



Supplemental Regulatory Program Information



Regulations and Permits

The Surface Water Utility must comply with local, state, and federal regulations and permits, some of which are applicable to the work the Utility does, and others that are more tangential. This appendix provides supplemental summary information about the City’s applicable regulations and permits in the table below.

Law	Program	Intent	Relevance to Kirkland Surface Water Program
Clean Water Act/ Federal	NPDES MS4 Permit	Eliminate discharge of pollutants to nation’s water, and achieve water quality that supports beneficial uses (fishable and swimmable)	NPDES Permit delegates Kirkland with the responsibility for water quality leaving the City’s system. Current NPDES Permit effective August 1, 2019, requires phased implementation schedule for new Comprehensive Stormwater Planning and Source Control Program requirements.
Clean Water Act/ Federal	Other NPDES permits (Industrial, Sand and Gravel, Boatyard, Construction permit, etc.)	Eliminate discharge of pollutants from industrial activities	Requires entities in Kirkland that conduct certain pollutant-generating activities to obtain a permit and implement a plan to eliminate or minimize discharge of pollutants to receiving waters.
Clean Water Act/ Federal	Water quality standards (303(d) list)	Protect and restore beneficial uses of state waters including fishing and swimming	Requires Ecology to develop a total maximum daily load (TMDL) for each pollutant in water bodies at levels greater than the water quality standards.
Clean Water Act/ Federal	Sections 401 and 404	Protect water quality during construction in waterways	Requires a permit for activities that discharge or dredge fill material to or from Waters of the United States.

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Clean Water Act/ Federal	Executive Order 13868 - the "Clean Water Act Section 401 Certification Rule," finalized June 1, 2020.	The Certification Rule addressed some key areas of the CWA Section 401 process, including timelines for review and action, initiating certification, clarification to the scope of certification review, technical assistance, and early engagement.	States and authorized tribes where the discharge would originate are generally responsible for issuing water quality certifications. The CWA Section 401 Certification Rule was vacated October 21, 2021, nationwide by a US District Court. The order requires a temporary return to the 1971 EPA Rule until the Agency finalizes a new certification rule following the public notice and comment process.
	Executive Order 13990 - "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" (Section 401)	To reconsider and revise the 2020 Clean Water Act Section 401 Certification Rule, as it determined that it erodes state and tribal authority under the CWA and thereby clean water and public health protections.	This is proposed to be the new certification rule that will replace the "Clean Water Act Section 401 Certification Rule," Muckleshoot Indian Tribe is party to SEPA review of development proposals and programs.

Law	Program	Intent	Relevance to Kirkland Surface Water Program
Tribal Agreements and Related Case Law / Federal	Federal Culvert Injunction -June 11, 2018, U.S. Supreme Court affirms that the State of Washington must repair or replace culverts that impede the passage of fish to their spawning grounds.	Protect fish populations in traditional fishing grounds of Indian tribes, upholding treaty obligations.	Muckleshoot Indian Tribe is party to SEPA review of development proposals and programs. June 11, 2018, U.S. Supreme Court ruling affirms that all culverts owned by DNR, WDFW, and State Parks must provide fish passage by October 31, 2016; and 90% of culverts owned by WSDOT by March 29, 2030. The injunction does not require correction of barrier culverts owned or maintained by local governments or other public or private entities.
National Flood Insurance Act, Flood Disaster Protection Act / Federal	National Flood Insurance Program (NFIP)	Reduce property damage and public safety threats from flooding.	City enacts restrictions/ requirements on development in floodplain. The National Marine Fisheries Service (NMFS) issued a Biological Opinion that required changes to the NFIP to comply with ESA.
Endangered Species Act (ESA)/Federal	Listing of Chinook salmon as a threatened species	Prevent further decline of Chinook salmon populations through prohibition on “take” of the fish or their habitat.	City participates in Water Resources Inventory Area (WRIA) 8 Salmon Conservation Planning. Chinook salmon are present in Lake Washington. The intent of this work is to recover and eventually de-list the species, as opposed to merely prohibiting take, leading to greater certainty for all.

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Endangered Species Act (ESA)/Federal	WRIA 8 Chinook Salmon Conservation Plan	To lead the region toward a legacy of healthy, harvestable salmon and improved water quality for future generations. This includes adapting salmon recovery strategies and actions to anticipated changing conditions resulting from climate change, population growth, and shifting community demographics.	City Council adopted WRIA 8 Plan via Resolution R-4510 in 2005. The Plan has been updated (2017) incorporating new science and lessons learned from over a decade working to recover salmon. The City will continue working with neighboring local governments to improve integration of salmon recovery priorities into land use planning to support land use changes that improve Chinook survival. .
State Environmental Policy Act (SEPA)/ State	City of Kirkland reviews proposals and issues SEPA determination	Identify and require mitigation for the environmental impacts or proposals and programs	SEPA is used to address impacts that are not covered in other City requirements.
Shoreline Management Act / State	City of Kirkland Shoreline Master Plan	Protect use and functions (economic, ecological, and aesthetic) of shoreline areas. Implemented by KMC Chapter 21.	The City's 2010 Shoreline Restoration Plan component of the Shoreline Master Program for the City of Kirkland (The Watershed Company, 2010) outlines restoration priorities that are complementary or the purview of the Surface Water Utility. City Council approved a periodic update of the Shoreline Master Program in April 2020 (Ordinance 4701) that was approved by Ecology in September 2020.

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Hydraulic Code / State	Revised Code of Washington	Set requirements for placement of culverts and other hydraulic devices that may impact fish use.	Project proposing work within the wetted perimeter of a stream must obtain a Hydraulic Project Approval (HPA).
Growth Management Act / State	City Comprehensive Plan, City zoning and critical areas regulations	Regulate land use to meet growth targets while providing necessary services and protecting sensitive environmental resources	City of Kirkland Comprehensive Plan and supporting municipal code sections. The next Comprehensive Plan Update is scheduled to begin in 2022 with a target horizon year of 2044. Surface Water Management will coordinate with the Comprehensive Plan Update.
Puget Sound Partnership / State	Action Agenda	Protect habitat and economic resources (fish, shellfish) in Puget Sound	Action agenda includes a specific list of components to address water quality and quantity in Puget Sound. Many requirements overlap with NPDES requirements.