

## Chapter 6. NEPA and Environmental Processes

### A. OVERVIEW

The National Environmental Policy Act (NEPA) is triggered for projects in the Federal-Aid Highway Program (FAHP) either through Federal Highway Administration (FHWA) funding or when an approval from the FHWA is required (such as an interstate access approval or interchange approval). NEPA typically serves as an “umbrella” process for meeting all environmental review requirements.

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For Oregon, NEPA responsibilities on FHWA-funded or approved projects cannot be delegated to nor managed by the local public agency (LPA) (whether Certified or not) as per the FHWA Stewardship and Oversight agreement, and the programmatic categorical exclusion (PCE) agreement, between FHWA and ODOT.

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This chapter focuses on FHWA NEPA procedures. Many federal agencies, including FHWA, developed their own implementing regulations and guidance. FHWA’s NEPA regulations primarily are codified in 23 CFR 771. If multiple federal agencies are involved in a proposed project, the federal agencies must determine NEPA responsibilities of each agency, including lead agency, early in project development.

Resources of concern are discussed in ODOT’s Environmental Prospectus, which is typically prepared or reviewed and approved by the Region Environmental Coordinator (REC). The Environmental Prospectus also documents a preliminary NEPA classification as either a programmatic categorical exclusion (PCE), a categorical exclusion (CE), an environmental assessment (EA), or an environmental impact statement (EIS).

Each environmental discipline is discussed below, followed by links to additional informational resources.

FHWA or ODOT approval of NEPA decisions for FHWA-funded projects is not a guaranteed approval of any other local, state, or federal requirement.

#### Resources:

- [ODOT NEPA Program](#)
- [ODOT NEPA Manual](#)
- [Statement of Work Library: Task Language Templates for Certified Local Agency Projects](#)

General NEPA and environmental information including templates, forms, and procedure manuals can be found on the ODOT NEPA Program website. LPAs must use the environmental statement of work template linked in the Statement of Work Library for certified LPAs (see link in Resource box and in Section D of this manual). Environmental statements of work for LPA federal-aid projects must be approved by ODOT Region Environmental staff. If the LPA needs discipline specific language not included in the LPA statement of work template, the LPA should

contact their Regional Local Agency Liaison and work with ODOT Region Environmental staff to identify appropriate templates and resources. Templates and forms should be downloaded from the ODOT website for each new project, because templates and forms are updated regularly to incorporate the newest regulatory and policy information.

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All environmental documents produced for a FHWA-funded LPA project by the LPA or their consultant are required to be reviewed and approved by ODOT Region Environmental staff to ensure the LPA's Federal-aid Highway project complies fully with FHWA NEPA and other federal and state agency environmental regulations.

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Environmental document preparation needs and review times should be established at project kickoff, and then coordinated with ODOT Region Environmental staff during the design and construction phases of the FHWA-funded local project as the environmental permitting processes progress and evolve.

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**IMPORTANT NOTE ON ADVANCE INVESTIGATION WORK:** Environmental permitting and compliance must be considered in advance of geotechnical drilling or other ground disturbing work, which may happen very early in the project lifecycle. Necessary environmental permits include: wetlands, Endangered Species Act (ESA), and archaeological clearances as relevant.

All environmental clearances, permits, and approvals must be coordinated with the ODOT Region Environmental Coordinator (REC) and Region Local Agency Liaison (LAL) to ensure the appropriate level of effort (i.e., project scope, schedule, and budget) is identified early on in order to meet the needs of the project. In addition, ODOT Archaeologists must conduct required tribal consultation in advance of the geotechnical drilling work; coordinating with the REC and LAL will ensure that this happens.

Geotechnical drilling or other ground-disturbing work shall not proceed until all relevant environmental clearances, permits, and approvals are obtained and "in hand".

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**LPA FHWA-funded/approved NEPA / Environmental Approval Responsibilities**

<b>Discipline/Resource</b>	<b>Required Process, Permit, Clearance, or Approval</b>	<b>Responsibility</b>
Right-of-Way	<ul style="list-style-type: none"> <li>Issue Right of Entry permit for environmental studies</li> <li>Prepare impact assessment and findings</li> <li>After NEPA approval: Perform negotiations/acquisition process</li> </ul>	<ul style="list-style-type: none"> <li>ODOT/LPA/CONS*</li> <li>LPA/CONS*</li> <li>ODOT/LPA/CONS*</li> </ul>
Land Use	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>Prepare Findings of Consistency with other plans</li> <li>Obtain Goal Exceptions (when required)</li> <li>After NEPA approval: Obtain local land use permits</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS*</li> <li>LPA/CONS**</li> <li>LPA/CONS**</li> </ul>
Socioeconomics	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> </ul>
Environmental Justice	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li><b>Coordinate with FHWA (if there may be disproportionate impacts )</b></li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li><b>ODOT</b></li> </ul>
CWA Section 404 / Wetlands / Waters	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>After NEPA approval: Obtain 404 Corps/DSL permit</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS**</li> </ul>
Water Quality	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>After NEPA approval: Obtain DEQ certification permit</li> <li>After NEPA approval: Prepare and submit Stormwater Plan to DEQ</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS**</li> <li>LPA/CONS*</li> </ul>
ESA / T&E Species	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>Propose ESA Effects Determination(s)</li> <li>Use FAHP ESA programmatic agreement processes</li> <li><b>If FAHP PA is unavailable, obtain Biological Opinion or other permit coverage (from NMFS/USFWS)</b></li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS* w/ ODOT</li> <li>LPA/CONS* w/ ODOT</li> <li><b>FHWA</b></li> </ul>
NHPA Section 106 (Cultural Resources)	<ul style="list-style-type: none"> <li>Obtain permits for surveys on federal/private lands</li> <li>Perform field surveys, reconnaissance, research</li> <li>Prepare impact assessment and findings</li> <li>Make Determinations of Eligibility</li> <li>Prepare Findings of Effect</li> <li>Consult with SHPO for concurrence</li> </ul>	<ul style="list-style-type: none"> <li>ODOT</li> <li>LPA/CONS*</li> <li>LPA/CONS*</li> <li>ODOT, for FHWA</li> <li>ODOT, for FHWA</li> <li>ODOT, for FHWA</li> </ul>
Visual Resources	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> </ul>
Section 4(f)	<ul style="list-style-type: none"> <li>Prepare impact assessment</li> <li>Prepare appropriate Section 4(f) document</li> <li><b>Concurrence on Section 4(f) considerations and any effects findings</b></li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS* ODOT</li> <li><b>FHWA</b></li> </ul>

Discipline/Resource	Required Process, Permit, Clearance, or Approval	Responsibility
Section 6(f)(3)	<ul style="list-style-type: none"> <li>• Prepare impact assessment and draft PD/ESF (NPS)</li> <li>• Survey and mapping</li> <li>• After NEPA approval: ROW negotiations/acquisitions</li> <li>• Obtain Section 6(f)(3) Conversion Approval from NPS</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• ODOT or LPA</li> </ul>
Air Quality	<ul style="list-style-type: none"> <li>• Prepare impact assessment</li> <li>• Document regional conformity w/ MPO</li> <li>• Prepare project-level conformity analysis</li> <li>• After NEPA approval: Obtain Indirect Source permit (Lane Co.) if needed</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS**</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Prepare impact assessment and findings</li> <li>• Perform noise study(s)</li> <li>• After NEPA approval: Perform surveys for recommended abatement</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> </ul>
Hazardous Materials	<ul style="list-style-type: none"> <li>• Prepare impact assessment and findings</li> <li>• Perform testing w/ findings, recommended further actions</li> <li>• After NEPA approval: Containment and cleanup plan(s)</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS**</li> </ul>
Tribal Coordination	<ul style="list-style-type: none"> <li>• Tribal consultation and coordination</li> </ul>	<ul style="list-style-type: none"> <li>• ODOT, for FHWA</li> </ul>
Public Outreach	<ul style="list-style-type: none"> <li>• Stakeholder involvement</li> <li>• Public meetings and involvement</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> </ul>
Environmental Commitments	<ul style="list-style-type: none"> <li>• Capture/document environmental commitments</li> <li>• Database entry and track environmental commitments</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• ODOT</li> </ul>

LPA = Local Public Agency

CONS = Consultants hired by the LPA

**After NEPA approval:** indicates a process that is done after NEPA approval. All other items are required for FHWA NEPA Approval. \* **ODOT needs to review and concur** on any deliverable that the LPA/Consultant prepares. \*\* **ODOT needs a copy of the final documentation** that the LPA/Consultant prepared.

### A.1. Project Environmental Scoping and NEPA Classification

The Environmental Prospectus together with the Local Agency Technical Scope Sheet (discussed previously in Section C, Chapter 3 of this manual) document potential project impacts to determine the level of environmental analysis that will be required to complete NEPA and environmental processes. Project classification preliminarily identifies which type of NEPA document will be completed. If the scope of a project changes after a project has been scoped, then different and potentially additional environmental analysis may be required. Changes in project scope could result in a change to the NEPA classification of the project.

The Environmental Prospectus is the environmental scoping document that identifies existing environmental resources, constraints and probable processes that could be required for the project. For the most recent version of the Environmental Prospectus, refer to the ODOT NEPA Program website.

Resources:

- [Local Agency Technical Scope Sheet \(734-5151\)](#)
- [Environmental Prospectus \(734-5198\)](#)

A project will be classified as needing either a Programmatic Categorical Exclusion (PCE), a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS), depending upon what is known about the significance of the proposed project's potential environmental impacts, as documented in the Environmental Prospectus. Generally, EA and EIS NEPA processes take longer to complete than the NEPA process for a CE or PCE. *FHWA primarily relies on ODOT recommendations for NEPA classifications, and only ODOT staff can approve NEPA classifications for LPA FHWA-nexus projects.*

ODOT and FHWA have developed templates for CEs and PCEs that are used for NEPA documentation. Documentation for EA and EIS projects is determined on a project-by-project basis. ODOT and FHWA have a PCE Agreement in place, which delegates NEPA approval to ODOT on behalf of FHWA for CEs that fall within the impact thresholds of the agreement.

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*FHWA primarily relies on ODOT recommendations for NEPA classifications, and only ODOT staff can approve NEPA for LPA FHWA-nexus projects.*

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### **a. Environmental Impact Statement (EIS)**

EIS projects are likely to result in significant impacts to the environment by virtue of their impacts to land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, and natural and cultural resources, or are projects that are likely to create significant public controversy.

### **b. Environmental Assessment (EA)**

For actions where the significance of the project's environmental impact is not clearly established, an EA is prepared to assist in determining the extent of environmental impacts and to determine whether the preparation of an EIS is appropriate. If an EA results in a Finding of No Significant Impact (FONSI) then an EIS is not required. The assumption of a FONSI is not pre-supposed during any of the EA activities. Consultant contracts, project schedules and information shared with the public must reference "completion of the NEPA process".

### c. Categorical Exclusion (CE) and Programmatic CEs (PCEs)

CE and PCE projects are actions that generally do not individually or cumulatively result in significant environmental impacts. *Most LPA FHWA-funded/approved projects are CE and PCE projects.*

Per 23 CFR 771.117, Categorical Exclusions are actions which:

- Do not induce significant impacts to planned growth or land use for the area
- Do not require the relocation of significant numbers of people
- Do not have a significant impact on any natural, cultural, recreational, historic or other resource
- Do not involve significant air, noise, or water quality impacts
- Do not have significant impacts on travel patterns
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts
- Do not have significant environmental impacts
- Do not have substantial controversy on environmental grounds
- Do not have significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act
- Do not have inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action

#### A.2. NEPA Re-evaluation

If the scope of a project changes, the NEPA documentation previously completed may need to be updated to account for the changes in the project. A re-evaluation of any previous or current NEPA decision document is required for any changes or new information if any of the following conditions exist:

- The scope of a project changes enough to create significant additional or different impacts, than those disclosed in the original NEPA document
- Three years or more have passed since a major project approval (environmental document, final design, right of way acquisition or construction)
- A change in the regulatory environment, such as different species or habitat being listed as threatened or endangered
- Single or cumulative conditions change, such as significant changes in assumed land uses, population, employment or traffic conditions

**Re-evaluation requirements are determined on a project-by-project basis, in close consultation between ODOT and FHWA.** The extent of the re-evaluation can vary greatly depending upon the circumstances. In some cases, e-mail correspondence may be adequate to meet the re-evaluation requirements; but in other cases, a re-evaluation document may be a more extensive written report.

Resources:

- [ODOT Geo-Environmental website](#) (for NEPA and environmental forms, templates and procedures)
- [National Environmental Policy Act](#)
- [Council on Environmental Quality Regulations for Implementing NEPA](#)
- [FHWA NEPA Implementing Regulations](#) (23 CFR 771)
- [FHWA Section 4\(f\) Regulations](#) (23 CFR 774)
- [FHWA/FTA Environmental Impact and Related Procedures](#)
- [FHWA NEPA Re-evaluation Guidance](#)
- [FHWA Technical Advisory T6640.8A](#) Guidance from 1987 for preparing and processing NEPA and Section 4(f) documents
- [FHWA Eco-Logical Summary of Federal Laws & Requirements](#)
- [ODOT-FHWA EIS Template](#)

## B. RIGHT OF WAY

### B.1. Overview

Right of way impacts include all public and private property needed for the project on a temporary or permanent basis. Right of way impacts include potential residential and business displacements, as well as permanent and temporary easements. The right of way requirements for a project can be a substantial factor in considering the appropriate NEPA classification (PCE, CE, EA or EIS).

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**Professional Qualifications** – Recommend that someone with NEPA experience working with the Design Team identify and document potential right of way needs and potential right of way impacts

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### B.2. Regulatory Framework

The use or acquisition of particular properties may trigger other environmental considerations such as Section 106 of the National Historic Preservation Act (NHPA); Section 6(f) of the Land and Water Conservation Act; and, Section 4(f) of the Department of Transportation Act. The acquisition of right of way is covered by ODOT's *Right of Way Manual*, which is consistent with

*Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970*, as amended. The acquisition of right of way is covered by ODOT's Right of Way Manual, which is consistent with Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. Additional right of way information is located in Section C, Chapter 7 of this manual.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document ROW narratives, see 426.1 of the ODOT NEPA Manual.

### **B.3. Completed Deliverable**

Depending upon the scope of potential impacts, a technical report may be required. The estimated number of residential and business displacements will be included in the NEPA documentation. The estimated right of way impact in acres will be included in the NEPA documentation.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
- For EISs, use EIS template.
- For EAs, work closely with LAL.

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## **C. LAND USE**

### **C.1. Overview**

Since 1973, Oregon has maintained a strong statewide program for land use planning. The foundation of that program is a set of 19 Statewide Planning Goals. The goals express the state's policies on land use and on related topics, such as citizen involvement, housing, and natural resources. Oregon's planning laws strongly emphasize coordination -- keeping plans and programs consistent with each other, with the goals, and with acknowledged local plans.

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**Professional Qualifications** – Recommend that someone with NEPA experience working together with the Design Team and LPA Land Use Department to identifying existing and planned land uses and documenting potential impacts to land use be engaged in project scoping.

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### **C.2. Regulatory Framework**

Transportation projects have the potential to affect land use and growth patterns, local traffic circulation, the goals of local Comprehensive Plans, Oregon Statewide Planning Goals, Exclusive Farm Use property and Coastal Management Zones. OAR 731-015-0075 and 731-015-0085 require ODOT and LPAs who are the sponsors of FHWA-funded/approved projects to consider land use impacts during NEPA project development. OAR 731 Division 15 establishes the



procedures used by the Department of Transportation to implement the provisions of its State Agency Coordination Program which assure that Department land use programs are carried out in compliance with the

Resources:

- [Oregon Statewide Planning Goals](#)
- [State Agency Coordination Rule \(OAR 731-015-0005 through 0135\)](#)

statewide planning goals and in a manner compatible with acknowledged comprehensive plans, as required by ORS 197.180 and OAR 660, Divisions 30 and 31.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Land Use narratives, see 426.2 of the ODOT NEPA Manual.

### C.3. Completed Deliverable

Depending upon the scope of potential impacts a technical report may be required. The NEPA documentation will vary with the type of NEPA document and the context and intensity of land use changes associated with the project. The NEPA document will describe any state Goal Exception requirements and special land use considerations, such as project compatibility with acknowledged comprehensive plans as well as the need for local permits.

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#### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
- For EISs, use EIS template.
- For EAs, work closely with LAL.

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## D. SOCIO-ECONOMIC

### D.1. Overview

Potential impacts to neighborhoods, community cohesion, civic groups, infrastructure, environmental justice populations, and businesses should be considered early in planning and further identified during project scoping. The socio-economic benefits and adverse effects of implementing a proposed project should be captured in the NEPA documentation. Environmental justice has additional considerations outside of socio-economic and is covered in more detail in the following section.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential socio-economic resources and documenting potential impacts be engaged in project scoping.

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## D.2. Regulatory Framework

Socio-economic impacts are those that should be broadly captured under the NEPA umbrella.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document socio-economic narratives, see 426.3 of the ODOT NEPA Manual.

### Resources:

- [Community Impact Assessment website](#)
- [NCHRP 456 Guidebook for Assessing the Social and Economic Effects of Transportation Projects](#)

## D.3. Completed Deliverable

At the completion of the NEPA process, the socio-economic documentation should capture the benefits of the project when constructed and summarize known socio-economic impacts resulting from the project. If construction will result in a closure of a transportation facility, describe estimated closure duration and any potential impacts including detours. Specifically address potential business impacts and if the impacts are permanent or temporary. Address detour length in miles or time in minutes and impacts from those detours to the community, both to residents and visitors.

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### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
- For EISs, use EIS template.
- For EAs, work closely with LAL.

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## E. ENVIRONMENTAL JUSTICE

### E.1. Overview

Environmental justice (EJ) requires federal agencies to focus attention on the environmental and human health conditions in minority and low-income communities, enhance efforts to assure nondiscrimination in Federal programs affecting human health and the environment, and promotes meaningful opportunities for access to public information for public participation in proposed projects which have the potential to impact minority and low-income communities and their environment.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential environmental justice impacts be engaged in scoping and documenting potential impacts.

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## E.2. Regulatory Framework

Executive Order 12898 was signed requiring each federal agency to make environmental justice part of its mission. In order to comply with environmental justice requirements, agencies are required to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations.

In 1997, the United States Department of Transportation (USDOT) issued its DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations to summarize and expand upon the requirements of Executive Order 12898 on environmental justice. The FHWA issued an agency-level Environmental Justice Order in 1998 further defining the responsibilities for FHWA-funded/approved projects.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Environmental Justice narratives, see 426.4 of the ODOT NEPA Manual.

## E.3. Completed Deliverable

Depending upon the scope of potential impacts a technical report may be required. Documentation on how impacts were minimized or avoided should be maintained throughout the development of the project. The NEPA documentation will include a clear Environmental Justice finding pursuant to Executive Order 12898, following the process outlined in the 2011 FHWA EJ guidance.

### Resources:

- [FHWA Environmental Justice website](#)
- [Executive Order 12898](#)
- [DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations](#)
- [FHWA Environmental Justice Order](#)

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### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
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Potential EJ Findings Include:

- **Example statement of a determination of no adverse impacts because no EJ populations are present:** No minority or low-income populations have been identified that would be adversely impacted by the proposed project as determined above. Therefore, in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23,

no further EJ analysis is required.

- **Example statement of a determination of no disproportionately high and adverse effects:** Based on the above discussion and analysis, the XYZ alternative(s) will not cause disproportionately high and adverse effects on any minority or low-income populations in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23. No further EJ analysis is required.
- **Example statement of a determination of adverse effects that are not disproportionately high:** Based on the above discussion and analysis, the XYZ alternative(s) will cause adverse effects on {name EJ population}; however, those effects are not disproportionately high. Therefore, in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23, no further EJ analysis is required.
- **Example statement of a determination of disproportionately high and adverse effects\*:** Based on the above discussion and analysis, the XYZ alternative(s) will cause disproportionately high and adverse effects on {name EJ population}. {Summarize benefits of the project to the EJ populations, summarize mitigation considered but not incorporated, summarize practicable mitigation commitments, summarize how the EJ populations were involved in the decision-making process, summarize input received from EJ populations and how that input was considered.} **\*FHWA should be consulted any time this finding is considered.**

## F. WETLANDS AND WATERWAYS

### F.1. Overview

Wetlands provide important functions and values, including groundwater recharge, flood flow attenuation, water quality improvements, erosion control and shoreline stabilization, as well as fish and wildlife food and habitat. Impacts to wetlands and waters can occur due to the placement or discharge of fill material, or other alterations including material removal. Some local jurisdictions require protection of wetland buffers. When wetlands are adversely affected by a transportation project, compensation for the impacts by restoring, enhancing or creating wetlands must be made in accordance with a variety of laws and regulations.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Wetlands & Waterways (including U.S. Coast Guard coordination) narratives, see 426.5 of the ODOT NEPA Manual. For CE/PCE document Floodways & Floodplains narratives, see 426.6 of the ODOT NEPA Manual.

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**Professional Qualifications** – Recommend that someone with NEPA and soils experience in identifying potential wetland and waterway resources and impacts to those resources be engaged in scoping and documenting potential impacts.

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## F.2. Regulatory Framework

Wetlands and waterways are regulated under section 10 of the Rivers and Harbors Act, section 404 of the Clean Water Act, and the Oregon Removal-Fill Law (ORS 196.800-196.990). Wetlands located within the project area that may be impacted should be delineated in accordance with the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, and any applicable regional supplements. Wetland delineations are submitted to the Oregon Department of State Lands (DSL) and the US Army Corps of Engineers (USACOE) for review and concurrence before submitting the permit application. Permit applications are submitted to both the DSL and the USACOE.

### Resources:

- [ODOT Geo-Environmental Wetlands Program](#)
- [Clean Water Act](#)
- [Oregon Removal/Fill Law](#)
- [1987 U.S Army Corps of Engineers Wetland Delineation Manual](#)

When impacts exceed regulatory thresholds, a permit must be obtained by the LPA from the USACOE and the DSL before impacting a wetland. Activities that occur below the ordinary high water mark of jurisdictional non-tidal waterways (i.e., intermittent streams, perennial streams, rivers, lakes, ponds and other water bodies), or that occur below the highest tide elevation on tidal waterways, also require permits from the USACOE and DSL.

Projects that affect mitigation site wetlands must double the mitigation ratio when replacing such wetlands as per the Removal-Fill Law. The ratios for compensatory wetland mitigation vary depending on the type of mitigation being conducted. For each acre of wetland impacted, the DSL requires that one acre of wetland be restored, or that 1.5 acres of wetlands be created, or that 3 acres of wetlands be enhanced.

## F.3. Completed Deliverable

Depending upon the scope of potential impacts a technical report may be required. NEPA documentation will include a summary of the amount of known impacts, and the type of impacts and required mitigation. NEPA documentation will indicate if a nationwide or individual permit is needed. When individual permits are required, the NEPA documentation will include a summary of coordination with the USACOE regarding the designation of the Least Environmental Damaging Practicable Alternative.

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### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
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## G. WATER QUALITY

### G.1. Overview

Waterways provide important functions and values that support people, fish, and wildlife and the environment within which they live. Water quality should be preserved, restored and maintained to ensure the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential water quality triggers and impacts be engaged in scoping and documenting potential impacts.

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### G.2. Regulatory Framework

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is the primary law covering water quality. Management of water quality on projects that require a US Army Corps of Engineers permit under Clean Water Act Section 404 must be reviewed and approved by the Oregon Department of Environmental Quality (DEQ) under the Clean Water Act Section 401 requirements. DEQ can also request to review and comment on an Oregon Department of State Lands

Removal/Fill permit. A water quality certification is the mechanism by which the State evaluates whether an activity meets water quality standards. Guidance on the development of a stormwater management plan can be found in the Oregon Department of Environmental Quality Stormwater Guidelines.

For Oregon Department of State Lands Removal/Fill permit, Oregon Department of Environmental Quality requires a stormwater management plan approval. Guidance to the management plan can be found in the Oregon Department of Environmental Quality Stormwater Guidelines.

Projects that require a Biological Assessment for potential impacts to aquatic listed Threatened or Endangered species must include a description of the stormwater management plan in the Biological Assessment if the project involves impervious area with stormwater discharges. The information required for a CWA 401 Certification is usually sufficient.

#### Resources:

- [ODOT Stormwater Management Program](#)
- [Clean Water Act Section 401](#)
- [Clean Water Act Section 404](#)
- [Oregon DEQ Stormwater Guidelines](#)
- [ODOT Water Resources](#)
- [ODOT Hydraulics Manual, Chapter 14](#)
- [Underground Injection Control \(UIC\) Program](#)

Projects using dry wells or injection wells to dispose of storm water are subject to regulation and permitting by the Underground Injection Control (UIC) program administered by the Oregon Department of Environmental Quality.

All FHWA-funded/approved projects must conform to the water quality mitigation requirements of ODOT Project Delivery Notice PD-05. Guidance on the selection and design of treatment facilities is available in ODOT Hydraulics Manual, Chapter 14.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Water Quality narratives, see 426.7 of the ODOT NEPA Manual.

### **G.3. Completed Deliverable**

Depending upon the scope of potential impacts a technical report may be required. The NEPA documentation will include a summary of the stormwater treatment requirements. A stormwater management plan or a SLOPES notification form may be required. A stormwater management plan report template based on DEQ guidance is available on the ODOT Stormwater Management Program page.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
- For EISs, use EIS template.
- For EAs, work closely with LAL.

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## **H. BIOLOGICAL RESOURCES**

### **H.1. Overview**

A variety of Federal and state laws focus on the conservation of fish and wildlife species and their habitat in the state of Oregon. These laws, along with ODOT policies, require the consideration of resource avoidance, protection, mitigation, and other measures needed to develop FHWA-funded/approved projects in concert with their natural environment. Biological resources include threatened, endangered and sensitive fish and wildlife species along with their habitats. Mitigation and monitoring requirements for native species establishment, with minimal invasive species interference may apply.

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**Professional Qualifications Requirement** – ODOT requires LPAs to assign ESA document preparation and Biological Assessment (BA) consultation work to consulting firms that retain at least one biologist who is pre-qualified by ODOT to write and review ESA effects determinations and their resulting documents, including individual BAs. To become an ODOT-qualified biologist, ODOT requires an individual to meet

minimum educational requirements, to attend a training course, and to pass a written exam. ODOT requires qualified biologists to participate in a one-day re-qualification training every three years.

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## H.2. Regulatory Framework

All FHWA-funded/approved projects must comply with the Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (USFWS) primarily manage the ESA. Section 7 of the ESA requires that federal action agencies consult with the Services to ensure that a proposed action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. When a project is proposed in an area where endangered species or their habitat is located, an evaluation of the impact of that project to those species must be conducted.

Resources:

- [ODOT Biology website](#)
- [Endangered Species Act](#)
- [Magnuson-Stevens Act](#)

Other Federal and state laws and regulations that must be considered include Magnuson-Stevens Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Oregon Endangered Species Act, and Oregon State Fish Passage.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Biological narratives, see 426.8 of the ODOT NEPA Manual.

## H.3. Completed Deliverable

The deliverable varies depending upon the existence of threatened or endangered species or their habitat and the potential impacts to those species and their habitat. ESA clearance for USFWS and NMFS species may be documented separately for each agency's trust species. At least one of the following documents will be completed for each project unless a programmatic agreement is used: No Effect (NE) Determination; Not Likely to Adversely Affect (NLAA) letter of concurrence from the Services; or a Biological Opinion from the Services. Programmatic agreements offer an additional method of ESA compliance.

The Biological Opinion includes an Incidental Take Statement (ITS), mandatory terms, conditions, and conservation recommendations. The ITS will quantify the amount of a listed species or its designated critical habitat that may be taken during project implementation. Any take of a listed species or its habitat that is not covered under an ITS is a clear violation of the ESA. Incidental take statements are not provided for in NLAA or NE determinations. The ESA can carry civil and criminal penalties for violations.



### Is a specific template required?

**Yes.** ODOT has developed templates to document No Effect, and Determinations of Not Likely to Adversely Affect and Likely to Adversely Affect.

Other documentation may be required related to ODOT’s FAHP ESA Programmatic Agreement.

Any forms, templates, and procedural guidance can be found on the ODOT Biology website.

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## I. SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT (CULTURAL RESOURCES)

### I.1. Overview

The Section 106 review process considers archaeological resources, traditional cultural properties and historic resources, and consultation with federally recognized Indian tribes.

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**Professional Qualifications Requirement** – Cultural resources documentation must be conducted by persons meeting the Secretary of the Interior’s Professional Qualifications of 36 CFR part 61 Appendix A in the fields of archaeology, history, and architectural history. **\*\*ODOT Cultural Resources staff should be included in scoping and review of all FHWA-funded/approved LPA projects.\*\***

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### I.2. Regulatory Framework

Any project, activity, or program funded in whole or in part, under the direct or indirect jurisdiction of a federal agency, including those carried out on behalf of a federal agency, as well as those actions requiring a federal permit, license, or approval are considered to be an “undertaking,” and are subject to the requirements of Section 106 of the National Historic Preservation Act (NHPA).

Resources:

- [ODOT Archaeology website](#)
- [ODOT Historic Resources website](#)
- [Section 106 of the National Historic Preservation Act](#)

When cultural resources are identified, the resources will be evaluated to determine if they meet eligibility requirements for listing in the National Register of Historic Places. If the resources are eligible, the effects will be assessed to determine whether the project adversely affects these resources.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Cultural Resource narratives, see 426.9 of the ODOT NEPA Manual.

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### I.3. Completed Deliverable

Section 106 findings for a project are made by FHWA. The Section 106 review process is complete when the State Historic Preservation Officer (SHPO) has concurred in writing with that finding.

ODOT may act on behalf of FHWA for purposes of fulfilling the procedural requirements of Section 106, including consultations and effects determinations. Although LPAs may hire consultants to do general research, field reconnaissance, and write impact assessments that consider Section 106 resources, LPAs (including certified LPAs) may not conduct consultations (with Tribes or with SHPO), make eligibility determinations, or make effects determinations on FHWA funded/ approved projects.

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#### Is a specific template required?

**Yes.** The 2011 Section 106 Programmatic Agreement amongst ODOT, FHWA, SHPO and ACHP outlines the different types of documentation required for each type of Section 106 determination.

Also see the [ODOT Archaeology website](#) for more information on archaeological requirements.

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## J. VISUAL RESOURCES

### J.1. Overview

If any LPA FHWA- funded/ approved project has the potential to affect visual resources, a Visual Impact Assessment may be required. Some examples of activities that may adversely affect visual resources include *introduction of a transportation facility into a rural or forested area, removal of vegetation, or addition of structures including bridges, walls, poles or cameras*. The level of analysis can range from no formal analysis to a complex analysis depending on the project features, the setting and the viewers. The analysis may require assessment of viewshed impacts from users of the transportation facility, as well as assessment of impacts the transportation facility may have on the viewshed.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying visual resources and potential impacts be engaged in scoping and documenting potential impacts.

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### J.2. Regulatory Framework

Applicable statutes, regulations, and guidance that may apply to a project include, but are not limited to Scenic Byway designations, Wild and Scenic River Act, Columbia River Gorge National

Scenic Area Act, National Forest Management Plans, and Goal 5 resources identified in local comprehensive plans. Coordination with the agency or agencies of jurisdiction may be necessary to demonstrate compliance.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Visual Resources narratives, see 426.10 of the ODOT NEPA Manual.

### **J.3. Completed Deliverable**

Depending upon the scope of potential impacts, a technical report may be required. A visual impact assessment will generally include “before” photographs and “after” simulations or sketches to demonstrate the likely visual resource effects.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
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## **K. SECTION 4(F)**

### **K.1. Overview**

Section 4(f) references the 1966 U.S. DOT Act, which has since been codified in 23 CFR 774. Section 4(f) and applies to all US Department of Transportation projects and stipulates that the Federal Highway Administration (FHWA) and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historic or archaeological sites unless: (1) there is no feasible and prudent alternative to the use of land; (2) the action includes all possible planning to minimize harm to the property resulting from use; or, (3) the action results in only a Section 4(f) *de Minimis* use or provides a Section 4(f) net benefit to the resource.

Section 4(f) is a high regulatory bar and can prevent the selection of particular alternatives. Early and correct identification of potential Section 4(f) properties is critical in the development of alternatives that may be selected. FHWA-funded/approved LPA projects that include Section 4(f) considerations should involve the ODOT Regional Local Agency Liaison and FHWA at the point the potential involvement is known.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential Section 4(f) impacts be engaged in scoping and documenting potential impacts.

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## K.2. Regulatory Framework

Section 4(f) of the 1966 U.S. DOT Act requirements apply to: significant publicly- owned public parks and recreational areas (which may include public school playground areas and ball fields) that are open to the public, significant publicly owned wildlife and waterfowl refuges (regardless of whether these refuge areas are open to the public or not), and historic sites. In some cases, Section 4(f) applies to planned parks and recreation areas.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Section 4(f) narratives, see 426.11 of the ODOT NEPA Manual.

### Resources:

- [ODOT Cultural Resources website](#)
- [Section 4\(f\) of the U.S. DOT Act](#)
- [23 CFR 774](#)

## K.3. Completed Deliverable

Every FHWA-funded or approved project will document Section 4(f) considerations. The type of documentation will vary depending upon the existence of Section 4(f) resources within the project area, and the potential uses of Section 4(f) resources.

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**Is a specific template required? Yes, ODOT and FHWA require specific templates for documenting Section 4(f), which vary based on the type of Section 4(f) resources and the potential uses.**

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## L. SECTION 6(F) OF THE LAND AND WATER CONSERVATION FUND ACT

### L.1. Overview

The Land and Water Conservation Fund (LWCF) Act establishes funding assistance for federal acquisition of park and recreation lands as well as matching grants to state and local governments for recreation planning, acquisition and development. The LWCF Act also set requirements for state planning through the State Comprehensive Outdoor Recreation Plan and provides a formula for allocating annual LWCF appropriations to the states and territories. Over 40,000 park and other recreation lands have been funded with assistance from the LWCF program throughout the country. This section applies only to properties that receive LWCF funding.

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**Professional Qualifications – Recommend that ODOT Geo- Environmental NEPA Program staff who have experience with Section 6(f)(3) Conversion Request processes be involved in all potential conversions caused by LPA FHWA- funded/approved projects.**

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Early contact with OPRD in cooperation with ODOT’s NEPA Program Coordinator (who is ODOT’s Liaison with OPRD for conversion processes), through the LAL and the assigned Region Environmental staff, is crucial if it is uncertain whether a Section 6(f) conversion will occur.

Due to the long lead time to gather data, appraise properties, conform to NPS NEPA requirements, and to complete all other necessary materials for a Section 6(f) conversion request, early coordination during the project scoping process is crucial.

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## L.2. Regulatory Framework

Pursuant to federal law, LWCF grant-assisted areas are to remain available for public outdoor recreation use “in perpetuity”. This is enforced in part through the National Park Service (NPS) NEPA compliance process, as Section 6(f) (3) of the Act falls within NEPA, which provides analysis regarding the impact of losing public parklands and recreation opportunities. In Oregon, if a transportation project, regardless of funding source, has the potential to impact any portion of an LWCF grant-assisted area, or affect users of such areas, the impact can constitute a potential “conversion” under Section 6(f)(3) as codified in 36 CFR 59.3. All conversions must be replaced with property(s) of reasonably equivalent recreation usefulness and location and be of at least equal fair market value to the conversion area(s).

Resources:

- [LWCF Act](#)
- [LWCF Compliance Responsibilities](#)
- [OPRD LWCF webpage](#)

Conversions must be approved by NPS through a formal Conversion Request. The state of Oregon, through Oregon State Parks and Recreation Department (OPRD), has the responsibility for all Conversion Requests in Oregon.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Section 6(f) LWCF narratives, see 426.12 of the ODOT NEPA Manual.

## L.3. Completed Deliverable

All Conversion Requests are developed in collaboration with OPRD by ODOT and the LPA of jurisdiction over the LWCF assisted property, and are formally submitted by OPRD to NPS for approval. Conversion Requests include the appropriate NEPA document(s), public comments, appraisals meeting federal standards, and the appropriate survey and mapping for the specific conversion. The general timeline for completion of a Conversion Request is one to two years or more depending on the complexity of the conversion and replacement property appraisal and NEPA processes.

**Is a specific template required? Yes.** NPS and ODOT have required templates, available on the ODOT and OPRD websites. The LPA should work through the LAL to determine which template(s) are required for their specific conversion.

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## M. AIR QUALITY

### M.1. Overview

Multiple areas in Oregon, including Certified LPA jurisdictions, are currently designated as non-attainment or maintenance of the National Ambient Air Quality Standards. Information regarding current maintenance and non-attainment areas can be found on DEQ's Air Quality website.

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**Professional Qualifications** –To be eligible to conduct an air quality report, the air quality expert shall have the following qualifications and experience:

- At a minimum, a Bachelor's degree in environmental engineering, atmospheric science, transportation engineering or a closely related field, or be a registered professional engineer in civil, environmental, or closely related field. An Associate of Science degree in civil, environmental, or closely related field may substitute for the BS degree if the applicant also has a minimum of four years' experience in civil or engineering.
  - In addition, a minimum of two years' experience in research, analysis, and performance of complex air quality modeling for transportation projects. This experience must include work on transportation projects requiring NEPA documentation at the level of an Environmental Assessment (EA) or higher.
  - Possess considerable knowledge of the National Ambient Air Quality Standards (NAAQS), various air pollutants and air toxics, and experience in both qualitative and quantitative (mesoscale and microscale) analysis and also have a thorough understanding of the Transportation Conformity Rule OAR 340-252 and 40 CFR 93.
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### M.2. Regulatory Framework

Air quality must be addressed for transportation projects in order to satisfy NEPA, the Clean Air Act and Transportation Conformity Rule Requirements (State Conformity Rule OAR 340-252-0010 through 0290 and the Federal Conformity Rule (40 CFR Part 93).

In order to meet transportation conformity rule requirements, all projects that are contained in metropolitan air quality maintenance and non-attainment areas must first be included in that metropolitan area's long-range transportation plan (RTP) and transportation improvement

program (TIP), prior to FHWA making a final environmental decision. The design concept and scope of the project should be the same as the project description in RTP and TIP.

Resources:  
- [ODOT GES Air Quality website](#)

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Air Quality narratives, see 426.13 of the ODOT NEPA Manual.

### **M.3. Completed Deliverable**

The ODOT Region Environmental Coordinator (REC) and ODOT Air Quality Specialist can assist in determining if conformity applies and what level of work is necessary. The LPA, as the project sponsor, is responsible for preparing project-level conformity documentation. For Categorical Exclusion projects, a formal air quality report is only required if a CO quantitative or PM quantitative hot spot analysis is needed. An air quality report is also required if an ISCP is needed.

If the LPA project is exempt from needing an air quality report, the NEPA documentation should still document any qualitative analysis that was done and provide an MSAT statement. If the project is in a carbon monoxide (CO) or particulate matter (PM) area, project level conformity may be required. For CO areas, a qualitative or quantitative CO hot spot analysis may be required.

For PM<sub>2.5</sub> or PM<sub>10</sub> areas, most projects will be exempt from PM hot spot project level conformity requirements. Projects requiring a PM analysis are “projects of air quality concern,” types of projects that are listed in 40 CFR 93.123(b) (1). If exempt, the project-level conformity determination should document that the project is not of the type identified in 40 CFR 93.123(b)(1), and EPA has determined that such projects meet the Clean Air Act’s requirements without any further hot-spot analysis. The Environmental Prospectus should identify if a PM analysis is required. For questions, contact the ODOT REC or ODOT Air Quality Specialist.

Mobile Source Air Toxics (MSATs) are an issue that must also be addressed, as outlined in FHWA’s Interim Guidance Update on Mobile Source Air Toxic Analysis in NEPA. When an air quality report is required, the report must document if the project is exempt from MSAT analysis, or report the findings of the qualitative or quantitative analysis.

For projects located in Lane County, some transportation projects that increase capacity or involve new sections of roadway may require an Indirect Source Construction Permit (ISCP). For complete information regarding ISCP, requirements refer to the Lane Regional Air Protection Agency Rules for Indirect Sources, Title 20. The air quality report should identify if an ISCP is needed for a particular project.

### Is a specific template required?

**Yes.** For CE projects that require a “quantitative” CO analysis, the standard scope of work template to use when hiring a consultant can be found at the ODOT GES Air Quality Website. For all required documentation, the ODOT Air Quality Specialist can provide assistance to the LPA for estimate of hours needed to conduct a quantitative CO hot spot analysis, an air quality report, or a qualitative CO Analysis memo.

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## N. NOISE

### N.1. Overview

FHWA-funded/approved projects will be developed in conformance with the ODOT Noise Manual. Proposed transportation projects have the potential to create long-term, permanent noise impacts to residents and businesses. The ODOT Noise Manual defines when noise impacts occur and when noise abatement must be considered. The physical construction of transportation projects can also create temporary noise issues that need to consider best management practices for construction noise. Conducting a noise impact and abatement analysis is time consuming and can greatly affect the project schedule and budget if the decision regarding the need for a noise study is postponed.

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**Professional Qualifications** Recommend that someone with NEPA experience in identifying potential noise receptors and impacts and has experience with performing transportation noise studies be engaged in scoping and documenting potential impacts. Professionals conducting noise studies should be experienced in using the traffic noise model (TNM) and the barrier analysis of the ODOT Noise manual. Contact ODOT’s Noise Program Coordinator if it is uncertain whether a noise study is required. Due to the long lead-time to gather data and complete a traffic noise study, early contact during the project scoping process is advised.

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### N.2. Regulatory Framework

Any highway project or multimodal project that receives FHWA funds or is otherwise subject to FHWA approval is subject to the policies contained in the ODOT Noise Manual and the FHWA Noise Standard (23 CFR 772).

Resources:

- [ODOT GES Acoustics website](#)
- [ODOT Noise Manual](#)

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Noise narratives, see 426.14 of the ODOT NEPA Manual.



### **N.3. Completed Deliverable**

A traffic noise study is required when one or more of the following events will happen:

- The construction of a highway on new location.
- The physical alteration of an existing highway where there is either a substantial horizontal or vertical alteration.
- The addition of a through-traffic lane(s), including the addition of a through-traffic lane that functions as a High-Occupancy Vehicle (HOV) lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane.
- The addition of an auxiliary lane, except when the auxiliary lane is a turn lane.
- The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange.
- Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane.
- The addition of a new or substantial alteration of a weigh station, rest area, ride-share lot, or toll plaza.

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**Is a specific template required?** – Requirements for noise studies are included in the Noise Study Outline found in Appendix I of the ODOT Noise Manual. A sample noise study conducted for an ODOT highway project can also be found in the Air and Noise section in the Sample Documents. For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

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## **O. HAZARDOUS MATERIALS**

### **O.1. Overview**

The LPA is responsible for all wastes generated from their property including, but not limited to, contaminated soils and groundwater, asbestos, demolition debris, lead-paint, treated wood, striping grindings, mercury lamps, PCB ballasts and hydraulics. The LPA may also be responsible for cleanup of contaminated property if they owned or operated the source of contamination, acquired the property without eminent domain authority, contributed to or exacerbated the contamination, hindered cleanup efforts or otherwise attained liability per ORS 465.255. Even if the LPA is not liable for cleanup, as is often the case, the LPA may end up paying for cleanup in order to complete the construction project, to avoid liability for human health effects (such as allowing drinking water wells to become contaminated), or to facilitate future sale of surplus property. It is essential to conduct hazardous materials assessments early in project development to minimize the risk of unexpected project costs and risks to worker health and

safety. Early characterization of project wastes can facilitate reuse and recycling options that reduce overall project costs, e.g. reusing concrete demolition debris or asphalt grindings as aggregate.

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**Professional Qualifications** – Recommend that an environmental professional meeting the education, training and experience as set forth in 40 CFR 312.10(b) be engaged in scoping and documenting potential impacts and someone with NEPA experience in identifying potential hazardous materials for NEPA and project scoping and documentation.

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## O.2. Regulatory Framework

FHWA policies require evaluation of hazardous materials issues early in project development. The Comprehensive Environmental Response, Compensation, and Liability Act and ORS 465 require the responsible party to clean-up contaminated property.

### Resources:

- [ODOT Hazardous Materials website](#)
- [ODOT Hazardous Materials Corridor Assessment template](#)
- [Resource Conservation and Recovery Act](#)
- [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#)

Resource Conservation and Recovery Act and ORS 448, 465 and 466 require the owner to manage wastes appropriately. OSHA and OR-OSHA regulations require an employer to ensure the health and safety of their employees and strictly regulate hazardous materials operations. ORS 468A requires asbestos surveys for all structures to be demolished or renovated and regulates asbestos abatement.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Hazardous Materials narratives, see 426.15 of the ODOT NEPA Manual.

## O.3. Completed Deliverable

To meet these laws and regulations and protect both the LPA and ODOT from future cleanup liability, hazardous materials assessments are required if the project includes any of the following activities:

- Land acquisition (including easements and leases).
- Excavation below road base.
- Demolition or renovation of structures.
- Any activities with the potential to generate wastes.

The hazardous materials assessment may identify testing required before construction.

**Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template. For EAs, work closely with LAL.
  - It is advised that a Hazardous Materials Technical Memorandum should follow ODOT’s Hazardous Materials Corridor Assessment template.
- 

**P. TRIBAL COORDINATION**

**P.1. Overview**

The LPA should consult early with ODOT (in project scoping or planning) for all FHWA-funded/approved local projects to ensure tribal consultation for the LPA project, *by ODOT staff on behalf of FHWA*, is accomplished in a timely manner using the most complete project description and mapping information possible.

Resources:

- [ODOT GES Cultural Resources Program website](#)
- [Tribes and Treaty Ceded Areas of Oregon](#)

LPAs should prepare project maps that include Township and Range, county information, and all potential project-related activities to ensure the Tribes can comment appropriately and completely. **\*\*LPAs may not coordinate** with Tribes nor conduct Tribal consultation on behalf of ODOT or FHWA for FHWA- funded/approved LPA-sponsored projects. \*\*

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Tribal Coordination narratives, see 426.16 of the ODOT NEPA Manual.

**P.2. Regulatory Framework**

There are nine federally recognized Native American Tribes in Oregon, as well as Tribes outside of Oregon that have retained interest in Oregon. Projects receiving federal-aid are required to consult with all federally recognized tribes with an interest in the project.

**P.3. Completed Deliverable**

For every NEPA document, a summary of tribal consultation is included in the format FHWA and ODOT have agreed.

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**Is a specific template required?** – ODOT is responsible for managing a template developed with FHWA that provides FHWA-funded/approved project-level summary of all tribal coordination efforts completed.

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## Q. PUBLIC OUTREACH & ENGAGEMENT

### Q.1. Overview

Public outreach and engagement needs to be an early and continuing part of the transportation and FHWA-funded/approved project development process. It is essential that the project sponsor knows the community's values in order to avoid, minimize, and mitigate impacts, as well as to narrow the field of alternatives and alignments. The community also needs to understand the constraints and tradeoffs of the proposed project and understand the transportation problem.

Early and continuing public involvement allows the project sponsor to be aware of the problems and impacts and to deal with these issues early. If involved early, the public can provide insight into what their community would find acceptable. Often, there are designs or enhancements that will allow the project to fit more harmoniously into the existing community.

Early in project development, LPAs should contact the ODOT Region Local Agency Liaison (LAL) who will work with the appropriate ODOT Region environmental staff to determine appropriate levels of coordination with the public, appropriate project stakeholders, and external agencies.

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**Professional Qualifications** – Recommend that someone with NEPA experience in designing public involvement for transportation projects in Oregon be engaged in determining an appropriate public involvement plan.

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### Q.2. Regulatory Framework

For regulatory framework for CEs, PCEs, EAs, and EISs, see **ODOT NEPA Manual Section 412**. This section is ODOT's and FHWA Oregon Division's collective Public Involvement and Agency Coordination policy for the FHWA Environmental Review (i.e., NEPA) program area.

Resources:

- [ODOT Public Involvement website](#)
- [FHWA Public Involvement website](#)

For FHWA Oregon Division Federal-Aid Project development, to ensure that the public is involved in transportation decisions and activities, the Oregon Department of Transportation (ODOT) engages with the public and seeks their input during the Planning and NEPA phases and throughout project development and into construction. Specific public involvement activities for each project are commensurate with the project, regulatory requirements, the intensity of public and agency interest, and the potential for controversy or adverse impacts. These procedures are consistent with 23 CFR 771.111(h) and were approved by the Federal Highway Administration, Oregon Division office on May 17, 2017.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Public Outreach & Engagement narratives, see 426.17 of the ODOT NEPA Manual.

### **Q.3. Completed Deliverable**

For every NEPA document, a summary of public involvement is included in the format upon which FHWA and ODOT have agreed. The summary should include outreach events, opportunities, comments received and how comments were considered.

## **R. OTHER FEDERAL AGENCY APPROVALS**

Many times, other Federal agency NEPA approvals (i.e., separate from FHWA’s NEPA approval) are required for FHWA-nexus projects. As per ODOT NEPA Manual Section 426.18, if other Federal agency NEPA approvals are required (i.e., permits, other approvals), list the agency, the type of approval, and the date of approval. If another Federal agency’s NEPA approval is pending, provide an expected timeframe for completion.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Other Federal Agency Approvals narratives, see 426.18 of the ODOT NEPA Manual.

## **S. ENVIRONMENTAL COMMITMENT TRACKING**

### **S.1. Overview**

Environmental commitments include any required, negotiated, or voluntary action that is intended to avoid, minimize, or mitigate environmental impacts of a project. In the Federal-Aid Highway Program, environmental commitments may begin in planning, would certainly be formed and would evolve during project development, would be implemented prior to or during project construction, and to some extent may require monitoring or other action during maintenance and operation of the transportation facility.

As an initial part of project development, the LPA should establish an “environmental commitments file” for each FHWA-funded/approved LPA project. Establishment of this file generally coincides with preparation of all NEPA documentation.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Environmental Commitments narratives, see 426.19 of the ODOT NEPA Manual.

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**Professional Qualifications Requirement** – The FHWA-funded/approved project sponsor (the LPA) should always have a comprehensive knowledge of the status of all environmental commitments for a project.

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## **S.2. Regulatory Framework**

FHWA policy, applicability, and responsibilities for fulfilling environmental commitments are codified in 23 CFR 771.105(d), 771.109(b), and 771.109(d). In essence, these regulations mandate that environmental commitments are implemented by the project applicant as a required condition of project approval from the FHWA. As part of its program management responsibilities, *FHWA may conduct project or program reviews and inspections to ensure that environmental commitments are implemented.*

## **S.3. Completed Deliverable**

ODOT maintains an Environmental Commitment Tracking System (ECTS) that captures environmental commitments at a project-level. The LPA environmental commitments file consists of proposed mitigation measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design-related environmental commitments such as those commitments that may come from public involvement, planning, environmental review, or project permitting.

Other commitments may be added at the LPA's discretion, such as right of way, access, maintenance, other permits, and agreements. The LPA's environmental commitments file is shared with ODOT so that commitments may be entered into ODOT's Environmental Commitment Tracking System.

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### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
-