



U.S. Department  
of Transportation

**Federal Highway  
Administration**

## Guidance on Wild & Scenic Rivers in Idaho

### Idaho Division

This guidance is intended to assist the Local Highway Technical Assistance requirements of the Wild and Scenic Directive regarding the Nationwide



Idaho Transportation Department (ITD) and the Council (LHTAC) in complying with the Rivers Act (WSRA) and the 1979 Presidential Rivers Inventory.

### Rivers in Idaho affected by the WSRA and/or the Presidential Directive

There are three lists to be aware of:

- Designated Wild & Scenic Rivers (WSR);
- Study rivers authorized by Congress (Section 5(a)); and
- Nationwide Rivers Inventory (NRI) (Section 5(d)(1)).

#### Wild & Scenic Rivers

Idaho has the WSR designations on the rivers listed below. Click on the river name (bold letters) to link directly to information on each on the [www.rivers.gov](http://www.rivers.gov) website, including the type of designation (Wild, Scenic, or Recreational), map location, and description of the designated reach.

- **Battle Creek** (Owyhee County)
- **Big Jacks Creek** (Owyhee County)
- **Bruneau River** (Owyhee County)
- **Bruneau River - West Fork** (Owyhee County)
- **Clearwater River - Middle Fork** (Idaho County)
- **Cottonwood Creek** (Owyhee County)
- **Deep Creek** (Owyhee County)
- **Dickshooter Creek** (Owyhee County)
- **Duncan Creek** (Owyhee County)
- **Jarbidge River** (Owyhee County)
- **Little Jacks Creek** (Owyhee County)
- **Owyhee River** (Owyhee County)
- **Owyhee River - North Fork** (Owyhee County)
- **Owyhee River - South Fork** (Owyhee County)
- **Rapid River** (Adams and Idaho Counties)
- **Red Canyon** (Owyhee County)
- **St. Joe River** (Shoshone County)
- **Salmon River** (Lemhi and Idaho Counties)
- **Salmon River - Middle Fork** (Valley, Custer, Lemhi Counties)
- **Sheep Creek** (Owyhee County)
- **Snake River** (Idaho County)
- **Wickahoney Creek** (Owyhee County)

#### Study Rivers

Congressionally authorized study rivers are also protected under the WSRA as explained in the section titled "Compliance with the WSRA (Section 7)." Study rivers are listed at <http://www.rivers.gov/study.php>

then navigate to “Section 5(a), Congressionally Authorized Studies” Congressionally authorized study rivers in Idaho include the following river segments:

- St. Joe and Salmon Rivers, which were added to the system,
- Bruneau and Priest Rivers, which were recommended for designation, and
- Moyie and Snake Rivers, which were not recommended for designation

**Note:** Land management agencies may have lists of rivers in which they have made eligibility and suitability determinations. Rivers on these lists are not afforded protection under the WSRA unless they also happen to be congressionally authorized study rivers.

For projects on federal lands, check with the local land manager to verify that the segment is still considered ‘eligible and/or suitable’ in their most recent land or resource management plan.

### **Nationwide Rivers Inventory (NRI)**

Under the [Wild and Scenic Rivers Act](#) section 5(d)(1) and related guidance, all federal agencies must seek to avoid or mitigate actions that would adversely affect [NRI river segments](#).

The NRI is a list (maintained by the National Park Service (NPS)) of potentially eligible river segments. There are over 100 river segments in Idaho on the NRI; they occur across the state from Boundary County in the north to Owyhee County in the southeast, Twin Falls in the south, and Caribou County in the southeast. Segments are present in every ITD District. The list is extensive and so is not reproduced here – water bodies with name starting with letters A thru M are shown on <http://www.nps.gov/ncrc/programs/rtca/nri/states/id.html> and names starting with N through Z are shown at <http://www.nps.gov/ncrc/programs/rtca/nri/states/id2.html>.

The 1979 Presidential Directive and CEQ procedures found at <http://www.nps.gov/ncrc/programs/rtca/nri/hist.html#pd> provides guidance for interagency consultation to avoid or mitigate adverse effects on NRI rivers.

### **WSR Boundaries**

Each congressionally authorized WSR must have a legally established boundary. If a boundary has not yet been established, an interim boundary will be in effect, generally comprising “that area measured within ¼ mile from the ordinary high water mark on each side of the river.” The final boundary is limited to an area averaging up to 320 acres per river mile. State-administered rivers (Section 2(a)(ii)) may or may not include the establishment of lateral boundaries.

#### **Notes:**

- Contact the river-administering agency to obtain the boundaries.
- Boundaries for USFS-administered WSRs may be found in the relevant national forest plan.

### **Compliance with the WSRA (Section 7)**

Federally assisted construction projects determined to be “water resources projects” (e.g. bridge replacements) are subject to Section 7 of the WSRA. Section 7 determinations are made by the federal river-administering agency for federally-administered WSRs and by the NPS for state-administered WSRs. Evaluation standards vary by project location (i.e., within the bed/banks of a designated/congressionally authorized study river or within the bed/banks upstream, downstream or on a tributary to the river). The evaluation standards can be found in the document **“Wild and Scenic Rivers Act: Section 7”** <http://www.rivers.gov/documents/section-7.pdf>

- **Within the bed/banks of a designated or congressionally authorized study river corridor**, the river-administering agency determines whether there are “direct and adverse effects” to the values (free-flowing condition, water quality and the outstandingly remarkable values). Any project that results in a “direct and adverse effect” on the values is prohibited. See **Appendix C** of *“Wild and Scenic Rivers Act: Section 7”*;

- **Within the bed/banks upstream, downstream or on a stream tributary to a designated river corridor**, the river-administering agency determines whether the proposed project would “invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area” on the date of its designation. See **Appendix D** of “*Wild and Scenic Rivers Act: Section 7*”, and
- **Within the bed/banks upstream, downstream or on a stream tributary to a congressionally authorized study river corridor**, the river-administering agency determines whether the proposed project would “invade the area or diminish the scenic, recreational, and fish and wildlife values present in the area” on the date of its authorization for study. Note: This standard provides greater protection during the shorter-term study process because “diminish” is not qualified by “unreasonably.” See Appendix E of “*Wild and Scenic Rivers Act: Section 7*”.

In the analysis process, opportunities for improved design or a better location for a bridge may lessen its impacts on river resources and allow better connection of the river with its floodplain.

## Coordination

ITD and/or LHTAC should identify any proposed, federally assisted action having a foreseeable effect on a WSR or a congressionally authorized study river early in the planning process. Coordination should begin to with the river-administering agency and other interested parties when such projects are identified. For each alternative under consideration, the environmental analysis will identify the potential effects on the natural, cultural and recreational values of the designated or study river. If any alternatives could adversely impact the values for which a river was designated, or foreclose options to designate a congressionally authorized study river, those alternatives cannot be selected, absent the elimination of adverse effects. The NEPA process will facilitate, but does not substitute for, a Section 7 determination by the river-administering agency. However, Section 7 consultation and determinations should occur within the umbrella of the project NEPA phase.

## State-administered rivers

Under Section 2(a)(ii) of the Act, a state governor can request that a river be designated, provided certain conditions are met. The National Park Service (NPS) then conducts a study to determine if those conditions are satisfied. There are currently no studies for Idaho rivers. Although it becomes the responsibility of the state to serve as the river-administering agency for WSRs designated under Section 2(a)(ii) of the WSRA, the NPS retains responsibility for making the Section 7 determination, preferably in consultation with the state.

## Types of activities likely to be exempt from Section 7 of the WSRA

The WSRA does not exempt any types of federally assisted or sponsored water resources projects from compliance. Neither the DOI nor USDA considers highway reconstruction, including replacement or modification of bridges, to be maintenance. Maintenance projects such as painting, resurfacing, or replacement of superstructure or guardrails presumably do not involve construction in the bed/banks of a river and therefore are not water resources projects. It is also unlikely that bridge and roadway construction upstream, downstream or on tributaries of designated rivers will invade or unreasonably diminish the scenic, recreational, fish or wildlife values of the designated river, and they usually will not require a Section 7 determination by the river administrator. This is also for true for congressionally authorized study rivers except the standard is “diminish” rather than “unreasonably diminish.” The further the project is from the designated or study area the more likely this will be the case. Early consultation with the river administrator is advised.

Relative to the NRI, CEQ guidance states:

*“...repair or rehabilitation of existing structures would not have a negative impact except if the action would result in significant expansion of the facility or if the construction process itself would cause an irreversible impact on the environment.”*

## **Design changes required through Section 7 of the WSRA**

Design changes may be required only if the river-administering agency intends to make an adverse determination under Section 7 and suggests measures to eliminate the adverse effects. Continued contact and coordination with the administering agency is crucial during project development. For example, aesthetic treatments may be required if the project adversely affects scenic values. Staff of FHWA and the river-administering agency should also consider opportunities in project design based on direction in the river management plan. While such opportunities, e.g., increased or decreased access, are not a part of the Section 7 determination, assuming such components are not water resources projects, their inclusion in project design may protect or enhance river values, in conformance with direction to all federal agencies in Section 12(a) of the WSRA and possible formal agreements with specific administering agencies.

## **Section 4(f) applicability**

Publicly owned public parks, recreation areas, refuges, and historic sites within a WSR corridor are subject to Section 4(f). Lands in WSR corridors managed for multiple uses may or may not be subject to Section 4(f) depending on the manner in which they are administered by the managing agency. Close examination of the management plan is required prior to any use of these lands for transportation purposes. Section 4(f) would apply to those portions of the land specifically designated in a management plan for recreation or other Section 4(f) uses. Where the management plan does not identify specific uses or where there is no plan, further consultation with the river-administering agency is required in order to make a Section 4(f) determination.

**Note:** FHWA makes the Section 4(f) determination.

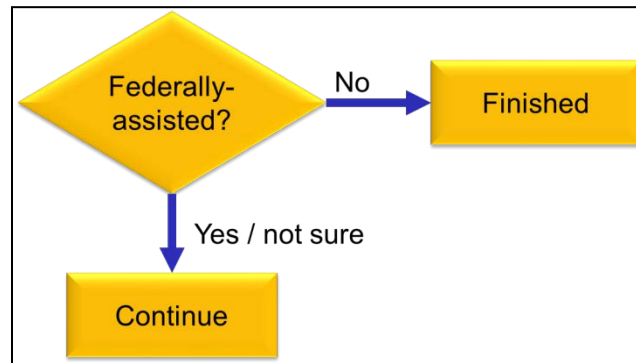
## **The WSRA compliance process**

One of the first steps is determining whether the project involves federal assistance. Federal assistance can be:

- FHWA funding
- USACE permit
- USCG permit
- Transferring property rights from federal lands

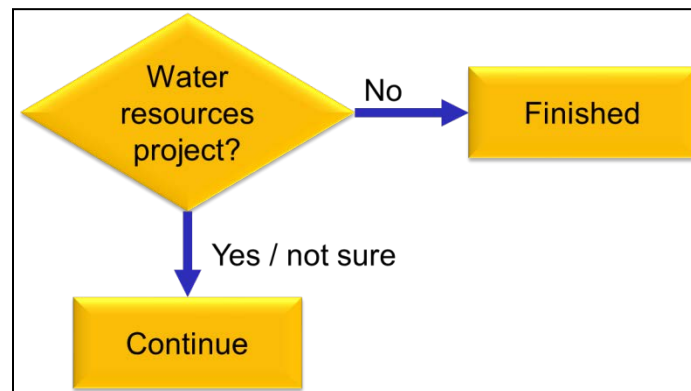
There are three options at this point:

- If your project does not involve any form of federal assistance, then you're done.
- If your project does involve federal assistance, continue on.
- If you are not sure if you need federal assistance, continue on.



A next step is to determine whether the project is a “water resources” project. You have three options at this point:

- If you know your project is not a “water resources” project, then you’re done.
- If you know your project is a “water resources” project, continue on.
- If you are not sure if your project is a “water resources” project, continue on.

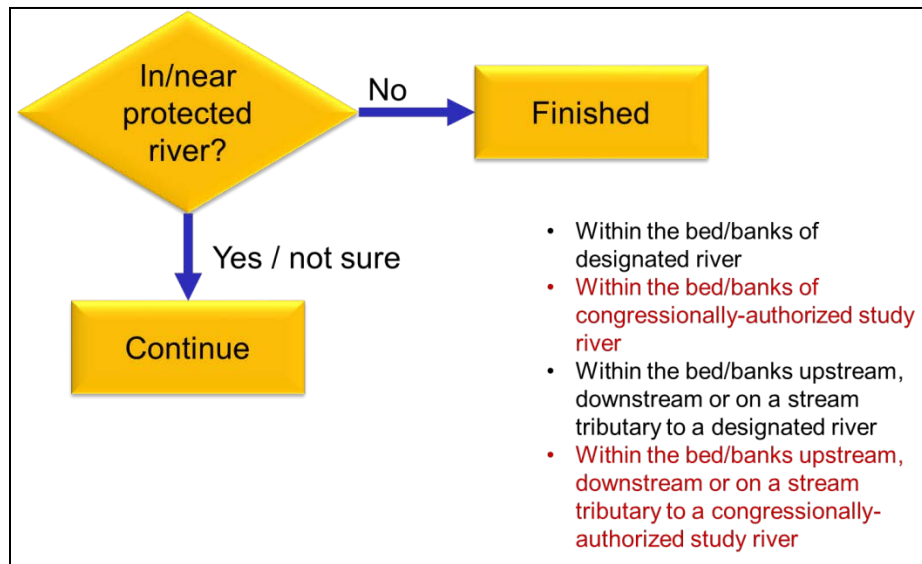


Now you must determine the proximity of your project to the river segment. Proximity will depend on whether your project is:

- Within the bed/banks of designated river
- Within the bed/banks of congressionally-authorized study river
- Within the bed/banks upstream, downstream or on a stream tributary to a designated river
- Within the bed/banks upstream, downstream or on a stream tributary to a congressionally-authorized study river

You have three options at this point:

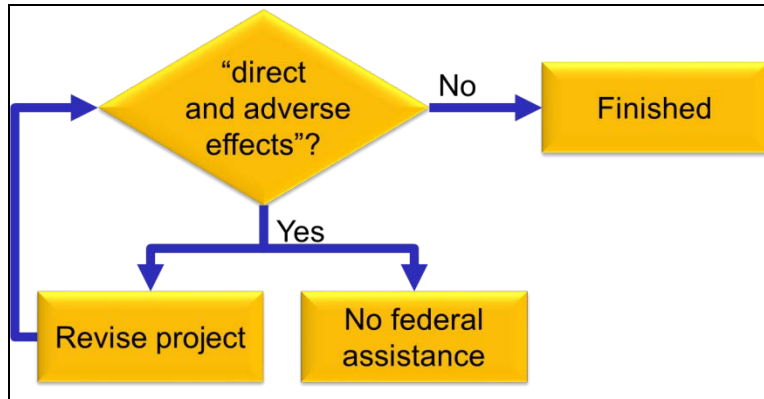
- If you know your project is not located within one of the four thresholds listed above, then you're done.
- If you know your project is located within one of the four thresholds listed above, continue on.
- If you are not sure if your project is located within one of the four thresholds listed above, continue on.



The next step is the determination. There are three standards based on whether the river segment is designated or congressionally-authorized, and whether your project is within the segment or upstream/downstream.

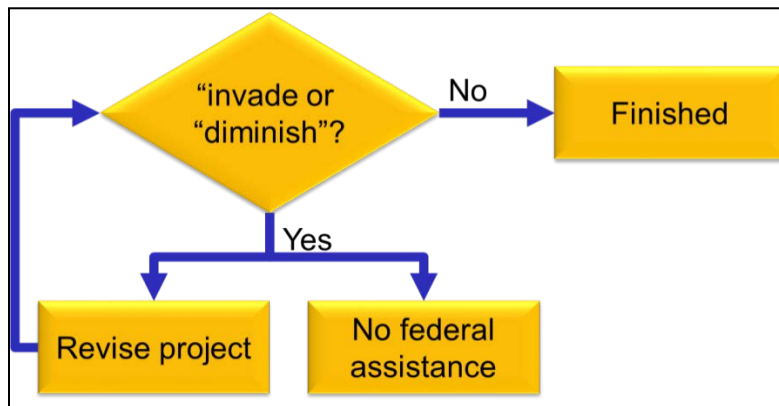
For projects within the bed/banks of a designated river corridor or a congressionally-authorized study river corridor:

- If the river-administering agency determines your project will not have a “direct and adverse effect”, then you're done.
- If the river-administering agency determines your project will have a “direct and adverse effect”, then you have a choice:
  - Change your project and re-submit (hoping you won't get a “direct and adverse effect” determination); or
  - Do not seek any federal assistance.



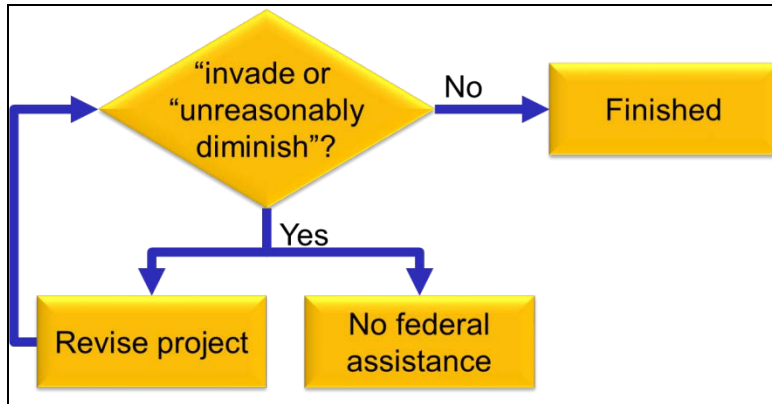
For projects within the bed/banks upstream, downstream or on a stream tributary to a congressionally-authorized study river corridor:

- If the river-administering agency determines your project will not “invade or diminish”, then you’re done.
- If the river-administering agency determines your project will “invade or diminish”, then you have a choice:
  - Change your project and re-submit (hoping you won’t get an “invade or diminish” determination); or
  - Do not seek any federal assistance.



For projects within the bed/banks upstream, downstream or on a stream tributary to a designated river corridor

- If the river-administering agency determines your project will not “invade or unreasonably diminish”, then you’re done.
- If the river-administering agency determines your project will “invade or unreasonably diminish”, then you have a choice:
  - Change your project and re-submit (hoping you won’t get an “invade or diminish” determination); or
  - Do not seek any federal assistance.



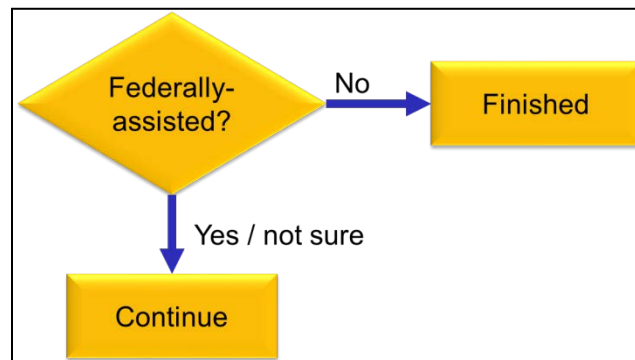
### The Presidential Directive (NRI) compliance process

One of the first steps is determining whether you need federal assistance. Federal assistance can be:

- FHWA funding
- USACE permit
- USCG permit
- Transferring property rights from federal lands

You have three options at this point:

- If you know you don't need federal assistance, then you're done.
- If you know you need federal assistance, continue on.
- If you are not sure if you need federal assistance, continue on.

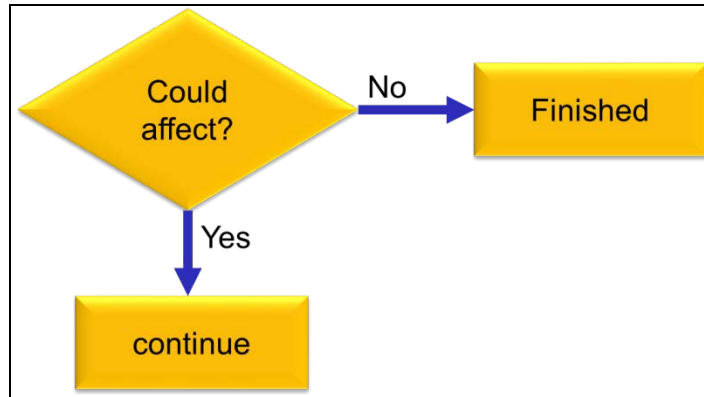


The next step is determining if your project could affect an NRI river segment.

You have two options at this point:

- If you know your project could not affect, then you're done.
- If you know your project could affect, continue on.

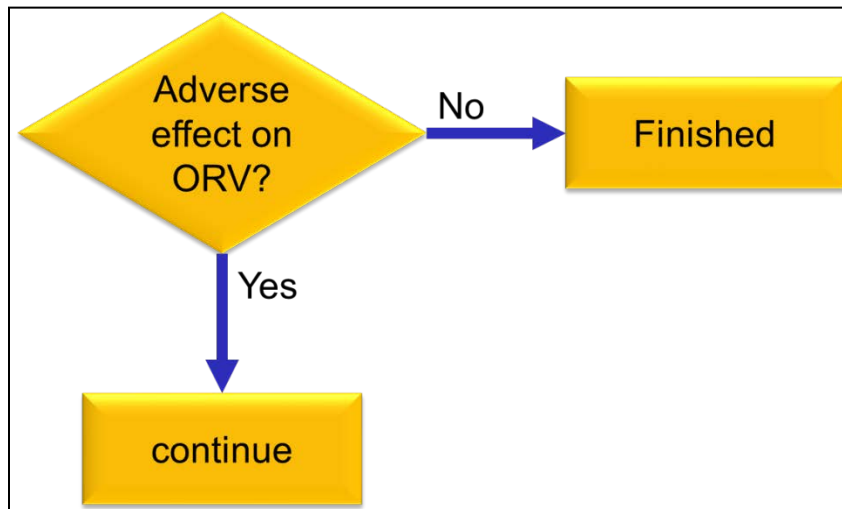




The next step is you—not another agency—determining whether your project could have an adverse effect on one or more of the NRI river segments “outstandingly remarkable values”.

You have two options at this point:

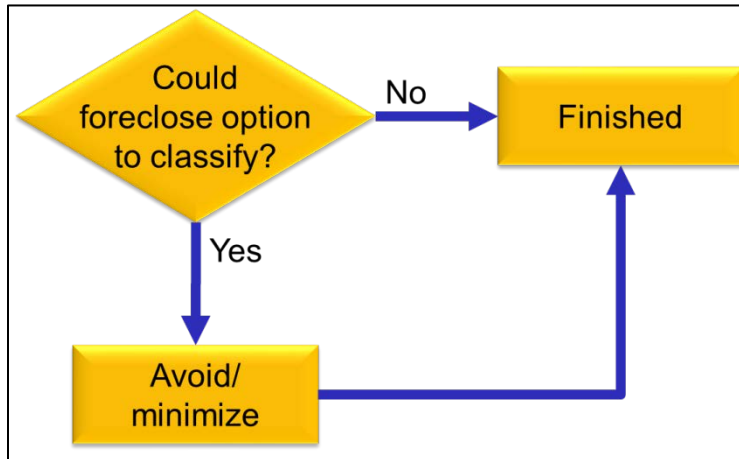
- If you know your project could not affect, then you’re done.
- If you know your project could affect, continue on.



The final step is for you to determine whether your project could foreclose the option to classify the NRI river segment as a Wild & Scenic River.

You have two options at this point:

- If you know your project could not foreclose the option to classify the NRI river segment as a Wild & Scenic River, then you’re done.
- If you know your project could foreclose the option to classify the NRI river segment as a Wild & Scenic River, you must incorporate avoidance & minimization aspects into your project, then you’re done.



**Process Complete!**

### References - Related Internet Links

- US Code: 16 USC 1271-1287 (Wild and Scenic Rivers Act)
- Code of Federal Regulations: 36 CFR 251 (land uses), 36 CFR 292 (national recreational areas), 36 CFR 297 (wild & scenic rivers), 43 CFR 3800 (mining claims), 43 CFR 8340 (ORVs), 43 CFR 8350 (management areas), 43 CFR 8360 (visitor services), 43 CFR 8370 (use authorizations) (<http://www.gpoaccess.gov/cfr/index.html>)
- National Wild & Scenic Rivers: (<http://www.rivers.gov/>)
- NPS National Wild & Scenic Rivers System: ([www.nps.gov/rivers/](http://www.nps.gov/rivers/))
- FHWA Environmental Guidebook (Wild & Scenic Rivers): ([www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=101](http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=101))

### Special Thanks

Rob Ayers, AICP, FHWA Resource Center