDEB internal website under Street Improvement Permit.

**Seattle District, Corps.** SPU manages an agreement with the Seattle District of the Corps to provide expedited processing of City applications for CWA and RHA permits for its capital projects and operations and maintenance activities. This agreement requires the Corps to designate one specific staff person to be the City's project manager, who is available for early and informal consultation and who processes the City's applications. The City pays for those services, as allowed by Section 214 of the federal Water Resources Development Act of 2000. SPU advances funds to the Corps for these services; the Corps then draws down that account and regularly sends account statements to SPU. To recover its extra-departmental costs, SPU invoices all other City departments that use the Corps services under this agreement.

## Websites

Helpful resources available on SPU's Wiki-PDEB internal website or on SPU's public facing webpages include:

- SDCI Permit Assistance
- Permitting and Compliance Toolkit
- Permit Assistance
- [Seattle Biological Evaluation](#)
- Street Improvement Permit
- Utility Major Permits

Other useful permitting, approval, and SEPA/NEPA resources include:

- [Corps of Engineers – Seattle District Regulatory Branch – Permit Guidebook](#)
- [King County Department of Permitting and Environmental Review](#)
- [King County Permitting Fees](#)
- [King County Real Estate Services](#)
- [King County Industrial Waste Program](#)
- [Public Health – Seattle & King County](#)
- [Seattle Biological Evaluation](#)
- [Seattle Department of Neighborhoods - Historic Preservation Program](#)
- [Washington State Department of Ecology's SEPA website](#)
- [Washington Governor's Office for Regulatory Innovation and Assistance](#)
  - Includes the [Washington Regulatory Handbook](#)

- [Washington State Department of Archaeology and Historic Preservation](#)
- [Washington State Department of Ecology's Construction Stormwater General Permit](#)
- [Washington Department of Ecology's Water Quality and Coastal Zone approvals](#)
- [Washington State Department of Ecology's Coastal Zone Management Program](#)
- [Washington State Department of Ecology's Well Construction information](#)
- [Washington State Department of Fish and Wildlife – Hydraulic Project Approval](#)
- [Washington State Department of Transportation - environmental website](#)
- [Washington State Department of Natural Resources – Aquatic Lands and Forest Practices](#)

## Contacts

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