

# Applicant Guide to the State Environmental Review Process

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.



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# 1. Purpose of State Environmental Review Process Guide

The purpose of the State Environmental Review Process (SERP) guide is to ensure that agencies that seek funding through the Oregon Department of Environmental Quality's Clean Water State Revolving Fund, CWSRF, address the environmental impacts of proposed projects early in the planning process. This includes complying with applicable environmental laws, consulting with appropriate environmental agencies, and incorporating any required mitigation measures.

This guide contains instructions on how to demonstrate compliance with federal regulatory requirements, also known as "cross-cutting authorities" or "cross-cutters." Cross-cutters refer to environmental laws and executive orders that apply to CWSRF-funded projects. These laws and executive orders address impacts on historical and cultural properties, wetlands, farmland, water bodies, flooding, endangered and threatened species, air quality, water quality and land use compatibility.

The guide also provides information on how to obtain a Categorical Exclusion as well as complete an Environmental Assessment or an Environmental Impact Statement. And it addresses when DEQ may accept an environmental review from another agency.

## 1.1 Applicability

An applicant may request DEQ CWSRF funding for municipal wastewater collection and treatment systems included in the Clean Water Act section 212, non-point source pollution control projects under Clean Water Act section 319 and estuary protection projects under Clean Water Act section 320.

All requests for funding, including interim loans, must demonstrate that the proposed project complies with federal cross-cutting authorities. Federal and state agencies determine compliance with relevant laws or executive orders. If you apply for CWSRF funding, it's your responsibility to consult with these agencies to evaluate your project's impacts on resources as part of the application process.

If an agency other than DEQ has completed an environmental report for the project and made an environmental determination within the past five years, this may satisfy CWSRF's SERP requirements. However, DEQ staff will need to review the environmental report and determination.

## 2. DEQ contacts and support

A CWSRF project officer in your DEQ region will assist you with questions about the SERP process. You will find contact information for project officers on DEQ's website at [www.oregon.gov/deq/wq/cwsrf/Pages/CWSRF-Contacts.aspx](http://www.oregon.gov/deq/wq/cwsrf/Pages/CWSRF-Contacts.aspx).

Your project officer will work closely with you throughout the application process and will be a key resource for ensuring the proposed projects meets CWSRF's SERP requirements. You should contact your regional project officer early in the application process so that they can support the success of your proposal.

# 3. State Environmental Review Process tracks

Every application for CWSRF funding undergoes an environmental review. However, the nature of the environmental review differs depending on a project's expected environmental impacts. This section summarizes the basic differences between the three different SERP tracks.

The SERP is comprised of three different tracks: (1) the Categorical Exclusion track, (2) the Environmental Assessment track, and (3) the Environmental Impact Statement track. The Categorical Exclusion track is for projects that are expected to have no significant environmental impacts. The Environmental Assessment track is for projects that are expected to have modest environmental impacts. And the Environmental Impact Statement track is for projects that are expected to have high environmental impacts.

Some of the factors used to determine the significance of a project's environmental effects include the existence of sensitive resources, the potential for irreversible impacts, the duration and frequency of effects, the potential for secondary and cumulative impacts and the uniqueness of potentially affected resources. Each of the three tracks requires an environmental review document describing the project and its impacts on any resources. DEQ staff will identify the appropriate track for the required environmental analysis.

After reviewing the environmental documentation provided by the applicant, DEQ will issue a Categorical Exclusion, a Finding of No Significant Impact based on an Environmental Assessment, or a Record of Decision based on an Environmental Impact Statement. DEQ's determination is valid for 5 years from date of the determination. If the project has not been initiated after five years, the applicant must submit updated environmental documentation for DEQ to reaffirm or modify the original determination.

See **Section 5 Environmental Determinations** of this guide for further discussion.

# 4. State Environmental Review

## Process requirements

This section of the SERP Guide explains the requirements for demonstrating compliance with federal cross-cutting authorities.

Federal and state agencies with cross-cutting authority determine compliance with environmental laws and executive orders. It is your responsibility to consult with these agencies to evaluate impacts to resources.

### 4.1 Historic and cultural resources – National Historic Preservation Act (1966) and Archeological and Historic Preservation Act (1974)

The National Historic Preservation Act and the Archeological and Historic Preservation Act protect archaeological and cultural resources and historic structures.

To demonstrate that your project complies with the historic and cultural resources cross-cutter, you must:

1. Review the National Register for listed districts, sites, buildings, structures, and objects in the proposed project area that are significant in American history, architecture, archeology, engineering and culture at [www.nps.gov/subjects/nationalregister/database-research.htm](http://www.nps.gov/subjects/nationalregister/database-research.htm).
2. Contact Oregon’s Legislative Commission on Indian Services at [LCIS@oregonlegislature.gov](mailto:LCIS@oregonlegislature.gov) using the provided template in **Appendix A – Legislative Commission on Indian Services Communication template**. The Commission will provide you the names of the appropriate tribal governments to notify.
3. Review the Legislative Commission on Indian Services website at [www.oregonlegislature.gov/cis/Pages/archeological.aspx](http://www.oregonlegislature.gov/cis/Pages/archeological.aspx) to find contact information for Cultural Resource Coordinators for each federally recognized tribe.
4. Based on the information provided by the Legislative Commission on Indian Services, contact the appropriate Tribal Cultural Resource Coordinator(s) and provide a description of the project and maps, preferably a vicinity map and a detailed US Geological Survey map at [www.usgs.gov/products/maps](http://www.usgs.gov/products/maps) showing the project location. The “Categorical Exclusion (CE) Candidate Project Packet” may be used as a template for tribal consultation, found at <https://www.oregon.gov/deq/FilterDocs/CECandidateProjectPacket.pdf>.

Using the letter to the Legislative Commission on Indian Services in **Appendix A – Legislative Commission on Indian Services Communication template** and “Categorical Exclusion (CE) Candidate Project Packet” will clarify for the tribe that the request is linked to federal cultural resource protection requirements.

Many tribal nations have limited resources and multiple priorities for the cultural resources work, and it is important to provide sufficient time for review by interested tribes.

5. If you have not received a response from the tribal cultural resources coordinator 30 days after sending the documents described in **Step 4**, follow-up by calling to let them know that your community will move forward with the proposed work unless they have any information or concerns to share with you. Document this communication.

If a tribal cultural resources coordinator requests more time to review the project, accommodate the request if possible.

In some cases, a tribe might be more willing to share information about cultural resources at a site with DEQ or the Environmental Protection Agency, rather than an applicant. Contact your DEQ regional SRF project officer for advice on effective tribal consultation.

6. Submit to DEQ the following documentation:
  1. Information that DEQ can use to make determinations about (1) built environment and (2) archaeological resources, including a copy of the database search results from the National Register in **Step 1**, copies of all correspondence received from tribal representatives, concurrence letters and other environmental analysis related to historic and cultural resources
  2. If applicable to the project, a separate list describing mitigation measures, including:
    1. The Archeological and Historic Preservation Act provision for construction requiring coordination with Department of Interior if historic properties are discovered after the project has begun and potential adverse effects may occur, and
    2. Any additional measures required by tribal governments.

Information provided by a tribal nation may suggest that a cultural resources survey must be performed prior to beginning work and/or that cultural resources monitoring occur during the project. The State Historic Preservation Office may request additional information, including a cultural resources survey be performed prior to beginning work and/or that cultural resources monitoring occur during the project.

The State Historic Preservation Office website

[www.oregon.gov/oprd/OH/pages/projectreviewresources.aspx](http://www.oregon.gov/oprd/OH/pages/projectreviewresources.aspx) provides additional information about the reports and forms you may be requested to complete.



## 4.2 Protection of wetlands – Executive Order 11990 (1997)

The Protection of Wetlands Executive Order 11990 seeks to avoid to the extent possible adverse impacts associated with the destruction and modification of wetlands, and to avoid direct and indirect support of new construction in wetlands wherever there is a practicable alternative. This cross-cutter may apply if the project is located near any wetlands.

To demonstrate compliance with wetlands cross-cutter, you must:

1. Print wetland inventory map(s) from both the Oregon Division of State Lands State Wetlands Inventory website at [www.oregon.gov/dsl/WW/Pages/SWI.aspx](http://www.oregon.gov/dsl/WW/Pages/SWI.aspx) and the US Fish and Wildlife Service Wetlands mapper at <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper> for the project area.
2. If wetlands will not be affected by the construction, staging or result of the project, submit to DEQ a copies of all printed wetlands inventory maps with a comparison to project maps.

If wetlands will not be affected by the construction, staging or result of the project, no further consultation is required. If wetlands will be affected, continue to **Step 3**.

3. Complete a Wetland Determination Request form at <https://www.oregon.gov/dsl/WW/Documents/WetlandsAndWatersDeterminationRequest.pdf> and submit to Department of State Lands by mail or email:

Mailing address:

Oregon Department of State Lands  
775 Summer Street NE, Suite 100  
Portland, OR 97301-1279

Email:

[support.services@dsl.oregon.gov](mailto:support.services@dsl.oregon.gov)

After reviewing the form, the Department of State Lands will determine if additional investigations or mitigation measures are required. Allow up to 30 days for response. If after 30 days you have not heard back about your Wetland Determination Request, contact the Department of State Lands jurisdiction coordinator for the relevant county to get an estimate for how long the response will take. Contact information for jurisdiction coordinators is available at <https://www.oregon.gov/dsl/WW/Pages/WWStaff.aspx>.

4. If wetlands will be affected by the construction, staging or result of the project, submit to DEQ the following documentation:
  1. A copy of all printed wetlands inventory maps with a comparison to project maps,
  2. A copy of the response from DSL Wetlands and Waterways Conservation Division, and

3. If applicable to the project, a separate list describing mitigation measures required by DSL.

## 4.3 Floodplain management – Executive Order 11988 (1977)

The Floodplain Management Executive Orders are a series of presidential executive orders that protect floodplain function and protect federally funded projects from flood damage. This cross-cutter applies if the project is located in or may affect a base floodplain.

To demonstrate compliance with floodplain management cross-cutter, you must:

1. Contact the city or county floodplain manager to inquire if a permit is required. Obtain permit if it is required. The planning director may also be the floodplain manager.
2. If the project is entirely within the footprint of the existing facility, no further consultation is required. Provide DEQ the following documentation
  1. Documentation that is sufficient for DEQ to determine that the project is within the footprint of the existing facility,
  2. A copy of response from floodplain manager, and
  3. Documentation that verifies that required permits have been obtained,

If project is not within footprint of the existing facility, continue to **Step 3**.

3. Review Federal Emergency Management Agency for local Flood Insurance Rate Maps at [www.fema.gov/flood-maps](http://www.fema.gov/flood-maps) to determine if project is within or will affect a 100-year floodplain.
4. If project is outside a 100-year floodplain and no impact has been identified, the project may proceed without further consideration of the remaining procedures. Provide DEQ relevant FEMA FIRM plate maps and any other documentation that demonstrates the project area is outside of the 100-year floodplain.

If project is within or will affect a 100-year floodplain, continue to **Step 5**.

5. Create and distribute early public notice of proposed project.
6. Create a floodplain assessment.
7. Prepare a written document that describes alternatives to the proposed project, mitigation measures or design modifications.
8. If the project is inside a 100-year floodplain, submit to DEQ the following documentation:

1. A copy of all printed Federal Emergency Management Agency for local Flood Insurance Rate Maps with a comparison to project maps of the location(s) related to this project,
2. A copy of response from floodplain manager,
3. Documentation that verifies that required permits have been obtained, and
4. If applicable to the project, a separate list describing mitigation measures required by floodplain manager, federal agencies or DEQ engineers.

If the project is within the 500-year floodplain and involves a critical facility, other federal agencies and DEQ engineers may have other mitigation requirements.

## 4.4 Farmland Protection Policy Act (1981)

The Farmland Protection Policy Act protects the nation’s productive farmland. This cross-cutter may apply if the project converts farmland to another purpose.

To demonstrate compliance with farmland protection cross-cutter, you must:

1. Provide documentation that is sufficient for DEQ to determine that project is either:
  1. On previously disturbed land within the footprint of an existing facility, or
  2. Inside the incorporated limits of a city.

If the project fulfills the criteria in **Step 1.1** or **Step 1.2**, there is no need for further consultation. If the project does not fulfill the criteria in **Step 1.1** or **Step 1.2**, continue to **Step 2**.

2. Initiate contact with the county planning department to:
  1. Determine whether the project site is within an adopted and approved urban growth boundary, or
  2. Determine whether the project site is within an exclusive farm use zone, and
    1. If project site is within an exclusive farm use zone, apply for project to be designated “utility facilities necessary for public service” as provided in ORS 215.283(d) or 215.213(d) and meeting the standards of ORS 215.275.
3. Obtain input from the Natural Resource Conservation Service:
  1. Download and complete parts I and III of US Department of Agriculture Form AD-1006 at [www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/) and submit to your local contact [www.nrcs.usda.gov/wps/portal/nrcs/main/national/contact/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/contact/).

2. Request that the Natural Resource Conservation Service complete parts II, IV and V, Land Evaluation, of Form AD-1006 and offer any advice on further action that should be taken.
  3. Complete parts VI and VII of Form AD-1006, Site Assessment, and request input from the county planning department.
  4. Provide the county planning department completed Form AD-1006 for its use in evaluating the proposed project against the standards of ORS 215.275.
4. If the county planning department, hearings officer or planning commission deny the proposed project, the option exists to apply to the county planning department for a “reasons” exception to Goal 3 (Agricultural Lands) under ORS 197.732, using the completed Natural Resource Conservation Service Form AD-1006.

The applicant will need to provide an explanation of why the project should be sited on agricultural land even though it was determined by the county that it was not necessary for public service

5. If the project is located in an exclusive farm use zone, submit to DEQ the following documentation:
  1. A copy of all printed maps comparing city boundaries to location(s) related to this project,
  2. A copy of response from county planning department and Natural Resource Conservation Service, and
  3. If applicable to the project, separately listed mitigation measures required by county planning department and Natural Resource Conservation Service

## **4.5 Coastal Zone Management Act (1972)**

The Coastal Zone Management Act protects the nation’s coastal areas. The Coastal Zone Management Act applies to projects located in counties adjacent to the Pacific Ocean.

To demonstrate compliance with the coastal zone management cross-cutter, you must:

1. Review coastal zone management plan map at <https://www.coastalatlantlas.net/czfinder/> to determine if the project is in a coastal management area.
2. If the project is outside a coastal management area, submit documentation to DEQ that demonstrates that the project is outside the geographical area subject to the Coastal Zone Management Act.

The Coastal Zone Management Act applies to Clatsop, Columbia, Tillamook, Washington, Yamhill, Lincoln, Polk, Benton, Lane, Douglas, Coos, and Curry counties. When a project is outside of these counties there is no need for consultation.

If the project is outside a coastal management area, no further consultation is required. If the project is inside a coastal management area, continue to **Step 3**.

3. Contact Department of Land Conservation and Development to obtain a consistency determination.

Department of Land Conservation and Development requires information to verify that project is consistent with local comprehensive plan. If permits are required, the Department of Land Conservation and Development requires that completed applications for water quality and air quality permits be sent to DEQ as well as a completed application for a Removal-Fill permit sent to the Department of State Lands.

4. If the project is located inside a coastal management area, submit to DEQ the following documentation:
  1. A statement identifying the county in which the project will be built and that the project is within coastal management area,
  2. A copy of response from the Department of Land Conservation and Development,
  3. Verification that supporting required permits have been obtained, and
  4. If applicable to the project, separately listed mitigation measures required by the Department of Land Conservation and Development, the Department of State Land and DEQ.

## 4.6 Wild and Scenic Rivers Act (1968)

The Wild and Scenic Rivers Act protects the character of designated rivers. This cross-cutter may apply if the project is in the river basin of a wild and scenic river. Compliance may require consultation with the land managing agency where the river is located.

To demonstrate compliance with the wild and scenic rivers cross-cutter, you must:

1. Review the National Wild and Scenic Rivers System and determine if the proposed project is geographically located within a designated wild and scenic river basin at <https://www.rivers.gov/map.php>.
2. If the proposed project is not within a designated wild and scenic river basin, submit the following documentation to DEQ:
  1. A statement declaring that location(s) related to this project are outside any designated wild and scenic river basin, and

2. Copies of printed maps comparing wild and scenic river basic location(s) in relation to the project location.

If the proposed project is not within a designated wild and scenic river basin, there is no need for consultation. If the proposed project is within a wild and scenic river basin, continue to **Step 3**.

3. If the proposed project may affect a designated or study river, contact the appropriate agency with jurisdiction. Depending on the circumstance this may include the National Park Service, the US Forest Service, the Bureau of Land Management, or US Fish and Wildlife Service.
4. If the proposed project is within a designated wild and scenic river basin, submit the following documentation to DEQ:
  1. A statement declaring that location(s) related to this project are inside a designated wild and scenic river basin,
  2. Copies of printed maps comparing wild and scenic river basin to location(s) related to this project,
  3. A copy of response from appropriate agency with jurisdiction, and
  4. If applicable to the project, separately listed mitigation measures that are required by the appropriate agency with jurisdiction.

## **4.7 Endangered Species Act (1973) and Magnuson-Stevenson Fishery Conservation Act (1996)**

The Endangered Species Act identifies and protects species at risk of extinction. The ESA cross-cutter may apply if the project is located near any endangered species or their critical habitat. The Magnuson Stevenson Fishery Conservation Act protects habitat for commercially valuable fish species. This cross-cutter may apply if the project is located near essential fish habitat.

To demonstrate compliance with the endangered species and essential fish habitat cross-cutters, you must:

1. Determine if ESA-listed species, designated critical habitat and/or essential fish habitat are within the action area of the project. The “action area” of the project is defined as all areas that may be directly or indirectly affected by the action. The action area can often extend well beyond the physical project boundaries, such as water downstream from the project. Consult the following websites to determine if any ESA-listed species or essential fish habitats are present within the action area of the project:
  1. Oregon Biodiversity Information Center for listings of threatened or endangered plants, <https://inr.oregonstate.edu/orbic>,

2. US Fish and Wildlife Service for list of ESA species in the project area, the agency responsible for terrestrial and freshwater species, <https://ipac.ecosphere.fws.gov/>,
  3. National Oceanic and Atmospheric Administration National Marine Fisheries Service for ESA species in the project area, the agency responsible for most marine species, <https://www.fisheries.noaa.gov/topic/consultations#endangered-species-act-consultations>, and
  4. National Oceanic and Atmospheric Administration National Marine Fisheries Service for essential fish habitat, [www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper](http://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper).
2. Print a recent list of ESA-listed species, designated critical habitat and essential fish habitat for the county or region where the project is proposed.
  3. Analyze the potential impacts to ESA-listed species, designated critical habitat and essential fish habitat identified in **Step 1** that may result from proposed project, and make your determinations of effect in a written Biological Evaluation.
    1. The Biological Evaluation must determine for each ESA-listed species and designated critical habitat whether there will be:
      1. No Effect,
      2. May Affect/Not Likely to Adversely Affect, or
      3. May Affect/Likely to Adversely Affect.
    2. The Biological Evaluation must determine for essential fish habitat whether the project will have:
      1. No Adverse Effect, made if there is no designated essential fish habitat in the action area and no designated essential fish habitat that may be impacted downstream,
      2. May Adversely Affect, made if there is designated essential fish habitat directly affected or designated essential fish habitat that may be impacted downstream.

Determinations for **Steps 3.1** and **3.2** must be scientifically defensible and should be supported with applicable studies, analysis, and the best available science, tailored to the magnitude and complexity of the project and anticipated impacts. Support your determinations with information found in **Step 1**.

The applicant is responsible for providing sufficient and defensible information and analysis to support the determinations of effect. Submitting printed web screens from these websites for your documentation can expedite the process but will not substitute for an analysis and determination of effects.

4. Submit to DEQ the following documentation:
  1. Three (3) hard copies of the Biological Evaluation with supporting documentation to assigned project officer, <https://www.oregon.gov/deq/wq/cwsrf/Pages/CWSRF-Contacts.aspx>.
  2. A cover letter addressed to the Environmental Protection Agency, including:
    1. Applicant contact information, including:
      1. Contact name
      2. Mailing address
      3. Email address
      4. Phone number
    2. Statement describing what EPA is being asked to do, including:
      1. A request to make ESA and essential fish habitat determinations pursuant to the project being funded by the Oregon CWSRF; and
      2. The determinations made by the applicant as a result of the attached Biological Evaluation.
    3. DEQ Project officer contact information, including (optional, but helpful):
      1. Name
      2. Email address
      3. Phone number
  3. Supporting documentation, including:
    1. Type of loan application
      1. Point source or non-point source
      2. Planning, design and/or construction
    2. Detailed project description or proposed action
    3. Project location, including map



4. ESA-listed species, designated critical habitat and any essential fish habitat in the action area
5. Potential impacts to ESA-listed species, designated critical habitat and essential fish habitat
6. The preliminary analysis of effects
7. Determination for ESA-listed species, designated critical habitat and essential fish habitat
8. Primary Contact information

The project officer will submit the documents described in **Step 4** to EPA and expedite the process on behalf of the community. If the documentation is insufficient, EPA will coordinate with DEQ and the community to complete the review. Ultimate responsibility for providing sufficient information and analysis in the Biological Evaluation resides with the applicant.

Regarding the ESA determination, EPA will respond to DEQ and the community for the ESA and for EFH. If EPA provides a written ESA “No Effect Determination” letter, consultation is complete, and the project can proceed. If EPA determines that the proposed project May Affect/Not Likely to Adversely Affect ESA-listed species or designated critical habitat, EPA will send a request for concurrence letter to relevant federal agency. If EPA determines that the proposed project May Affect/Likely to Adversely Affect ESA-listed species or designated critical habitat, EPA will coordinate with the applicant and initiate formal consultation with the respective federal agency.

5. If EPA determines that no ESA-listed species will be affected, the agency will issue a “No Effect Determination” letter. Submit the “No Effect Determination” letter to DEQ.

If EPA concurs with the applicant’s “No Effect to Essential Fish Habitat” conclusion, it will provide a written essential fish habitat concurrence letter. If EPA determines that the project may adversely affect essential fish habitat, EPA will coordinate with the applicant and initiate essential fish habitat consultation with the National Oceanic and Atmospheric Administration National Marine Fisheries Service.

6. If EPA concurs there will be no effect on essential fish habitat, it will issue a “No Effect to EFH” concurrence letter. Submit a copy of the “No Effect to EFH” concurrence letter to DEQ.

## **4.8 Clean Air Act (1977)**

The Clean Air Act establishes air quality standards. This cross-cutter requires projects to show how they conform to National Ambient Air Quality Standards.

To demonstrate compliance with the clean air cross-cutter, you must:

1. Consult with Oregon DEQ Air Quality Staff to determine if the project will impact air quality. Regional air quality staff can be found at the following website:  
<https://www.oregon.gov/deq/aq/aqPermits/Pages/Contacts.aspx>.

1. Discuss details of the project with Regional Air Quality staff member, explaining that you are fulfilling a Clean Air Act consultation requirement for a CWSRF loan.
2. Request an email or hard copy reply from Regional Air Quality staff member.
2. DEQ Air Quality staff may request that you complete additional documents such as a Notice of Intent to Construct. If additional documents are required, complete and submit those documents.
3. Submit to DEQ the following documentation:
  1. A copy of the reply from DEQ Air Quality or Regional Air Quality authority related to this project, and
  2. If applicable to the project, separately listed mitigation measures required by DEQ Regional Air Quality authority.

## 4.9 Safe Drinking Water Act (1974)

The Safe Drinking Water Act protects sole source drinking water aquifers. The SDWA cross-cutter may apply if the project is located near a sole source aquifer.

To demonstrate compliance with the SDWA cross-cutter, you must:

1. Determine if there will be a direct and/or indirect discharge to groundwater from the proposed project.
2. If there will be a direct and/or indirect discharge to groundwater from the proposed project, determine if the project is in the vicinity of a sole source aquifer by consulting the EPA website [www.epa.gov/dwssa](http://www.epa.gov/dwssa).
3. If the proposed project is not within the vicinity of a sole source aquifer, submit to DEQ the following documentation:
  1. A map locating the project relative to sole source aquifers in the state; and
  2. A written statement declaring that the project will not be built within the vicinity of a sole source aquifer.

If the proposed project is not within the vicinity of a sole source aquifer, no further consultation is required. If the project is within the vicinity of a sole source aquifer, continue to **Step 4**.

4. Contact the Oregon Health Authority, which will decide if further investigations are required to determine whether the aquifer may be contaminated by the project. The Oregon Health Authority will also consider alternative sites or devise adequate mitigation measures.

5. If an alternative site is selected and/or mitigation measures are necessary, provide information to DEQ which will coordinate with EPA. EPA may require additional mitigation measures to be integrated into the project proposal.
6. If the project is within the vicinity of a sole source aquifer, submit to DEQ the following documentation:
  1. A map locating the project relative to sole source aquifers in the state,
  2. A statement declaring there will be a direct or indirect discharge to groundwater from the proposed project,
  3. Copy of response from the Oregon Health Authority, and
  4. If applicable to the project, separately listed mitigation measures required by the Oregon Health Authority and/or EPA.

# 5. Environmental Determinations

An environmental determination is a decision by the CWSRF project officer that categorizes the environmental impacts of the project. It applies both to the construction of the project and the project outcome. The possible environmental determinations are (1) Categorical Exclusion (2) a Finding of No Significant Impact established through an Environmental Assessment; or (3) a Record of Decision established through an Environmental Impact Statement. More information on each is provided under separate subsection headings below.

All projects that request CWSRF funding must provide adequate information to the CWSRF project officer so that the Project officer may make an environmental determination.

If you have previously completed an environmental report for your project through a different agency, please provide that report to your project officer. However, completing an environmental review through a different agency does not automatically exempt an application from completing cross-cutters.

Applicants seeking interim loans for projects funded by a federal or other state agency must meet DEQ's CWSRF SERP requirements.

## 5.1 Categorical Exclusion

A Categorical Exclusion or CE indicates that there will be no environmental impacts resulting from the project and no impacts during construction of the project. If DEQ concludes that the project will not affect the quality of the environment, including the upstream, downstream, and receiving waters, DEQ will determine the project qualifies for a CE. Obtaining a CE environmental determination from DEQ concludes the environmental review process.

A project may receive a CE determination if it is limited solely to the minor rehabilitation of existing facilities, the replacement of equipment, or the construction of related facilities that do not affect the degree of treatment or the capacity of the facility.

Examples of projects that generally receive a CE determination include:

- Correction of infiltration and inflow
- Construction of small structures on existing sites
- Replacement or rehabilitation of existing equipment and structures
- Modification or expansion of solids processing, storage, or disposal facilities that do not expand liquid treatment capacity
- Process substitution or enhancement that does not expand liquid treatment capacity, such as adding chemical dechlorination, replacing chlorination with ultraviolet disinfection, or adding effluent irrigation facilities
- Installation of groundwater monitoring
- Construction of new collection lines to serve existing development with failing on-site systems
- Minor expansion or upgrade of existing water pollution control facilities of a system serving fewer than 10,000 people

Examples of projects that will not generally be eligible for a CE include:

- Construction of new collection lines to serve undeveloped areas
- Construction of a new discharge point or relocation of an existing discharge point
- A substantial increase in the volume or loading of pollutants
- Expansion of treatment capacity sufficient to serve a population that exceeds the existing population by 30 percent or more
- Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas
- Construction of facilities that are known or expected to be highly controversial
- The proposed action is known or expected to cause significant adverse air quality effects

To receive a CE for your project, complete the following five steps.

### **Step 1**

Determine if the project includes any extraordinary circumstances as described by 40 CFR § 6.204(b), bulleted below. If any of these circumstances are present, the project will not be eligible for a CE and the applicant must follow the Environmental Assessment track. If none of the following circumstances are present, continue to **Step 2**.

- The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.
- The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
- The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
- The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to property listed on or eligible for the National Register of Historic Places.
- The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
- The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth (population growth that exceeds the existing population by 30 percent or more) and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.
- The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
- The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.

- The proposed action is known or expected to conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

### **Step 2**

Complete the federal cross-cutters for your project. See section 4. **State Environmental Review Process requirements** of this guide. If consultation is not required to demonstrate compliance with a cross-cutter, provide DEQ a map or other documentation. The project officer in your region can assist you with this.

### **Step 3**

Contact the federal or state agencies for applicable cross-cutters and obtain a written communication from them.

We recommend that you use the “Categorical Exclusion (CE) Candidate Project Packet” at <https://www.oregon.gov/deq/FilterDocs/CECandidateProjectPacket.pdf> to describe the project and send transmittal memos to the appropriate agencies. The documents in the packet are tools to help you demonstrate compliance with federal cross-cutting authorities and assemble the information DEQ needs to document a CE determination. Be sure to include the state/federal agency review form which the federal or state agency should complete and return to you.

### **Step 4**

Assemble the completed and returned state/federal agency review forms, the transmittal memos and the project description from “Categorical Exclusion (CE) Candidate Project Packet, along with any other supporting documents.

### **Step 5**

Submit a copy of the assembled documents listed in **Step 4** to the CWSRF project officer in your DEQ region.

CE determinations require DEQ to publish a public notice with a 30-day comment period. DEQ has the final authority whether a project qualifies for a CE. If the project does not qualify for a CE, DEQ will require the applicant to prepare an Environmental Assessment. Information prepared and compiled to demonstrate a CE can be used to develop an Environmental Assessment report.

## **5.2 Environmental Assessment**

The Finding of No Significant Impact or FONSI determination requires a broader environmental analysis of the proposed project. This analysis is referred to as an Environmental Assessment. The EA includes considering alternatives in addition to the proposed project.

DEQ has compiled information to assist applicants with developing an EA. An EA should be prepared in accordance with the following documents: “Guidelines Preparing Wastewater Planning Documents and Environmental Reports for Public Utilities” and “Guide for Preparing the Environmental Report for Water and Wastewater Projects” at [www.oregon.gov/deq/wq/cwsrf/Pages/CWSRF-Planning.aspx](http://www.oregon.gov/deq/wq/cwsrf/Pages/CWSRF-Planning.aspx).

For the purpose of the CWSRF SERP, applicants referring to the Rural Utilities Service Bulletin 1794A-602 should contact DEQ instead of the Rural Utilities Service as the Bulletin indicates.

Clean Water Act Section 212 municipal wastewater projects are typically developed through a wastewater facilities plan which may contain an EA chapter. For the purpose evaluating the environmental impacts of potential alternatives and selecting the best option, it is ideal to complete the facilities plan. When the facilities plan does not include an EA, it will be necessary to either prepare a freestanding EA or amend the facilities plan to include an EA chapter.

There are six steps in the EA process.

**Step 1**

Prepare a detailed environmental review, including an analysis of a no action alternative, in addition to other alternatives considered.

**Step 2**

Establish which federal cross-cutting authorities you will be required to contact to demonstrate compliance with the cross-cutters. A CWSRF project officer in your DEQ region will assist you as necessary.

**Step 3**

Contact the appropriate federal and state agencies for their review and comment. Be sure to obtain a written reply from each agency you contact. Section 4. **State Environmental Review Process requirements** of this guide will assist applicants in providing the necessary documentation to federal and state agencies.

**Step 4**

Include a chapter demonstrating compliance with any applicable federal cross-cutting authorities in the proposed project's facility plan or in a separate environmental report. This is the environmental review document for the project. The chapter should explain actions taken by the applicant, include studies and analyses compiled for each cross-cutter, any "no effect" letters, or letters explaining acceptable mitigating measures received from the responsible federal or state agency.

**Step 5**

Incorporate required mitigating measures into the project plans.

**Step 6**

Submit the EA document to the CWSRF project officer in your DEQ region.

DEQ will independently review the EA. DEQ's acceptance of an EA and issuance of a FONSI may be conditioned on implementation of mitigation measures. Any required mitigation measures will be designed to ensure that the project will be environmentally sound and performed consistent with DEQ's findings. Mitigation measures will be identified in the FONSI.

Before an EA process is considered complete, DEQ is required to publish a notice with a 30-day public comment period. DEQ will not execute a design and/or construction loan agreement or otherwise take action on the project until the EA process is complete.

A public hearing or meeting will generally not be held for projects having little or no environmental effect. After completion of the public review period, DEQ will issue the final FONSI.

## 5.3 Environmental Impact Statement

The Record of Decision or ROD is made at the conclusion of an Environmental Impact Statement process. DEQ's decision to require an EIS will be based on the EA or other information which demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to the proposed action. DEQ might also determine that an EIS is needed based upon information prepared by the applicant or issues raised by the public or agencies.

There are seven steps in the EIS process.

### Step 1

Publish a notice of intent to prepare an EIS in a state-wide circulation publication as well as a local newspaper and allow a 30-day public comment period before initiating an EIS.

Notice of the EIS must include contact information as well as how to obtain the EIS and any environmental documents incorporated into the EIS.

### Step 2

Contact relevant local, state, and federal agencies as well as tribes and other interested parties for comments regarding the appropriate scope of the EIS. Include DEQ in the scoping process so that it may help to address the federal cross-cutting authorities during the development of the EIS. You will find contact information for SRF project officers on DEQ's website at <https://www.oregon.gov/deq/wq/cwsrf/Pages/CWSRF-Contacts.aspx>.

### Step 3

Prepare a "draft EIS" that conforms to the requirements articulated in 40 C.F.R. § 1502 and 40 C.F.R. § 6.207(d)(2)-(7). The draft EIS must address reasonable alternatives and the issues identified during the scoping process.

### Step 4

Submit the draft EIS to the CWSRF project officer for review and approval.

### Step 5

Once the draft EIS is approved by DEQ, you must:

1. Submit the approved draft EIS to agencies with jurisdiction and expertise for their review and comment,
2. Publish a notice of availability of the draft EIS in a state-wide publication and a local newspaper, allowing a 45-day public comment period, and
3. Conduct a public hearing on the draft EIS.

### Step 6



Prepare a “final EIS” under the DEQ’s technical direction based on the comments received on the draft EIS. The final EIS must include or summarize all substantive comments received on the draft EIS, respond to those comments, and explain any changes to the draft EIS, including the reason for the changes.

**Step 7**

Submit the final EIS to DEQ with a request for proposed action.

Upon receipt of a satisfactory final EIS, DEQ will publish it and make copies available to all who commented on the draft EIS as well as to the general public. After a 30-day waiting period, DEQ will issue a ROD. During the waiting period no action shall be taken on the project that will have adverse environmental impacts or limit the choice of alternatives.

The ROD is DEQ’s final action prior to implementation.

# 6. Environmental Reviews from other Agencies

Sometimes applicants seek CWSRF funding for a project for which an environmental review has already been completed by a federal or other state agency. It is the CWSRF program's practice to accept the environmental review document prepared for and accepted by federal and state agencies pursuant to their respective National Environmental Policy Act procedures as well as related environmental determinations.

For the CWSRF program to accept another agency's review documents and environmental determination, two conditions must be met: (1) the scope of the project must remain largely unchanged from that which was accepted by the other agency, and (2) the other agency's determination must have been made within the previous five years. The final environmental determination of the project rests with DEQ.

If an environmental review has been completed by a federal or state agency, the following should be submitted to the DEQ project officer:

1. A copy of the agency's environmental determination,
2. The environmental review documents that the agency used to make the determination, and
3. A cover letter declaring that:
  1. The agency's determination was made pursuant to their National Environmental Protection Act procedures, and
  2. The agency completed the federal cross-cutting authority requirements.

All Environmental Assessments and Categorical Exclusions adopted from another agency require DEQ to publish a notice of intent to accept another agency's determination. After the notice is published, there is a required 30-day public comment period before DEQ can accept the EA or CE as satisfying the SERP requirements and the EA or CE process is considered complete. DEQ will not execute a design and/or construction loan agreement or otherwise take action on the project until the EA or CE process is complete.

# Appendix A – Legislative Commission on Indian Services Communication template

Executive Director  
Oregon Legislative Commission on Indian Services  
\_\_\_\_@state.or.us  
(503) 986-1068

Dear \_\_\_\_\_,

[Community name] is preparing to use federal Clean Water State Revolving Funds (SRF) through the Oregon Department of Environmental Quality to [build/upgrade a wastewater treatment facility, etc.] at the following site:

Project name:  
Property address:  
County:  
Nearest city:

[Community name] is constructing a [project description] to [solve what problem].

In accordance with state law, I would like to notify the appropriate tribal governments of DEQ's proposed action and request their review of this project from a cultural resources perspective.

Attached is a description of the project and maps [preferably a vicinity map and a detailed USGS map, if available] showing the project location. Could you please let me know which tribal governments to contact for a cultural resources review? If you need additional information about this site, its history or [Community name] proposed work, please let me know.

I am requesting this information as directed by Oregon DEQ as part of an application for the SRF program, which is funded by the EPA and subject to requirements of the National Historic Preservation Act. If you would like more information about the SRF program and/or federal cultural resource protection requirements related to the SRF, please contact [DEQ Regional SRF Officer and their phone number] or David Carcia, EPA CWSRF Coordinator at (206) 553-0890.

Thank you for your assistance,

[signed by community representative]

City Manager [or other appropriate title]  
[community]  
[address]  
Telephone: [phone]  
[email]