



**APPENDIX H:
TRAIL PERMITTING PROCESS**

TRAILS PERMITTING PROCESS

The permitting process is a critical component in the successful development of a trail network. The process is designed to protect natural and cultural resources (federal, state and local regulations), ensure public safety (building codes), and provide compatible uses within existing communities (Growth Management Act, local plans, and zoning).

Depending on the setting, trail permitting can be complicated, requiring review and permitting by various agencies. Natural resources, critical areas, and endangered species are all issues that can increase the complexity of the permitting process. Trail funding can also create the need for additional permits, especially when federal funding is involved. In addition to these issues, many trail projects go through a public involvement process that can lengthen the permit review period.

Without a specific trail alignment it is difficult to determine necessary permitting requirements. As such, the following provides a general overview of planning considerations and types of review that are typically required. While not all planning considerations or types of review may be involved in the development of a particular trail, it is important to identify some of the more common. Once a trail alignment has been identified, this information can be used to consider specific site conditions.

PLANNING CONSIDERATIONS

The most common considerations to identify in the trail planning process include tribal areas, rights of way, existing uses, zoning, and critical areas.

Tribal Areas

Pierce County is home to several Indian tribes including the Muckleshoot, the Nisqually, the Steilacoom, and the Puyallup Tribes. In the Tacoma area, alignments along the Puyallup River and other areas will likely be within the Puyallup Tribe 1873 Medicine Creek Treaty Lands. Federal funding for a trail project in this area will require review, as specified under Section 106 of the Historic Preservation Act. State funding for a trail project in this area will require review, as specified under Executive Order 05-05. Both of these regulations require a cultural and historical resource assessment. In addition, many local agencies require a cultural and historical resource assessment for projects that disturb soils in these areas.

Rights-of-Way

Reaching an agreement by all effected property owners can be a lengthy process. Regardless of whether a proposed trail is on existing public right-of-way or not, it is important to include affected property owners early in the process, provide information, and discuss any issues regarding trail development and use. As such, securing the necessary rights-of-way for a trail segment may take time and may require phasing. It is common for many trail alignments to follow existing rights-of-way, including rail lines, public easements, and natural resource buffers. To avoid potential issues related to property ownership, easement status, or other property issues, it is important to research all effected properties through a title company. If property is purchased for a trail, additional research including a Phase I environmental site assessment will also be required.

Existing Uses

Trail projects can provide connections to different neighborhoods, commercial areas, parks, open spaces, commuter stations, schools, and recreation facilities. Although trails are typically compatible with existing uses, some communities may require a permit. Existing uses should not preclude trail development, although some uses create unique challenges to the planning process. This is especially common in areas that have heavy traffic, or busy intersections. Trail planning should consider local transportation plans and permits, as well as county, region, and state transportation plans and agencies. As a result, trails that intersect or follow busy streets and intersections should incorporate safety improvements within these areas, especially if the proposed trail is used as a school route.

Zoning

Public trails are typically compatible with most zoning regulations. Many local zoning codes allow trails outright along existing rights-of-way. However, private trails or trail development on private property may be limited in incompatible zoning districts. Some community planning areas in Pierce County do not allow trails in all zoning districts. The Gig Harbor Community Plan, for example, restricts or prohibits trails in several of its zoning districts.

Critical Areas

The Pierce County region has marine shorelines, streams, lakes, wetlands, steep slopes, geological hazard areas, and is home to many federally listed endangered species. Federal permits and funding will require biological assessments to determine whether proposed trail

projects impact endangered species or their habitat. Pierce County and local cities will require critical area reports, including wetland reports, landslide hazard reports, and habitat reports. In addition to the county, many local cities have either adopted or are in the process of developing open space plans in addition to park plans. Information provided in these plans will be important for making trail connections to parks and open space.

TYPES OF REVIEW

Trail development on or adjacent to critical areas in Pierce County requires a variety of permits. Depending on the proposed trail location or funding type, common types of review may involve endangered species, archeological resources, stormwater, and water resources.

Endangered Species

The listing of several northwest fish species under the Endangered Species Act (ESA) requires compliance with federal regulations. These regulations ensure that construction in marine waters, wetlands, lakes, and streams does not have a detrimental impact on fish and does not impact designated fish critical habitat. In addition to fish, Pierce County is home to many listed ESA species.

Archeological Resources

Archeological reviews are required at the federal, state and local levels. In November 2005, the State of Washington Executive Order 05-05 was put in place to protect the rich archeological and historical sites in the state. As part of protecting that heritage, work that requires excavation and is not subject to federal regulations requires cultural and historical assessments at the state level if state funds are used. This includes minor excavation for trails.

Stormwater

Stormwater issues create additional permitting requirements. Recent decisions by the State of Washington Pollution Control Hearings Board require “All Known Available and Reasonable Methods of Treatment (AKART)” to be used in development projects. As specified in the hearing board order, AKART is the use of low impact development techniques, including pervious pavement, rain gardens and other low impact stormwater treatments to prevent pollution.

Water Resources

If trail development occurs on a stream, stream buffer, wetland, wetland buffer or within 200 feet of an existing regulated shoreline,

local critical area codes and shoreline codes will apply requiring stream, wetland and shoreline permits. A habitat assessment will be required for projects occurring on areas that are heavily forested or provide critical habitat for wildlife, especially wildlife that do not typically inhabit urban areas. Federal and state permits include review under the Clean Water Act (CWA), Hydraulic Project Approvals (HPA), and potential tribal review under the CWA and the Endangered Species Act (ESA).

PERMITTING

Federal permits include those administered by the Army Corps of Engineers under the CWA. These are required anytime there is work in a water of the US (considered to be most wetlands, rivers, streams, and some drainage ditches). For trail projects within waters of the US, the Army Corps of Engineers would conduct their review under Section 404 of the CWA, with the State Department of Ecology (Ecology) or the local Tribal entity providing review under the Section 401 of the Clean Water Act. ESA review is required anytime there are federal permits or funding and a potential impact to a listed endangered species, including listed fish and southern resident killer whales (Orcas). State permitting requirements will include WDFW HPA which is required for work in, over, under, or adjacent to a water of the state along with Ecology review (if no 401 review) under RCW 90.48. Trail head locations might require a conditional use permit from the local agency.

Regulatory permitting is constantly changing. New regulations are being developed for reduction of green house gas emissions but nothing has been finalized in Pierce County. Mitigation will most likely be required and commuter trails provide a potential option as mitigation. Given the current regulatory environment, challenges will be encountered for trail projects based upon the amount of time required for permit review. Many federal, state, and local agencies have very heavy workloads and permitting review can range from six to eight months. Generally review of the project funding and location should help to determine which of the following permits/approvals will be required:

- Section 404 Permit from ACE under the CWA.
- Section 401 Permit from Ecology or local Tribe under the CWA (Note: If the project does not require a 404 permit, then section 401 is not applicable).
- WDFW HPA for work over, under, adjacent to waters of the state.
- Habitat Assessment, Biological Assessment.

- Wetland review and review by ecology under RCW 90.48.
- Cultural and Historical Assessment.
- Review under the State Environmental Policy Act (SEPA).
- Review under Critical Area regulations.

In order to obtain the necessary permits, especially for wetlands, mitigation will be required. Depending on the area, several permits could be required prior to construction. Once the final alignment is selected and the environmental permitting is completed, building permits will need to be obtained.

There are always challenges to constructing trails, but trails provide many benefits. Communities can create trail systems to connect with transit stations, parks, schools, and neighborhood shopping areas. The Pierce County regional trail system can continue working toward connections to existing trails such as the Interurban Trail, the Foothills Trail, the Scott Pierson Trail, Cushman Trail, and the Chehalis Western Trail which will enhance recreation opportunities and commuting options for area residents.

H-1: Federal, State and Local Regulations

General Regulatory Requirements			
Special areas:	Federal	State	Pierce County*
Right of Way	---	---	Permitted outright within existing right of ways.
Wetlands	Section 404 of CWA, Army Corps of Engineer permit required (there are two permitting levels within the Section 404, one is a Nationwide Permit (NWP) and the other is an individual permit. Many trails (less than 1/2 acre impact) fall into the NWP -14 category.	If reviewed by Corps under Section 404 then a Section 401 review by State Department of Ecology(or local tribe); If no Section 404 Ecology still regulates under RCW 90.48; Possibly requires Hydraulic Project Approval (HPA) from Washington State Dept of Fish and Wildlife (WDFW) (HPA applies to work adjacent to, in on over or under the	Critical Area Review under PCC - Wetland report and mitigation for impacts - PCC 18E.20 AC provides conditions where trails are allowed in wetland buffers.
Streams	Section 404 of CWA, Army Corps of Engineer permit or if stream is considered navigable Section 10 of the Rivers and Harbors Act applies if there are endangered fish in the stream a biological assessment will be needed (some wetlands are connected to streams, providing refuge for juvenile salmon and work in those will require preparing a biological assessment).	Section 401 review by State Department of Ecology (or local tribe); If no Section 404 Ecology still regulates under RCW 90.48; HPA from Washington State Dept of Fish and Wildlife.	Possible shoreline report and permit application (streams over 20 cfs); minimum stream report including Habitat Assessment and Shoreline erosion report
Other Critical Areas	---	---	Other Critical Areas within the PCC include Volcanic Hazards, Aquifer Recharge, Flood plains, Landslide Hazards

H-1: Federal, State and Local Regulations

General Regulatory Requirements			
Special areas:	Federal	State	Pierce County*
Marine Shorelines	Section 404 of CWA, Army Corps of Engineer permit or if waterward of OHWM Section 10 permit for work in navigable waterway	Section 401 review by State Department of Ecology; Hydraulic Project Approval from Washington State Dept of Fish and Wildlife	Compliance with County Shoreline Master Program, shoreline erosion hazard report and possibly a landslide hazard report depending on the site. Shorelines designated as "Natural Environments" do not allow paved trails.
Tribal Lands	Tribal entity has jurisdiction as a sovereign nation, Pierce County region tribes include: Puyallup Tribe, Nisqually Tribe, and Muckleshoot Tribe	Executive Order 05-05 must be complied with for all public works projects that receive state funding	Pierce County requires a cultural site assessment for all their projects involving excavation.
Federal Funding	Compliance with National Environmental Policy Act (NEPA)	---	NEPA Environmental Assessment or Environmental Impact Statements can be adopted for SEPA.
Projects that are not exempt from environmental review	---	State Environmental Policy Act - trail maintenance is typically exempt from SEPA.	SEPA determination is made by the local agency, in this case Pierce County Planning, if there is federal funding and the project is a NEPA Environmental Assessment or Environmental Impact Statement, the NEPA can be adopted for SEPA.

*All Pierce County Projects require compliance with development regulations.

At a minimum an abbreviated site plan will be required for all trail projects and Low Impact Development techniques for treating storm water should be included in all

H-2: Community Planning Areas

Pierce County Zoning Designations	
Pierce County Code designates linear trails in the Civic Use Category as recreation non-profit; the use is considered a Level 4 Use	
Pierce County Outside Community Planning Areas	
Allowed in all Rural residential classifications	
Allowed in all Rural Centers and Resource Lands	
Allowed in all Urban Centers and Employment Centers	
Community Planning Areas:	
Alderton- McMillin	NOT allowed in the following districts: Agricultural Resource Lands; Rural Farm
Frederickson	Allowed in all districts
Gig Harbor Peninsula	NOT allowed in the following districts: Rural Neighborhood Center Requires Conditional Use permit in: Essential Public Facility Airport North; Rural 10; Rural 5; and Rural Sensitive Resource
Graham	Allowed in all districts
Key Peninsula	Allowed in all districts
Parkland-Spanaway-Midland	Allowed in all districts
South Hill	Allowed in all districts
MidCounty	Allowed in all districts

The permitting process can be very complicated and involved. Each project should be considered on a case by case basis, the following two examples should help illustrate why.

Example 1
<p>A trail constructed across an existing stream (non-navigable), with in water work, in the Graham Community Planning Area could require the following permits/approvals:</p> <ul style="list-style-type: none"> • Army Corps of Engineers - Section 404 NWP 14, if there are endangered fish in the stream prepare a biological assessment • Ecology either a Section 401 permit (if Ecology issues the decision after the Corps reviews and issues their decision) or an Administrative Order under RCW 90.48 • WDFW - Hydraulic Project Approval (HPA) for work in, on, over, or adjacent to a water of the state please note WDFW will not review until the SEPA is issued. • SEPA - issued by Pierce County • Pierce County Planning will require a habitat assessment report, a shoreline erosion hazard report, and cultural assessment.

Example 2
<p>A trail constructed across an existing stream (non navigable) with all work on the upland (no in water work) and in the Graham Community Planning Area could require the following permits/approvals:</p> <ul style="list-style-type: none"> • WDFW HPA for work in, on, over, or adjacent to a water of the state please note WDFW will not review until the SEPA is issued • SEPA - issued by Pierce County • Pierce County Planning will require a habitat assessment report, a shoreline erosion hazard report, and cultural assessment.

H-3: Pierce County Special Areas

Federal	State	Local
Floodplains		
May require creating compensatory flood plain storage	New state regulations may include the floodplain adjacent to rivers as part of the	SEPA, regulated by the Critical Area Regulations
Wetlands		
If water of the US and work is in-water Section 404 permit; Section 106 and Biological Assessment	If Section 404 then Section 401 if not, RCW 90.48; MAY require HPA from WDFW	SEPA; Wetland Report and Fish and Wildlife Habitat Assessment; Cultural Assessment
Wetlands connected to fish bearing streams		
If navigable Section 10 and possibly Section 404, non navigable Section 404, Biological Assessment; Section 106	If Section 404 then Section 401 if not, RCW 90.48; HPA from WDFW; if state funded EO 05-05 review	SEPA; Cultural Assessment; Wetland Report, Fish and Wildlife Habitat Assessment, possibly Shoreline Report
Lakes		
If navigable Section 10 and possibly Section 404, non navigable Section 404, Biological Assessment; Section 106	If Section 404 then Section 401 if not, RCW 90.48; HPA from WDFW; if state funded EO 05-05 review	SEPA; Cultural Assessment; Wetland Report, Fish and Wildlife Habitat Assessment, possibly Shoreline Report
Nonfish Bearing Streams		
If navigable Section 10 and possibly Section 404, non navigable Section 404, Section 106	If Section 404 then Section 401 if not, RCW 90.48; Possibly an HPA from WDFW; if state funded EO 05-05 review	SEPA; Cultural Assessment; Wetland Report, Fish and Wildlife Habitat Assessment, possibly Shoreline Report, possibly shoreline erosion hazard report and landslide hazard report
Fish Bearing Streams		
If navigable Section 10 and possibly Section 404, non navigable Section 404, Biological Assessment; Section 106	Section 401 from Ecology, HPA from WDFW; if state funded EO 05-05 review	SEPA; Cultural Assessment; Wetland Report, Fish and Wildlife Habitat Assessment, possibly Shoreline Report, possibly shoreline erosion hazard report and landslide hazard report.
Marine Shorelines		
If navigable Section 10 and possibly Section 404, non navigable Section 404, Biological Assessment; Section 106	Section 401 from Ecology, HPA from WDFW; if state funded EO 05-05 review	SEPA; Cultural Assessment; Fish and Wildlife Habitat Assessment; Shoreline Report, possibly shoreline erosion hazard report and landslide hazard report
Tribal Lands		
All federal permits are applicable (e.g. if in water work an Army Corps permit is required).	Sovereign Nation, not regulated by the State	Sovereign Nation, not regulated by County
*All Pierce County Projects must comply with Pierce County Stormwater development regulations including work in special areas.		
At a minimum an abbreviated engineered site plan will be required for all trail projects and Low Impact Development techniques for treating storm water should be incorporated into trail work.		

H-3: Pierce County Special Areas

Project Cost:	
1% for Arts	Public projects costing over \$100,000 require a contribution of 1% for arts
Grant Funding:	
Federal Grants (including NPS grants and some RCO Grants)	Require review under NEPA, Section 106 and Biological Assessment for ESA listed species, ADA compliance.
State Grants (including some RCO Grants)	Require review under SEPA, Executive Order 05-05, ADA compliance.
Regulatory Definitions:	
Biological Assessment/Evaluation (BA/BE):	A document that evaluates the project activities and how those activities will effect federally listed endangered species.
Cultural Assessment:	Pierce County any area requiring excavation needs to provide assessment for cultural and historical resources
Executive Order 05-05:	If NEPA and Section 106 are not applicable, the State under Executive Order 05-05 requires review to ensure no tribal cultural or archeological sites are effected.
Fish and Wildlife Habitat Assessment:	Review of areas that support various species including ESA listed species, elk habitat, oak prairies, etc.
Hydraulic Project Approval (HPA)	Washington State Fish and Wildlife issues an HPA for work in waters of the state under RCW 77.55.
Landslide Erosion Hazard:	Required by Pierce County for areas prone to Landslides, Pierce County Atlas provides information.
National Environmental Policy Act (NEPA):	If a project has federal funding a NEPA exclusion, Environmental Assessment or Environmental Impact Statement is required.
RCW 90.48:	An Administrative Order issued by Ecology to allow work in wetlands when there is no Section 404/401 requirement.
Section 10 Rivers and Harbors Act:	Required for work in Navigable Waterways as determined by the Army Corps of Engineers, Application is by submitting a Joint Aquatics Resource Permit Application (JARPA).
Section 106:	If federal funding or a federal permit, review under Section 106 of the historic preservation act applies to ensure protection of tribal, archeological and historical resources.
Section 401 Clean Water Act:	If the project requires Army Corps review under Section 404 of the CWA, it may also require review and approval under Section 401, Ecology will review or the tribe if the work is on tribal land/waters. The Section 401 CWA review (if needed) is completed after the Section 404 CWA approval.
Section 404 Clean Water Act (CWA):	Required for all work in waters of the US, including wetlands. Administered by the Army Corps of Engineers, application is by submitting a Joint Aquatics Resource Permit Application, if work is done where there are endangered fish a Biological Assessment/evaluation will be needed.
State Environmental Policy Act (SEPA):	State Environmental Policy Act required for most trails unless the project is repair and maintenance or on existing right of way.
Shoreline Erosion Hazard:	Required by Pierce County for shoreline areas.
Shoreline Report SMA/SMP:	Shoreline Master Program, work within 200 feet of shorelines requires local review under the Shoreline Master Program, including trails.
Water of the US:	Includes wetlands that are connected to streams and SOME isolated wetlands. Does not include Prior Converted Croplands (PCC).
Wetland Report:	Required by Pierce County for work in or around wetlands, report will include mitigation if any wetlands are affected by the project.

