

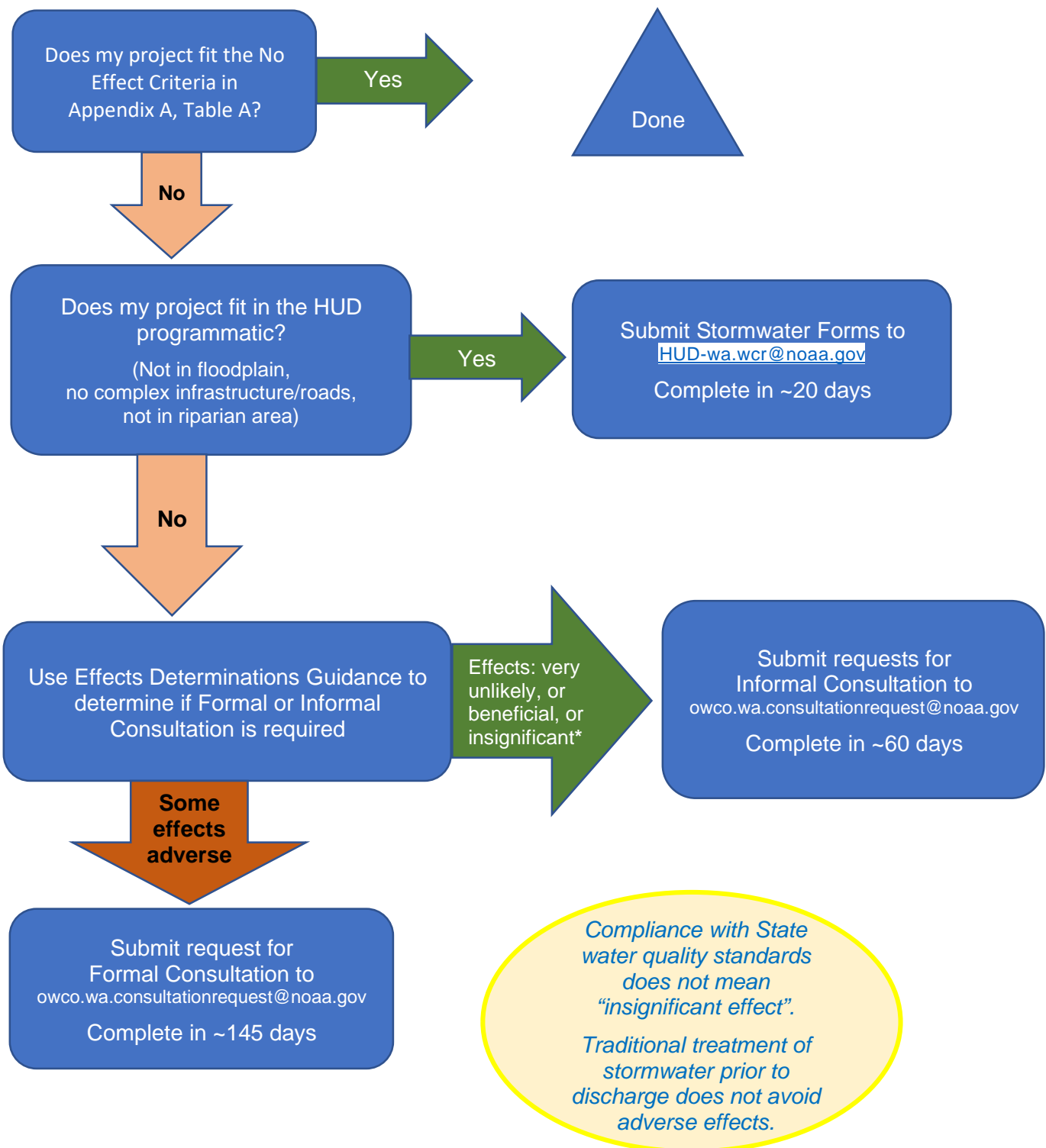
**NATIONAL MARINE FISHERIES SERVICE (NMFS) – HUD
Washington State Consultation Guidance Update
with Erratum Effective 9-21-2023**

Contents

NMFS-ESA Compliance Pathway (flow-chart)	2
APPENDIX A: Consultation Guidance for ESA and EFH in Washington State Prepared in collaboration with National Marine Fisheries Service	3
Part I – Determine if the Project can Proceed as No Effect	4
Part II – Determine if the Project can Proceed under the Washington State Programmatic Opinion for HUD Actions in Washington State	6
Part III – Individual Consultation under Section 7	7
Part IV – Confirmation of Project ESA/EFH Compliance under the Programmatic Consultation process	9
APPENDIX B: Materials and Landscape Design Criteria to Satisfy Programmatic Terms and Conditions for Increased use of Low Impact Development (LID) Methods.....	10
APPENDIX C: NMFS Stormwater Criteria for HUD Projects in Washington for use when site constraints prevent use of LID.....	14
APPENDIX D: Action Notification Form and Email for Program Compliance for Use with the HUD Programmatic Opinion.....	16
Withdrawing a Request for Review	17
Action Notification Form.....	18
Action Completion Report	21

NMFS-ESA Compliance Pathway (flow-chart)

Flow Chart for determining Best NMFS ESA Compliance Pathway



APPENDIX A: Consultation Guidance for ESA and EFH in Washington State

Prepared in collaboration with National Marine Fisheries Service
**For use by Responsible Entities under 24 CFR Part 58 and
HUD under 24 CFR Part 50**

General requirements	Legislation	Responsible Agency
Section 7(a) (2) of the Endangered Species Act (ESA) mandates that actions that are authorized, funded, or carried out by Federal jeopardize the continued existence of plants and animals that are listed or result in the adverse modification or destruction of designated critical habitat.	The Endangered Species Act of 1973; 16 U.S.C. 1531 et seq.	NMFS and USFWS (the Services)
Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NOAA Fisheries on any action that they authorize, fund, or undertake that may adversely affect essential fish habitat (EFH).	Magnuson-Stevens Fishery Conservation and Management Act; 16 U.S.C. 1801	NMFS only

Purpose

The purpose of this guidance is to assist HUD and HUD's responsible entities (REs) in meeting their obligations under the Endangered Species Act (ESA), and the MSA/EFH consultation with NMFS where necessary. The guidance is designed to help you determine whether a proposed project will have an effect on federally-listed species, designated critical habitat, or essential fish habitat, and the process to follow based on those effect determinations.

If HUD/RE determines that an action would have no effect, HUD/RE must document that determination in its project files, along with its supporting rationale.

Consultation with NMFS is not required for no effect determinations. HUD or the RE are solely responsible for this determination and cannot defer responsibility to an external party. NMFS rarely issues any correspondence for a no effect determination, except when there is strong disagreement about that determination.

Part I – Determine if the Project can Proceed as No Effect

1. Is the project activity type listed in Table A, and does the project meet all parameters and conditions listed for that project type?

Table A – Potential No Effect Categories and Required Criteria
Potential No Effect Activity Category with required performance criteria
<p>Purchase building or property</p> <ul style="list-style-type: none"> • No change to existing structures. • No new impervious surface area constructed. • No modification to existing stormwater collection or drainage patterns.
<p>Landscaping maintenance / improvement</p> <ul style="list-style-type: none"> • Does not result in fill of jurisdictional waters or the nation or waters of the state, except if proposed for the purposes of species habitat restoration or enhancement.¹ • Does not remove riparian¹ vegetation or trees within 150 feet of an aquatic resource.² • Any new plantings shall be comprised of native species approved by the local jurisdiction. No planting of invasive species is permitted. • No use of pesticides, herbicides within 150 feet of an aquatic resource, or if precipitation is predicted, within 24 hours prior to heavy storm events. • Outside lighting must not illuminate aquatic resources occupied by ESA-listed species. • Does not increase hardscape area unless an equal area of impervious surface area is converted to pervious surface. • Installation/maintenance of sprinkler irrigation systems, must direct spray away from pollution generating impervious surfaces.³ • Removal/maintenance of hazard trees or similar vegetation is matched by an equivalent number of trees appropriate to the location are replaced.

¹ Riparian zones are the areas bordering rivers and other bodies of surface water. They include the floodplain as well as the riparian buffers adjacent to the floodplain. Riparian zones are visually defined by a greenbelt with a characteristic suite of plants that are adapted to and depend on the shallow water table.

² An aquatic resource, for the purposes of this opinion, includes: streams, rivers, ponds, lakes, wetlands, estuaries, bays, or other tidally influenced marine areas.

³ A pollution generating surface, as used in this opinion, is a surface upon which motorized vehicles travel. Examples include, but are not limited to: parking lots, driveways, and roads.

Potential No Effect Activity Category with required performance criteria

Interior rehabilitation

- Applies only to existing structures.
- Access and staging, and source sites, have been assessed as part of the proposed action. The sites are located at least 150 feet away from any aquatic resources and include BMPs to prevent discharge of contaminants entering waterbodies or stormwater systems (e.g., filter fabrics in catch basins, sediment traps, etc.). No plantings of invasive species.
- Disposal sites are approved for materials to be received. Waste materials are recycled or otherwise disposed of in an EPA approved sanitary or hazardous waste disposal site.

Any exterior repair or improvement that will not increase post-construction runoff

- Does not increase amount (area) of impervious surface area.
- Does not replace existing roof with new hot tar roofing methods, torch down roofing method, treated wood, copper, or galvanized metal.⁴
- New or replacement roof-mounted HVAC (or similar mechanical systems) constructed from galvanized steel must be painted or physically covered to prevent exposure to precipitation.
- Does not replace existing siding with galvanized sheeting.
- Does not install, repair, or replace exterior artificial lighting on properties adjacent to aquatic resources that support ESA-listed or MSA managed (Pacific salmonids or groundfish) species.
- Complies with all state and local building codes and stormwater regulations.
- Disposal sites are approved for materials to be received. Waste materials are recycled or otherwise disposed of in an approved sanitary or hazardous waste disposal site.
- Exterior repair or improvements to an existing structure located within a Special Flood Hazard Area (100-year floodplain), does not increase structure footprint/does not reduce the amount of flood storage capacity, or remove native riparian vegetation.
- Access and staging, and source sites have been assessed as part of the proposed action. The sites are located at least 150 feet away from the aquatic resource and include BMPs to prevent discharge of contaminants from entering waterbodies or stormwater systems (e.g., filter fabrics in catch basins, sediment traps, etc.).

☐ **If YES**, the project is listed in Table A and it meets all parameters and Conditions, then the project has No Effect; **NMFS (ESA or EFH) consultation is NOT required.**

Note that there are no ESA listed fish in Ferry, Stevens, Pend Oreille, Lincoln, and Spokane Counties. No consultation is required for projects in these counties

☐ **If NO**, then the project may affect Designated Critical Habitat (ESA) or Essential Fish Habitat (EFH) and **NMFS consultation IS required. Go to Part II.**

⁴ Galvanized flashing, gutters, or fasteners may be utilized as part of roofing systems, so long as they are coated or painted to prevent exposure to precipitation.

Part II – Determine if the Project can Proceed under the Washington State Programmatic Opinion for HUD Actions in Washington State

2. Does the project qualify for inclusion in the programmatic opinion issued to HUD?

Projects which are subject to any ONE (or more) of the following conditions do not qualify for inclusion in the WA State NMFS Programmatic Biological Opinion (HUD Programmatic).

1. Is the project (other than the outfall structure):

- ☐ 150 feet, or closer, to a shoreline or aquatic resources (or enters the riparian area)?

2. Does the project:

- ☐ Include large infrastructure projects such as new roads, new or expanded waste treatment facilities?
- ☐ Place floodplain fill of any kind or expand buildings into 100 year floodplains?
- ☐ Remove 5 or more acres of mature tree cover (trees larger than 6" dbh)?

☐ **If you checked any** of the above, HUD or the RE does not qualify for inclusion under the programmatic consultation process and *must seek individual consultation* with NMFS for ESA and/or EFH; **Proceed to Part III for Individual Consultation**

☐ **If you did not check any boxes**, the project qualifies for inclusion under the programmatic consultation process and will seek a **Programmatic Consultation; Proceed to Part IV for Programmatic Consultation guidance:**

1. Appendix B for information on LID methods to incorporate into each project,
2. Appendix C for information to support Traditional Stormwater Management,
3. Appendix D for Forms necessary for programmatic review and where/how to submit for consultation.

Part III – Individual Consultation under Section 7

Consultation Requirements

The ESA directs all federal agencies (the RE under 24 CFR Part 58) to utilize their authorities to conserve species listed as threatened or endangered (ESA Section 2(c)(1)), and to consult with the Services to ensure that their actions will not jeopardize listed species, or adversely modify habitat designated as critical for listed species. Formal or informal consultation is required when a project *May Effect* species or designated critical habitat.

The Magnuson-Stevens Act (MSA) directs federal agencies to consult if their actions (including funding or permitting) *will adversely affect* features of Essential Fish Habitat, including Habitat Areas of Particular Concern. EFH is designated rivers and streams that support Chinook and coho salmon, and estuaries that support salmon, groundfish, and pelagic species, to physical, biological and chemical characteristics necessary to support fish for feeding, spawning, breeding, and growth to maturity. These are locations such rivers, wetlands, and the estuaries

Effects Determinations

Once “no effect” is ruled out, and inclusion under the Programmatic Biological Opinion is ruled out, individual consultation must occur for ESA, EFH, or both.

EFH consultation is required if there is any adverse effect, *even temporarily* that reduces quality and/or quantity of EFH. Adverse effect means direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components.

ESA consultation is either “Formal” or “Informal” consultation. *Both* require a written analysis to be submitted to the Service. This document is called a Biological Assessment (BA) for major construction activities that trigger NEPA, or a Biological Evaluation (BE) for smaller projects with fewer impacts. These terms are sometimes interchangeable, and the term BE will be used here.

A BE may serve multiple purposes, but the primary role is to document HUD/REs conclusions and the rationale to support those conclusions regarding the effects of the proposed actions on fish and fish habitat resources. Although there are no statutory or regulatory mandated contents, recommended elements are identified at 50 CFR §402.12(f).

HUD/REs typically do not have qualified staff to prepare a BE. It is recommended that HUD/RE hire a consultant (a biologist or otherwise qualified professional) to prepare the needed BE. It is also recommended that HUD/RE provide the consultant with NMFS/HUD WA State Biological Opinion Programmatic Agreement found at the [Region X website](#). Use of the recommended elements found at 50 CFR §402.12(f) and WA Programmatic content should guide a consultant to prepare a BE which will result in a successful Section 7 consultation.

This document is not an exclusive guide to preparing a BE. However, HUD/RE must understand how to initiate consultation with NMFS, therefore understanding the contents of the BE is critical in order for HUD/RE to request the correct level of consultation.

If the conclusion of the BE is:

1. **“Not likely to adversely affect”** Means that all effects, temporary and permanent, on species or critical habitat are expected to be insignificant, discountable, or wholly beneficial.

- ✓ Discountable effects are those extremely unlikely to occur. Based on the best available scientific and commercial data, and judgment, a person would not expect discountable effects to occur.
- ✓ Insignificant effects relate to the magnitude of the impact and should never reach the scale where “take” occurs. “Take” is defined to include “harass,” and “harm.” *Harm* can occur if habitat is altered in a manner that diminishes important species behavior, such as breeding, feeding, or sheltering, to the degree that it injures even a single individual of the species. *Harass* includes activities that alter an individual’s behavior in a manner that increases the likelihood of it being injured. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects.
- ✓ Wholly beneficial effects is very narrowly construed and cannot be interpreted to mean “better than before,” and cannot involve an analysis of net effects. All effects must be positive. If any adverse effect occurs, then the project is not wholly beneficial *.

** Meeting state water quality standards or adding treatment does not mean the project is “Not Likely to Adversely Affect”*

- ☐ **HUD/RE should seek informal consultation with the Service.**

2. **“Likely to adversely affect,”** means that the action is likely to adversely affect the trust resource—as little as one individual fish or any feature of critical habitat (ie., water). In the case of uncertainty, the benefit of the doubt must be given in favor of protecting the trust resources.

- ☐ **HUD/RE must seek formal consultation with the Service.**

How to Initiate NON-programmatic consultation: submit your request for formal, informal and EFH consultation to:

- West of the Cascades submit electronic materials (BE and other relevant documents) to owco.wa.consultationrequest@noaa.gov. This is a general email inbox that is monitored by NMFS for consultation requests.
- East of the Cascades, submit requests to CRBO.ConsultationRequest.WCR@noaa.gov

DO NOT use the email address above if your project qualifies under the programmatic agreement; use submission instructions found in Appendix D.

For General Questions contact Brian.Sturdivant@HUD.gov

Part IV – Confirmation of Project ESA/EFH Compliance under the Programmatic Consultation process

NMFS completed a program-level biological opinion on stormwater effects likely to occur with HUD-funded projects. To receive confirmation that your project fits within this programmatic consultation, and if any additional conditions apply, use the following Appendices to assist in preparing your submission to NMFS.

1. Use **Appendix B** to identify Low Impact Development (LID) methods that are or can be incorporated into the project to address stormwater generated by the project.
2. Use **Appendix C** to identify information necessary for NMFS review when projects have a Stormwater Management Plan to address some or all of the stormwater generated by the project.
3. Use **Appendix D** to ascertain how and where to submit your consultation request to NMFS.

RE submits the ACTION NOTIFICATION FORM along with all supporting materials as instructed in Appendix D.

APPENDIX B:

Materials and Landscape Design Criteria

to Satisfy Programmatic Terms and Conditions for Increased use of Low Impact Development (LID) Methods

LID Best Management Practices (BMPs) provide a combination of runoff treatment and/or flow control benefits and have additional hydrologic benefits. LID BMPs are installed for the purpose of mimicking the pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. For infiltration BMPs sized to meet Runoff Treatment requirements, the BMP must successfully infiltrate 91% of the influent runoff. Sites that can fully infiltrate 91% of runoff are not required to provide additional Runoff Treatment or Flow Control BMPs⁵.

ROOF AND GUTTERS (source control): Based on information from Washington State Department of Ecology (2014), the following criteria are the applicable minimization measures for roofing and gutters:

- ☐ No use of copper roofing or treated wood shingle roofing.
- ☐ Galvanized metals in roofing or gutters must be painted to prevent rain from introducing zinc into the runoff. If paint begins to flake or peel, paint must be refreshed.
- ☐ Composite (3-tab) roofing without moss inhibitor is preferred for Single Family and Duplexes.
- ☐ Multifamily or commercial style buildings with rooftop HVAC equipment shall place such HVAC equipment under a roofed structure to prevent rain from introducing zinc into the runoff.

ONSITE LID MANAGEMENT OF ROOF RUNOFF: ground water recharge and reduction of runoff volumes): Roof Downspout BMPs include infiltration trenches, dry wells, and partial dispersion systems for use in individual lots, proposed plats, and short plats.

Downspout rain filter boxes should be incorporated into landscaping and building design to reduce metals and depositional contaminants from leaving the site in stormwater runoff (Skaloud 2016). Downspout rain filter box types include:

- ☐ Downspout filtration through amended soil rainboxes (e.g. Grattix Box or Splash Boxx).
- ☐ Green roof, blue roof, or eco roof are an acceptable alternative to downspout treatment

The Department of Ecology 2019 Stormwater Manual also recommends:

- ☐ Downspout full infiltration systems via vegetated trench or drywell where soils infiltrate well.

⁵ Where soils, or site constraints and building design, cannot accommodate LID approaches, or cannot infiltrate 91% of runoff, refer to Appendix C.

- ☐ Downspout dispersion where infiltration rates are slower. Examples are splash blocks and a vegetated flow path (i.e., lawn, landscape area, or vegetated buffer), or gravel filled trenches to slow runoff, allow some infiltration, and provide some water quality benefit.
- ☐ Perforated stub-out connections with gravel trench (not suitable when seasonal water table is less than 1 foot below trench bottom)

HARDSCAPE: (source control for driveways, sidewalks, and patios): Multiple sources indicate that infiltration through pervious materials is effective at minimizing runoff volume and pollutant load (Brattebo and Booth, 2003), even with relatively impervious subgrade soils (Fassman and Blackbourn 2010), with the benefit of not requiring chemical treatment for de-icing in freezing conditions.

Hardscape areas shall incorporate pervious materials to the maximum extent possible. Appropriate pervious materials (See Drake et al., 2014; Alizadehtazi et al. 2016) are:

- ☐ Pervious Concrete
- ☐ Permeable interlocking concrete pavers
- ☐ Porous Asphalt

ONSITE LID STORMWATER MANAGEMENT OF POLLUTION GENERATING IMPERVIOUS SURFACE (PGIS) RUNOFF: (Roads, cul-de-sacs, driveways, and above-ground parking lots):

Where the proposal includes access roads, or open-air parking for more than 4 vehicles, biofiltration should be incorporated into landscaping design to reduce contaminants from leaving the site in stormwater runoff (Hinmann and Washington Department of Ecology 2013). Options for biofiltration include:

- ☐ **Bioretention cells** Shallow depressions with a designed planting soil mix and a variety of plant material, including trees, shrubs, grasses, and/or other herbaceous plants. Bioretention cells may or may not have an underdrain and are not designed as a conveyance system.
- ☐ **Tree box filters/bioretention planters** Bioretention soil mix and a variety of plant material including trees, shrubs, grasses, and/or other herbaceous plants within a vertical walled container usually constructed from formed concrete but could include other materials. Planter boxes are completely impervious and include a bottom (must include an underdrain). Planters have an open bottom and allow infiltration to the subgrade. These designs are often used in urban settings.
- ☐ **Rain gardens** non-engineered, shallow, landscaped depressions with compost-amended soils and adapted plants. These temporarily store stormwater runoff from adjacent areas. A portion of the influent stormwater passes through the amended soil profile and into the native soil beneath. Stormwater that exceeds the storage capacity is designed to overflow to an adjacent drainage system.
- ☐ **Bioswales** Incorporate the same design features as bioretention cells; however, bioretention swales are designed as part of a system that can convey stormwater when maximum ponding depth is exceeded. Bioretention swales have relatively gentle side slopes and ponding depths that are typically 6 to 12 inches

OTHER LID:

Many product lines are commercially available for use in space-restricted sites or locations with poor drainage.

Additional Low-Impact Development (LID) Resource Documents are available at:

Whole Building Design Guide, a program of the National Institute of Building Sciences,

<https://www.wbdg.org/>

<https://www.wbdg.org/resources/low-impact-development-technologies>

<https://www.wbdg.org/resources/wastewater-treatment-and-water-resource-recovery-facilities-wrrfs/storm-water>

RESOURCES

- Alizadehtazi et al. 2016. Comparison of Observed Infiltration Rates of Different Permeable Urban Surfaces Using a Cornell Sprinkle Infiltrometer. J. of Hydrol. Eng. 06016003-1),
- Brattebo and Booth. 2003. Long-term stormwater quantity and quality performance of permeable pavement systems. Water Research 37:43694376)
- Drake et al. 2014. Stormwater quality of spring-summer-fall effluent from three partial infiltration permeable pavement systems and conventional asphalt pavement. Journal of Environmental Management 139:69-79)
- Fassman and Blackbourn. 2010. Urban Runoff Mitigation by a Permeable Pavement System over Impermeable Soils” Journal of Hydrologic Engineering.
- Hinman, C. 2005. Low Impact Development: Technical Guidance Manual for Puget Sound. A Report for the Puget Sound Action Team and Washington State University, Pierce County Extension. Olympia, Washington. (January)
- Hinmann and Washington Dep’t of Ecology. 2013. Rain Garden Handbook for Western Washington; A guide for Design, Maintenance, and Installation
- National Association of Home Builders. 2003. The Practice of LID Development. A Report for HUD and the Partnership for Advancing Technology in Housing. 2003. Washington, D.C. (July)
- Skaloud. 2016. Stormwater treatment through planter boxes for contaminants originating from metal roofs at the Annacis Island Warehouse. University of British Columbia. Open Collections, Undergraduate Research.
- Transportation Research Board. 2006. National Cooperative Highway Research Program (NCHRP) Report 565. Evaluation of Best Management Practices for Highway Runoff Control. Washington, D.C.
- U.S. EPA. 2000. Low-Impact Development (LID): A Literature Review. Office of Water, Washington, D.C. (October)
- U.S. EPA. 2009. Managing Stormwater with Low Impact Development Practices: Addressing Barriers to LID <https://www3.epa.gov/region1/npdes/stormwater/assets/pdfs/AddressingBarrier2LID.pdf>
- U.S. EPA. Best Practices for the Design, Operation, and Maintenance of Green Infrastructure. Website. Accessed 2/13/2020 <https://www.epa.gov/water-research/best-practices-design-operation-and-maintenance-green-infrastructure>
- Washington State Department of Ecology. 2011. Technical Guidance Manual for Evaluating Emerging Stormwater Treatment Technologies: Technology Assessment Protocol – Ecology (TAPE). Lacey, Washington.
- Washington State Department of Ecology. 2014. Roofing Materials Assessment: Investigation of Toxic Chemicals in Roof Runoff from Constructed Panels in 2013 and 2014. – Publication Number 14-03-033.
- Washington State Department of Ecology. 2019. Stormwater Management Manual for Western Washington. Water Quality Program. Lacey, Washington. [https://fortress.wa.gov/ecy/ezshare/wq/Permits/Flare/2019SWMWW/2019SWMWW .htm](https://fortress.wa.gov/ecy/ezshare/wq/Permits/Flare/2019SWMWW/2019SWMWW.htm)
- Washington State Department of Ecology. 2019. Stormwater Management Manual for Eastern Washington. Water Quality Program. Lacey, Washington. [https://fortress.wa.gov/ecy/ezshare/wq/Permits/Flare/2019SWMMEW/2019SWMMEW. .htm](https://fortress.wa.gov/ecy/ezshare/wq/Permits/Flare/2019SWMMEW/2019SWMMEW.htm)
- Washington State Department of Ecology Low Impact Development Technical Guidance for Western Washington. 2012. Lacey, Washington. https://www.psp.wa.gov/downloads/LID/20121221_LIDmanual_FINAL_secure.pdf
- Washington State Department of Ecology Low Impact Development Guidance for Eastern Washington. 2013. Lacey, Washington. <https://fortress.wa.gov/ecy/publications/SummaryPages/1310036.html>

APPENDIX C:

NMFS Stormwater Criteria for HUD Projects in Washington for use when site constraints prevent use of LID

For projects that cannot meet infiltration criteria or on-site LID measure identified in Appendix B above, (pervious pavements, infiltration, bioswales, etc) the following information on stormwater treatment and management must be submitted for a complete, reviewable package:

1. Design Storm:

West of the Cascades, all stormwater treatment practices and facilities that result in off-site conveyance must be designed to accept and provide water quality treatment for the design storm, as through the use of the Western Washington Hydrology Model (WWHM)⁶ or equivalent continuous flow model. East of the Cascades, use the Stormwater Management Manual for Eastern Washington (SWMMEW).⁷

2. Stormwater Management Plan:

- a. All plans, drawings, and the Stormwater Information Form (Appendix D) must be signed by a licensed, professional engineer.
- b. A site map for the project that identifies all:
 - i. Impervious areas;
 - ii. Manufactured stormwater treatment technologies by type and capacity;
 - iii. Other structural source control practices by type and capacity (e.g., special practices for known or suspected contaminated sites); and
 - iv. All runoff discharge points and conveyance paths to the nearest receiving water.
- c. A description of how those practices will manage all precipitation on-site up to the design storm and provide adequate treatment for runoff that will be discharged from the site.
- d. A description of the proposed maintenance activities and schedule for the treatment facilities including the party responsible maintenance and contact information for the responsible party.

⁶ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals/Western-Washington-Hydrology-Model>

⁷ <https://apps.ecology.wa.gov/publications/SummaryPages/1810044.html>

- 3. Conveyance:** When conveyance is necessary to discharge treated stormwater directly into surface water or a wetland, the following requirements apply:
 - a. Maintain natural drainage patterns.
 - b. To the maximum extent feasible, ensure that water quality treatment for the HUD-funded project is completed before commingling with offsite runoff during conveyance.
 - c. Prevent erosion of the flow path from the project to the receiving water and, if necessary, provide a discharge facility made entirely of manufactured elements (e.g., pipes, ditches, discharge facility protection) that extends at least to ordinary high water.

- 4. Soils Report:** Please include documents that indicate soil types, strata, location of water table, infiltration rate and cation exchange rate.

APPENDIX D:

Action Notification Form and Email for Program Compliance for Use with the HUD Programmatic Opinion

March, 2022

Use of the HUD Programmatic E-mail Box

Use the HUD programmatic e-mail box at HUD-wa.wcr@noaa.gov to:

1. request that NMFS review and confirm a HUD-funded project can be included under the programmatic (or if advised it cannot be included – to withdraw a request for review), and
2. to reply to any EFH recommendations provided by NMFS, and
3. to submit the project completion forms.

The mailbox will send you an automatic reply after receipt of any message, but you will not receive any other communication from the programmatic e-mail box. Please cc: Frankie.Johnson@noaa.gov to ensure receipt.

Please direct all other communications or questions to the appropriate NMFS biologist or branch chief.

Please only submit one request for review, withdrawal, or completion report per e-mail (however, if a single project has many files or large files it require multiple emails, in which case, use the same project title for each). Please remember to attach all supporting information, including:

E-mail Title

In the subject line of the email (see below for requirements), clearly identify the type of action you are requesting (i.e., Action Notification, Withdrawal, etc.), Project Name, Applicant (HUD Office or Responsible Entity) Name, County, and Waterway (to which the project will discharge).

Use caution when entering the necessary information in the subject line. If these titling conventions are not used, NMFS will not accept the e-mail.

Examples:

Action Notification: HUD Project Name, Housing & Community Development, King County, Tolt River

Withdrawal: HUD Project Name, City of Tacoma, Pierce County, Puyallup River

Project Completion: HUD Project Name, Housing & Community Development, Thurston County, Nisqually River

Action Notification and Stormwater Information Forms

HUD or the RE must submit an Action Notification Form, a complete Stormwater Information Form, and a complete Post-construction Stormwater Management Plan (PCSMP) to the HUD programmatic e-mailbox to request that NMFS review and approve the PCSMP for a HUD project. Within 7 calendar days, NMFS will tell the requestor which staff person was assigned to complete the review, and within 30 calendar days NMFS will determine whether the proposed project can proceed under the programmatic, and if recommendations or conditions apply.

If asked, the consultation biologist will provide an estimate of the time necessary to complete the review based on the complexity of the proposed action and work load considerations at the time of the request. NMFS may delay its review if the Action Notification Form, the Stormwater Information Form, or the PCSMP is incomplete or unsatisfactory. Please contact NMFS early during the development phase of a project if you have any questions about how these guidelines may affect your project.

Withdrawing a Request for Review

If it is necessary to withdraw a request for review, submit a separate email with the word WITHDRAWN at the beginning of the e-mail subject line, but otherwise follow the email titling conventions as described above. State the reason for the withdrawal in the email. If HUD or an RE re-submits a request for NMFS review that has been previously withdrawn, NMFS will process the resubmittal as if it was a new action notification.

Action Completion Report. HUD or the RE must submit the Action Completion Form to NMFS within 60 days of finishing construction of the stormwater management facilities for a HUD project. Failure to submit the action completion form may result in NMFS recommending reinitiation of this consultation.

Action Notification Form HUD PROGRAMMATIC OPINION

Submit this form with all supplemental information to NMFS prior to the anticipated completion of the project's environmental review. Submit by email to: HUD-wa.wcr@noaa.gov

This form is to be submitted to NMFS by qualified Responsible Entities Only, and only for projects that qualify for inclusion under NMFS' HUD Programmatic Biological Opinion for Projects in Washington # **WCR-2020-00512**. Estimated review time on complete submittal is ~ 30 days.

PROJECT APPLICANT INFORMATION		PROJECT INFORMATION	
RESPONSIBLE ENTITY		PROJECT NAME:	
NAME	PHONE	COUNTY	
TITLE	EMAIL	STREET ADDRESS *	
HUD FUNDED?		CITY	ZIP
ADDITIONAL RE CONTACT NAME	PHONE	NEAREST WATER BODY	
TITLE	EMAIL	WITHIN 150 FEET OF WATER BODY?	YES <input type="checkbox"/> NO <input type="checkbox"/>
PROPONENT OR CONSULTANT		WITHIN 100 YEAR FLOODPLAIN?	YES <input type="checkbox"/> NO <input type="checkbox"/>
NAME	PHONE	5 + ACRES OF MATURE TREES AFFECTED?	YES <input type="checkbox"/> NO <input type="checkbox"/>
TITLE	EMAIL	ESTIMATED CONSTRUCTION START DATE	

NMFS SPECIES & CRITICAL HABITAT PRESENT IN THE ACTION AREA		
PUGET SOUND REGION <input type="checkbox"/> PS CHINOOK,, STEELHEAD PS BOCACCIO, YELLOWEYE ROCKFISH SOUTHERN RESIDENT KILLER WHALES	EASTERN WASHINGTON <input type="checkbox"/> SNAKE RIVER SALMONIDS UPPER COLUMBIA SALMONIDS MID COLUMBIA STEELHEAD	LOWER COLUMBIA BASIN <input type="checkbox"/> LOWER COLUMBIA SALMONIDS GREEN STURGEON EULACHON SOUTHERN RESIDENT KILLER WHALES
EFH SPECIES OCCURRING IN THE ACTION AREA		
<input type="checkbox"/> PACIFIC SALMON (CHINOOK, COHO)	<input type="checkbox"/> COASTAL PELAGICS	<input type="checkbox"/> GROUND FISH

* If the parcel has no street address, please provide latitude and longitude of the project site.

PROJECT DESCRIPTION	
(i.e., pre-project site condition; soil drainage rates – please attach; post-project number of dwelling units; roofing materials and HVAC; associated parking or vehicle access; planting plans – please attach.)	
STORMWATER INFORMATION	
Pre-Project Impervious Surface (roads, driveways, parking, roofs, sidewalks, hardscape), in acres	Pre-Project Pollution Generating Impervious Surface (PGIS), in acres
New Proposed Impervious Surface, in acres	New Proposed PGIS, in acres
Total Post-Project Impervious Surface, in acres	Total Post-Project PGIS, in acres
STORMWATER TREATMENT	
Are Low Impact Development (LID) stormwater methods incorporated into the project? YES <input type="checkbox"/> NO <input type="checkbox"/> (If yes, please describe method))	Methods (infiltration measures e.g. pervious concrete, porous asphalt, permeable pavers; roof runoff filtration; bioswales, rain gardens, bioretention)
All stormwater (up to the 10-year design storm*) infiltrated or treated with LID? <i>Project should submit design showing design storm</i>	YES <input type="checkbox"/> NO <input type="checkbox"/> (If no, please indicate percent using LID)
Non-LID* Stormwater treatment methods used on-site? <i>*Projects not using LID, must submit a Stormwater Design. Consult Appendix C for more information.</i>	YES <input type="checkbox"/> NO <input type="checkbox"/> (If yes, please describe methods)
Non-LID Stormwater treatment methods off-site?	DISCHARGE TO MUNICIPAL SYSTEM? <input type="checkbox"/> OTHER OFFSITE DETENTION/DISCHARGE? <input type="checkbox"/> NAME OF RECEIVING WATER BODY:

*See Ecology 2019 Stormwater Manual to determine the design storm for your location.

MAINTENANCE AND INSPECTION PLAN			
<p>Have you included a stormwater maintenance plan with a description of the on-site stormwater system, inspection schedule and process, maintenance activities, name and contact information of party/parties with legal and financial responsibility, and inspection and maintenance logs?</p>		<p>YES <input type="checkbox"/> Page in stormwater plan where plan can be found</p> <p>NO <input type="checkbox"/> NMFS cannot complete review without a maintenance and inspection plan.</p>	
<p>Contact information for the party/parties that will be legally responsible for performing the inspections and maintenance or the stormwater facilities*:</p>			
Name		Name	
Responsibility		Responsibility	
Phone		Phone	
Email		Email	
Alternate Name		Alternate Name	

*If no individual party is known, please identify a responsible role, such as President of Homeowners' Association, or City or County Maintenance Department. If none, a deed restriction to ensure stormwater facilities are maintained.

OTHER RELEVANT INFORMATION	

Action Completion Report

Submit this form within 60 days of completing all work to NMFS at HUD-wa.wcr@noaa.gov

DATE OF NOTIFICATION	NMFS TRACKING # WCR- (NUMBER PROVIDED BY NMFS)
Project Name	
HUD Office/Responsible Entity	/
Responsible Entity Contact	Name:
	Phone:
	Email:
Construction Completion Date	

1. **Describe the stormwater system as built or installed by the construction contractor and explain any on-site changes from the original plans. Attach additional pages if necessary.**

2. **Attach photos of the constructed stormwater facility, including photos of the outfall structure, vegetation, facility location relative to other site features.**
3. **Attach a map showing the stormwater facility's location(s)**
4. **Attach as-built design drawings for the stormwater facility and site stormwater collection system. Impervious surface includes hardscape, sidewalks, driveways, parking areas, and roofing.**
(PDF versions only please. No CAD files)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OR 97232-1274

Refer to NMFS Tracking Number
WCRO-2020-00512

May 12, 2023

Brian Sturdivant
Regional Environmental Officer (REO)
909 First Ave, Suite 340
Seattle, WA 98104-1000

Re: [ERRATUM](#) - for the Endangered Species Act Section 7 Formal Programmatic Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the U.S. Department of Housing and Urban Development Housing Programs in Washington State

Dear Mr. Sturdivant:

Thank you for the conversation of May 8, 2023 in which you noted a drafting oversight in the referenced HUD Biological Opinion. The correction of this error will not alter the substance, the analysis, conclusion, or outcomes of the opinion, but will ensure that Responsible Entities who employ the programmatic will have greater clarity in the applicability of the program, and the protocols of use and compliance.

In the terms and conditions found on pages 91-93, the original text reads:

“1. The following terms and conditions implement reasonable and prudent measure 1 (minimize take from stormwater using design criteria, restated with additional details in Appendix B for those projects that can apply LID approaches on site; Appendix C for all other projects)

A) HUD shall provide the following criteria for roofing and gutters:

- i. No use of copper roofing or treated wood shingle roofing.
- ii. Galvanized metals in roofing or gutters must be painted to prevent rain from introducing zinc into the runoff. If paint begins to flake or peel, paint must be refreshed.
- iii. Composite (3-tab) roofing without moss inhibitor is preferred for Single Family and Duplexes.
- iv. Multifamily or commercial style buildings with rooftop HVAC equipment shall place such HVAC equipment under a roofed structure to prevent rain from introducing zinc into the runoff.”

The error is in subparagraph iii. That corrected text will read:

- iii. Composite (3-tab) roofing without moss inhibitor is preferred, where available, for Single Family and Multi-Family.



The same correction is also made to parallel text in Appendix B, Materials and Landscape Design Criteria to Satisfy Programmatic Terms and Conditions for Increased Use of LID. The original text reads:

- No use of copper roofing or treated wood shingle roofing.
- Galvanized metals in roofing or gutters must be painted to prevent rain from introducing zinc into the runoff. If paint begins to flake or peel, paint must be refreshed.
- Composite (3-tab) roofing without moss inhibitor is preferred for Single Family and Duplexes.
- Multifamily or commercial style buildings with rooftop HVAC equipment shall place such HVAC equipment under a roofed structure to prevent rain from introducing zinc into the runoff.

The error is in the third bullet. The corrected text will read:

- No use of copper roofing or treated wood shingle roofing.
- Galvanized metals in roofing or gutters must be painted to prevent rain from introducing zinc into the runoff. If paint begins to flake or peel, paint must be refreshed.
- Composite (3-tab) roofing without moss inhibitor is preferred, where available, for Single Family and Multi-Family.
- Multifamily or commercial style buildings with rooftop HVAC equipment shall place such HVAC equipment under a roofed structure to prevent rain from introducing zinc into the runoff.

This correction brings consistency to the proposed action, the effects analyses, and the terms and conditions of the Opinion. The correction readily falls within the existing analysis, and changes no outcomes or conclusions regarding effects of the proposed action presented in the consultation. Please attach this erratum sheet to the Opinion in your records.

Please contact Bonnie Shorin, Branch Chief for the Central Puget Sound Branch of the Oregon Washington Coastal Office at 360-995-2750 or bonnie.shorin@noaa.gov if you have any questions concerning the consultation, or this notice of errata.

Sincerely,



Kim W. Kratz, Ph.D
Assistant Regional Administrator
Oregon Washington Coastal Office