

# Memo



To: BCC Partner Agencies and File

From: Molly O'Donnell

Date: June 29, 2017

Re: SB-40 Applicability to the BCC CDBG-DR Program

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Senate Bill 40 (SB-40), as prescribed in 33-5-101, CRS 1973, as amended, makes the State of Colorado Parks and Wildlife Division (CPS) responsible for “preserving the state’s fish and wildlife resources from actions of any state agency that may obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries.”

Therefore, in order to apply to a project, there must be a State share of funds (State action) **AND** have a potential to affect, in the manners described above, any waters of the state. Federal funds allocated to the BCC **through** the State (DOLA) do not qualify as State funds.

SB-40 is a State requirement, not a HUD requirement. However, all CDBG-DR projects are required to satisfy all applicable State and local requirements to be considered a fully compliant project.

For example, a FEMA-funded project with a State share and a local share being funded by CDBG-DR **AND** that has potential to affect waters of the state needs to complete an SB-40 consultation with CPW in order to satisfy State requirements. However, the BCC defers to the State lead agency to ensure compliance with State requirements. In the case of FEMA-funded projects, DHSEM is the State lead agency responsible for ensuring compliance with State requirements. If DHSEM does not require SB-40 compliance on a project, then the BCC defers to that decision.

Another example: project funded only by CDBG-DR or a combination of federal funding sources with no State funds is not required to satisfy SB-40, even if waters of the State are affected (this does not preclude compliance with federal requirements to waters of the U.S.).

If a Partner has a question about applicability of SB-40 to their project, please contact Molly O'Donnell. Any project that is not required to complete an SB-40 consultation can still do so on a voluntary basis at the discretion of the project proponent.

The process for completing an SB-40 consultation includes:

1. Determination whether the project will fall under CPW's Programmatic SB-40 Certification or needs a project-specific certification.
2. **At least 60 days prior to construction**, Email Larry Rogstadt at CPW ([larry.rogstadt@state.co.us](mailto:larry.rogstadt@state.co.us)) the following information with "SB40 – Project Name" in the Subject line to request an SB-40 review:
  - a. Project Description & Location
  - b. 30% plans or other project drawing
  - c. Project proponent contact information
  - d. Indicate whether the project qualifies for coverage under the Programmatic Certification.
  - e. Larry can be reached for questions at (970) 302-7394
3. Larry will forward to the appropriate local CPW staff person for review
4. For Programmatic Certifications, CPW will provide concurrence within approximately 2 days.
5. For project-specific certifications, CPW will provide a comment letter within 30 days.

NOTE ON TIMEFRAMES: For larger scale projects, consultation should start at 30% design, not 60 days out from construction in order to avoid costly design revisions at the last moment.

Here is a summary of current projects and the applicability (or not) of SB-40 to those projects:

- BoCo Home Access – Not applicable because there are no State funds.
- BoCo Reach 3 – If there are State funds involved SB-40 would be required. However, BoCo is already complying because they are designing for fish passage.
- BoCo Left Hand Canyon Reconstruction – There should be a State match but if DHSEM did not require it, the BCC will not require it.
- BoCo Left Hand Canyon Emergency Access Road – Not applicable since it was an emergency project immediately after the flood and no design was involved.
- BoCo Boston Avenue Repaving – Not applicable because there will be no stream impacts.
- City of Boulder – Not applicable because all funds through CDOT were federal FHWA pass through funds, not State funds.
- Jamestown Lower Main St. Bridge – SB-40 required, however Jamestown is already complying.
- Jamestown CR-94 – Applicable to revised project since culverts are being added, but stream impacts are minor, could be a programmatic certification.

- Longmont RSVP – Not applicable because no State funds, however Longmont is following SB-40 voluntarily.
- Louisville Raw Water Diversion – There was a State match but if DHSEM did not require it, the BCC will not require it.
- Nederland – Not applicable because these were road runoff drainage sites, not in-stream work.