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SECTION B

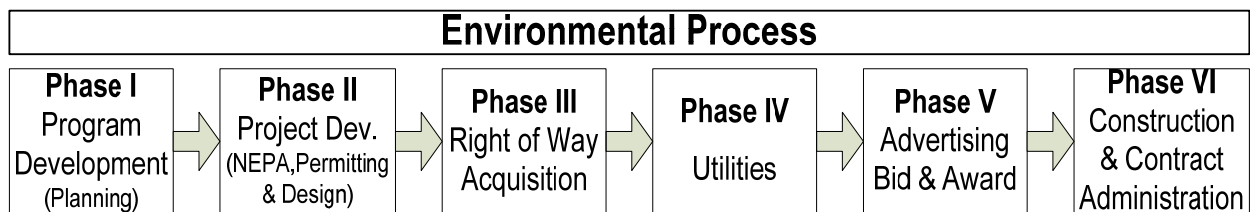
NON-CERTIFIED AGENCY

Chapter 5

Environmental Process

This chapter of the *LAG Manual* provides an outline of the environmental procedures that local agencies must follow when a project involves Federal Highway Administration funds or a project requires a Federal Highway Administration approval, such as an interstate access approval. For a complete description of environmental processes and procedures required, refer to ODOT's [Geo-Environmental Section website](#).

Environmental issues must be considered as early as possible in the planning and development of a project. In the sequence of project delivery, the environmental review process occurs concurrently with project development and prior to final design, right of way acquisition and construction. Other environmental processes, such as tracking environmental commitments, continue throughout project delivery, including construction, operation and maintenance of the facility.



A. OVERVIEW

Since the mid-1960's, a myriad of federal, state and local environmental statutes and regulations have come into existence as a response to the increasing adverse environmental and health effects of both public and private undertakings. Today, navigating the waters of environmental compliance can be a complex undertaking. Transportation project development is conducted concurrently with the "environmental review process," which includes scoping, environmental studies, interagency and public consultation, and securing applicable environmental permits, clearances and approvals. For proposed actions with a federal nexus, the National Environmental Policy Act (NEPA) typically serves as an "umbrella" process for meeting all environmental review requirements.

FHWA's approval of [NEPA](#) decisions is not a guaranteed approval of any other local, state or federal requirement. The local agency is responsible for obtaining all necessary environmental permits and clearances. The local agency may utilize the analysis completed in the [NEPA](#) compliance process to assist in the completion of applicable permits. The local agency must work with permitting agencies to provide the information needed to complete their local, state and federal permit obligations.

NOTE: Federal regulation (40 CFR 1506.5(c)) prohibits the environmental consultant providing NEPA documents from also providing design or other non-environmental services on a project, such as design or construction. Contractors preparing the NEPA document must have no financial or other interest in the outcome of the project. Also, 23 CFR 771.113 (a) states that final design activities may not proceed until a ROD or FONSI has been approved. In other words, the contractor involved in the NEPA document should not be working on final design while preparing the NEPA document. Both the CEQ and the design build regulations recently issued by FHWA (23 CFR 636.109(b)(6)) support this finding.

1. Applicable Regulations, Laws and Guidance

Projects that involve federal funds, federal permits or federal land must comply with numerous environmental regulations, including but not limited to:

- [National Environmental Policy Act](#);
- [Council on Environmental Quality Regulations for Implementing NEPA](#);
- [FHWA/FTA Environmental Impact and Related Procedures](#)
- [Endangered Species Act](#);
- [Magnuson-Stevens Act](#);
- [Migratory Bird Treaty Act](#);
- [Section 106 of the National Historic Preservation Act](#);
- [Title VI of the 1964 Civil Rights Act](#);
- [Section 4\(f\) of the U.S. DOT Act \(23 CFR 774\)](#);
- [Section 6\(f\)\(3\) of the Land & Water Conservation Fund Act](#);
- [Clean Air Act](#);
- [Transportation Conformity Rule](#);
- [FHWA Noise Regulation](#);
- [Resource Conservation and Recovery Act](#);
- [Clean Water Act](#).

If multiple federal agencies are involved in a proposed project, those federal agencies need to coordinate very early in project development to clearly delineate NEPA responsibilities. Federal agencies other than Federal Highway Administration, that may be involved in projects, include but are not limited to: the United States Forest Service, the Bureau of Land Management, and the Federal Transit Administration.

Oregon State environmental statutes and rules that could also apply to proposed actions include, but are not limited to:

- [Oregon Statewide Planning Goals](#);
- [State Agency Coordination Rule \(OAR 731-015-0005 through 0135\)](#)
- [Oregon Removal/Fill Law](#);
- [Oregon Endangered Species Act \(ORS 496.171\)](#);
- [Fish Passage Statute \(ORS 496.138\)](#);
- [Oregon Transportation Conformity Rule \(OAR 340-252-0010 through 0290\)](#);

- [Lane Regional Air Pollution Authority \(LRAPA\) Rules for Indirect Sources, Section 20-100 through Section 20-135.](#)

2. Guidelines and Manuals

To conduct all applicable environmental evaluations, refer to this *LAG Manual*, ODOT's *Regional Environmental Coordinator (REC) Manual*, ODOT's [Environmental Procedures Manual Vol. 1](#) and the other relevant manuals, practices and procedures found on the ODOT's [Geo-Environmental Section's "Manuals, Procedures and Practices" website](#). The [Environmental Procedures Manual](#) provides detailed information on the triggers, processes and documentation requirements related to specific environmental situations for all projects that must comply with [NEPA](#).

While this chapter of the *LAG Manual* provides basic information on coordination with regulatory agencies and documentation requirements associated with specific environmental conditions, the *REC Manual* and the [Environmental Procedures Manual](#) should be used in conjunction with this *LAG Manual* and other Geo-Environmental Section manuals to ensure compliance with [NEPA](#) and other federal and state environmental laws. For the most current updates, contact the [Regional Local Agency Liaison](#).

B. NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

NEPA requires the use of a systematic, interdisciplinary approach to assess a project's social, economic and environmental impacts. "Interdisciplinary" means integrated consideration of the project's aspects through such disciplines as air quality, biology, economics, geology, sociology, planning and archaeology, in addition to traditional civil engineering expertise. The [Regional Local Agency Liaison](#) can advise local agencies on the interdisciplinary approach for assessing a project's social, economic, and environmental impacts.

Environmental scoping, classification, and interagency coordination, should occur as early as possible in project planning and development to ensure compliance with [NEPA](#) and applicable environmental laws. A project will be classified as one of three [NEPA](#) classes depending upon the significance of the proposed project's potential environmental impacts. As a project develops through the NEPA process and more detailed information is learned, the classification of a project may change.

1. National Environmental Policy (NEPA) Act Classifications

The Council on Environmental Quality (CEQ) and FHWA NEPA regulations provide for three different "classes of action" – each with its own processing requirements: categorical exclusions (CE), environmental assessments (EA) and environmental impact statements (EIS). EISs must be completed for actions which will result in a significant impact to the human (including natural) environment. CEs can be completed for projects that will not have a significant on the human

environment. EAs are initiated for actions whose impacts may be significant, but are not known for certain. The term “significance” plays a central role in NEPA and is evaluated in terms of the context and the intensity of the effect of the proposed action.

FHWA must be in agreement with the project classification determination. In determining the appropriate environmental classification of a project, local agencies are encouraged to contact the [Regional Local Agency Liaison](#) to coordinate a field review of the proposed project with the appropriate parties. A flow chart that illustrates the process for prospectus and environmental classification is available at ODOT’s [Geo-Environmental Manuals, Procedures and Practices](#) website, in the “Region Environmental Coordination” section, under [Prospectus Processing](#). Non-certified local agencies may request through ODOT’s contract process, to retain a qualified consultant to perform some or all of the environmental tasks required for NEPA compliance. The local agency should contact the [Regional Local Agency Liaison](#) before retaining a consultant.

The Glossary of this *LAG Manual* provides definitions of the terms used in these processes. The following explanations define the three classifications of [NEPA](#) documentation and list the types of work typically associated with each classification.

Class I – Environmental Impact Statement (EIS)

Class I 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/or natural resources, or are projects that are likely to create significant public controversy.

Projects that typically require preparation of an EIS, include, but are not limited to:

- New construction of a controlled access freeway;
- A highway project of four or more lanes on a new location;
- New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated-guideway transit); and
- New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

Class II – Categorical Exclusion (CE)

Class II projects are actions that generally do not individually or cumulatively result in significant environmental impacts.

Categorical Exclusions are actions that meet the definition contained in [40 CFR 1508.4](#) and do not “significantly,” as defined in [40 CFR 1508.27](#), impact the environment. For additional information, see FHWA’s [Categorical Exclusion](#) website. 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; and
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Categorical Exclusions with Unusual Circumstances

Any action which normally would be classified as a Categorical Exclusion but could involve unusual circumstances will require appropriate environmental studies to determine if the Categorical Exclusion classification is proper. Such unusual circumstances include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by [Section 4\(f\) of the US DOT Act](#) or [Section 106 of the National Historic Preservation Act](#); or
- Inconsistencies with any federal, state or local law, requirement or administrative determination relating to the environmental aspects of the action.

Refer to [Section 4\(f\) of the U.S. DOT Act](#) or to ODOT’s [Environmental Procedures Manual Volume 1 Section 513](#) for additional details.

If these unusual circumstances exist, the local agency must contact the [Regional Local Agency Liaison](#) who will coordinate with the appropriate lead federal agency to determine if a Categorical Exclusion classification is appropriate.

Categorical Exclusion Documentation

Proposed actions being processed as a Categorical Exclusion (CE) must receive FHWA concurrence on the Categorical Exclusion (CatEx) documentation before proceeding with final design, property acquisition or construction. The [Categorical Exclusion \(CE\) Closeout Process, Guidance, and Documentation \(FHWA Required Documentation for CatEx Projects\)](#) and other details are available on ODOT’s [Geo-Environmental website](#). Follow the “Completion Guidance for the Categorical Exclusion (CE) Closeout Document” to determine what type of CE documentation is required for each CE project. Prepare the appropriate CE documentation. Ensure that all environmental permits, clearances, and approvals as specified in the guidance are complete and attached as appropriate. Obtain the proper signatures from the Region Environmental Coordinator, the Region Environmental Manager, and FHWA (if required). Submit to FHWA Oregon Division as specified in the CE Closeout guidance. Refer to the table below for CE process and documentation requirements by relative timeframe.

CE Process and Documentation	Relative Project Development Timeframe
<ul style="list-style-type: none"> • Early Scoping <ul style="list-style-type: none"> – identify environmental issues 	Planning
<ul style="list-style-type: none"> • Identify probable Class of Action <ul style="list-style-type: none"> – prepare Prospectus Part 3 	Pre-STIP to Draft STIP
<ul style="list-style-type: none"> • Plan and conduct environmental studies <ul style="list-style-type: none"> – as appropriate to scope of action – avoid resources where possible 	Project Development Team Kick-Off through early Preliminary Engineering (PE)

<ul style="list-style-type: none"> • Coordinate with jurisdictional agencies • Prepare regulatory documentation • Obtain clearances / approvals <ul style="list-style-type: none"> – document environmental commitments 	PE phase
<ul style="list-style-type: none"> • Document CE rationale <ul style="list-style-type: none"> – submit CE documentation to ODOT – ODOT reviews and signs CE documentation and forwards to FHWA for review and comment or approval 	Prior to R/W Authorization request or request to advertisement for construction contract
<ul style="list-style-type: none"> • FHWA signature concludes CE process 	<i>FHWA will not authorize R/W or Construction activities to proceed without approved CE Minimums documentation</i>

Class III – Environmental Assessment (EA)

For actions where the significance of the project’s environmental impact is not clearly established, an Environmental Assessment is prepared to assist in determining the extent of environmental impacts and to determine whether the preparation of an EIS is appropriate. If an Environmental Assessment results in a [Finding of No Significant Impacts](#) (FONSI) then an EIS is not required.

NOTE: It is extremely important that the assumption of a FONSI is not pre-supposed during any of the EA activities, especially consultant contracts, project schedules and information shared with the public. Rather than referencing a “FONSI,” “completion of the EA process” language should be used.

a. Project Prospectus

The local agency completes a project Prospectus utilizing project information developed during the planning stage. Parts 1 and 2 of the project prospectus describe the proposed project and serve as the support document for the FHWA authorization of federal funds. Part 3 of the project prospectus should identify all potential environmental issues associated with the proposed project and will preliminarily identify the NEPA classification (CE, EA or EIS). The project prospectus must be completed early in the process to ensure the project is well coordinated to minimize project delays. The local agency submits the project Prospectus and Local Agency Intergovernmental Agreement to the [Regional Local Agency Liaison](#). Refer to ODOT’s [Geo-Environmental Manuals, Procedures, and Practices](#) for documentation and forms required. Additional information regarding the project Prospectus is available within this *LAG Manual* in Section B, Chapter 2 and Section C, Chapter 3.

2. Project Procedures Based on NEPA Classification

The processes, procedures and documentation required for local agencies to process Class I (EIS), II (CE), and III (EA) projects are found in ODOT's [Geo-Environmental Manuals, Procedures, and Practices](#) website, which includes [Environmental Procedures Manual Vol. 1](#) and [Volume II](#). For detailed ODOT Region specific processes, contact the [Regional Local Agency Liaison](#).

3. Project Re-evaluation

A re-evaluation of the NEPA document is required whenever:

- 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 or construction);
- A change in the regulatory environment, such as different species or habitat being listed as threatened or endangered; or
- Single or cumulative conditions change, such as significant changes in assumed land uses, population, employment or traffic conditions.

The local agency shall check with the [Regional Local Agency Liaison](#) when any of these conditions exist.

There are two phases of re-evaluation, consultation and written re-evaluations. Consultation is a less formal process that typically precedes re-evaluation and consists of discussing the project with FHWA or the lead federal agency. 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.

The purpose of a written re-evaluation is to determine if a supplemental environmental document is needed, if a new environmental document is needed or if the original NEPA decision is still valid.

NOTE: It is important to discuss the project circumstances and potential re-evaluation needs with FHWA prior to proceeding with a written re-evaluation.

After the local agency contacts the [Regional Local Agency Liaison](#), the Liaison will coordinate consultation with FHWA. The re-evaluation must indicate whether new information alters the applicability of the previous analysis and findings. If so, the local agency must conduct additional appropriate environmental studies and update the conclusions.

The re-evaluation is submitted in written form to the [Regional Local Agency Liaison](#). The [Regional Local Agency Liaison](#) will transmit a copy of the re-evaluation to ODOT's Region Environmental Project Manager for review and coordination with FHWA. FHWA will determine whether additional work is required, or if the re-evaluation information is sufficient for the project to continue into subsequent implementation phases.

C. PUBLIC AND INTERAGENCY INVOLVEMENT

Commensurate with project scope, complexity and public interest, local agencies shall involve the public throughout project development activities. Early and continuous public involvement helps to ensure that transportation decisions are developed in a context-sensitive and sustainable manner. ODOT relies heavily upon local agencies to determine appropriate public involvement strategies.

Public involvement activities may include, but are not limited to public meetings with interested parties, outreach tailored to environmental justice populations, phone calls, focus groups, newsletters, legal notices, websites, local cable access programs, project tours, official local agency meetings (e.g. council meetings and planning meetings) etc. It is important for the local agency to catalog all public involvement activities performed for each project and include that information in the NEPA document. Good documentation of public involvement activities can be beneficial if the project is challenged.

Early in project development, local agencies should contact the [Regional Local Agency Liaison](#) who will work with the Regional Environmental Coordinator to determine appropriate levels of coordination with external agencies.

D. TRIBAL CONSULTATION

Local agencies must note that only ODOT may act on behalf of FHWA for purposes of consulting with tribes. Tribes always retain their rights to consult directly with FHWA on a government-to-government basis. Local agencies may not conduct tribal consultation on behalf of ODOT or FHWA.

E. SOCIO-ECONOMIC CONSIDERATIONS

Potential impacts to neighborhoods, community cohesion, civic groups, infrastructure, environmental justice populations, and businesses should be considered early in project planning and further identified during project scoping. Depending on project-specific circumstances, transportation project development may need to adhere to relevant socio-economic policies and guidance. The socio-economic benefits and adverse effects of implementing a proposed project should be captured in the NEPA documentation.

The [Federal-aid Highway Act of 1970: 23 United States Code 109\(h\)](#) specifies that federally funded highway projects make final decisions in the "best overall public interest" considering adverse economic, social, and environmental effects such as:

- Air, noise and water pollution;
- Destruction or disruption of man-made resources, aesthetic values, community cohesion; and availability of public facilities and services;
- Adverse employment effects, and tax and property value losses;
- Injurious displacement of people, businesses and farms;
- Disruption of desirable community and regional growth..

Resources on conducting socio-economic assessments are provided below:

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

1. Environmental Justice

In 1994, President Clinton issued [Executive Order 12898](#), 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 affects 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.

Environmental justice avoids, minimizes or mitigates adverse impacts, including discriminatory actions, against the following populations specifically:

- **Black** - a person having origins in any of the black racial groups of Africa.
- **Hispanic** - a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- **Asian** - a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.
- **American Indian and Alaskan Native** - a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.
- **Native Hawaiian or Other Pacific Islander** - a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Low-Income** - a person whose household income is at or below the [U.S. Department of Health and Human Services poverty](#) guidelines.

The DOT Order defines "population" as: (1) any readily identifiable group of minority persons or low-income persons who live in geographic proximity; or (2) geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed program, policy, or activity. Depending on the context and circumstances, a proposed action could cause a disproportionately high and adverse effect on a population even in cases where there are no clearly delineated neighborhoods or communities.

Additionally, disproportionately high and adverse effects, *not population size*, are the basis for Environmental Justice. A very small minority or low-income population in the project, study, or planning area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. What is needed is to show the *comparative effects* on these populations in relation to either non-minority or higher income populations, as appropriate.

To combat disproportionate health and environmental effects, [Executive Order 12898](#) requires environmental justice issues to be raised early and continually during federally funded projects.

a. Environmental Justice Program Goals

The goal of an environmental justice program is to develop principles and procedures within the agency that improve the agency's decision making. A successful environmental justice program will help the local agency:

- Make better transportation decisions that meet the needs of all people.
- Design transportation facilities that fit more harmoniously into communities.
- Enhance the public-involvement process, strengthen community-based partnerships, and provide minority and low-income populations with opportunities to learn about and improve the quality and usefulness of transportation in their lives.
- Improve data collection, monitoring, and analysis tools that assess the needs of, and analyze the potential impacts on minority and low-income populations.
- Partner with other public and private programs to leverage transportation-agency resources to achieve a common vision for communities.
- Avoid disproportionately high and adverse impacts on minority and low-income populations.
- Minimize and/or mitigate unavoidable impacts by identifying concerns early in the planning phase and providing offsetting initiatives and enhancement measures to benefit affected communities and neighborhoods.

In order to reach the goals listed above, it is helpful for local agencies to:

- Enhance their analytical capabilities to ensure that the long-range transportation plan and the Transportation Improvement Program (TIP) comply with Title VI (see *LAG Manual Section A, Chapter 7*).
- Identify residential, employment, and transportation patterns of low-income and minority populations so that their needs can be identified and addressed, and the benefits and burdens of transportation investments can be fairly distributed.
- Evaluate and, as necessary improve their public involvement processes to eliminate participation barriers and engage minority and low-income populations in transportation decision making.

b. Goal Statement

The following illustrates an example of a local agency's environmental justice goal statement.

No segment of the population, regardless of race, national origin, color, or income, as a result of the local agency's policies, programs, and activities suffers disproportionately from

adverse human health or environmental effects, and all people live in clean, healthy and sustainable communities.

Those who live with environmental decisions –community residents, state, tribal and local governments, environmental groups and businesses—must have every opportunity for public participation in the making of those decisions. An informed and involved community is a necessary and integral part of the process to protect the environment and those communities that are impacted.

In keeping with the goals and intent of environmental justice, local agencies should develop strategies to ensure that low-income and minority communities have access to information about their environment and that they have opportunities to participate in shaping government policies.

c. Information Sharing and Documentation

Particular information may be necessary for local agencies to determine whether their programs, policies and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. Local agencies should:

- Collect, maintain and analyze information assessing and comparing environmental risks borne by populations identified by race, national origin, color or income;

In order to equitably share information with all people local agencies should also:

- Offer to translate documents relating to environmental and human impacts, including public meeting times and information, and any other crucial public notices or hearings;
- Provide the needed information in language that is understandable, concise and readily accessible to all members of the public.

d. Recommendations

To improve public participation for the purpose of meeting environmental justice goals, local agencies could:

- Share the message early that public input and involvement is needed and desired so participants may help shape decisions, and they will be more likely to become and stay involved;
- Demonstrate how public involvement changed or altered outcomes, or if suggestions are not taken, explain why;
- Show how the community has a stake in the outcome of the project and keep all language, information and presentations simple to encourage participation and inclusion;
- Give people multiple ways and means to participate to help keep them engaged in the project;
- Cater to people's needs by holding meetings at convenient times and locations and by providing childcare and/ or food;
- Perform local outreach by going to where the target audience is located and becoming involved in local events or activities, such as fairs, colleges, swap meets, markets, etc.;
- Use alternative modes of participation, including e-meetings, but do not neglect traditional modes.

Procedures for addressing environmental justice are contained in the FHWA document “An Overview of Transportation and Environmental Justice.” This document and additional Title VI information can also be found at the following websites:

- [FHWA Environmental Justice](#)
- [FHWA Office of Civil Rights](#).

Additional non-discrimination information is available under the [“Title VI Program” in Section A, Chapter 7](#) of the *LAG Manual*.

2. Right of Way Acquisition

ODOT has overall responsibility to FHWA for project right of way acquisition on all FHWA funded transportation projects in the state. Federal regulations require ODOT to perform the final right of way project certification and ODOT’s acceptance of the process used to acquire right of way. Therefore, local agency right of way project acquisition may occur per the requirements of [Section B, Chapter 6 of this LAG Manual](#), but ODOT must complete the final certification acceptance of right of way for both certified and non-certified local agency projects.

The acquisition process is regulated by [ODOT’s Right of Way Manual](#) to assure compliance with the federal and state laws, assure fair and equitable treatment of any persons whose property rights are impacted by the project and encourage and expedite acquisitions by negotiations.

If federal funds are to be used in any part of the project, federal guidelines for acquisition of the Right of Way as identified in the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#) and further explained in the [ODOT’s Right of Way Manual](#) must be followed.

F. SECTION 4(f) COMPLIANCE

[Section 4\(f\) of the 1966 U.S. DOT Act \(see 23 CFR 774\)](#) requirements apply to significant publicly-owned public parks and recreational areas that are open to the public and to significant publicly owned wildlife and waterfowl refuges (regardless of whether these refuge areas are open to the public or not). [Section 4\(f\)](#) applies when the public agency that owns the property has formally designated it and determined it to be significant for park, recreation area, wildlife and waterfowl refuge purposes. A mere expression of interest or desire for a property to be a park, recreation area, wildlife or waterfowl refuge is not sufficient. [Section 4\(f\)](#) resources are presumed to be significant unless the official having jurisdiction over the site concludes that the entire site is not significant. FHWA must make an independent evaluation to assure that the official's finding of significance or non-significance is reasonable.

When private institutions, organizations or individuals own parks, recreational areas or wildlife and waterfowl refuges, [Section 4\(f\)](#) does not apply to these properties, even if such areas are open to the public. In addition, [Section 4\(f\)](#) does not apply to planned facilities unless the facility has been formally designated in a city or county plan, and the land on which the planned facility will be located is publicly owned.

[Section 4\(f\)](#) requirements apply to a historic or archaeological site when the property is either on or eligible for the [National Register of Historic Places](#). If a project has a “use” ([See 23 CFR 774.17](#)) of a National Register listed or eligible cultural resource, ODOT’s Cultural Resources staff must be consulted to determine the appropriate [Section 4\(f\)](#) evaluation. While the [Section 4\(f\)](#) process and [Section 106](#) process should be coordinated, the local agency must recognize that they require separate processes, timelines, jurisdictional agency approvals and documentation.

For additional insight into [Section 4\(f\)](#) considerations, see the [Region Environmental Checklist Guidelines](#), the [Section 4\(f\)](#) and [Related Recreation Requirements Resources](#) chapter of the Environmental Procedures Manual Volume II. FHWA’s [Section 4\(f\) Policy Paper](#) provides an excellent resource that includes questions and answers.

When a project proposes the use of a [Section 4\(f\)](#) resource, a [Section 4\(f\)](#) evaluation is required. Contact the [Regional Local Agency Liaison](#) for assistance in facilitating [Section 4\(f\)](#) processing, review and approval procedures.

For complete information regarding [Section 4\(f\)](#) requirements for local agency projects refer to ODOT’s [Cultural Resources Manual](#) (for historic resources), the Environmental Procedures Manual Volume II (for parks, wildlife/waterfowl refuges and recreation areas), or ODOT’s [Archaeological Manual](#) as appropriate.

G. BIOLOGICAL RESOURCES

1. Federal Endangered Species Act Compliance

All transportation projects must comply with the [Endangered Species Act](#) (ESA). The ESA is primarily managed by the [National Marine Fisheries Service](#) (NMFS) and the [US Fish and Wildlife Service](#) (USFWS). These two agencies are often referred to jointly as “the Services.”

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.

There are three possible results from this impact assessment:

- (1) the proposed project will have **no effect** (NE) on the species or their designated critical habitats;
- (2) the proposed project is **not likely to adversely affect** (NLAA) the species or their habitats; or
- (3) the proposed project is **likely to adversely affect** (LAA) the species or their habitats.

a. No Effect (NE)

If a project will have no effect on listed species or their designated critical habitats, no consultation with the Services is necessary. The NE determination documentation is submitted to ODOT for review and concurrence, and is then submitted to FHWA. This completes the ESA compliance process. However, if the project scope or scale changes, the local agency must coordinate with the [Regional Local Agency Liaison](#) to ensure that the NE determination remains valid: if it does not, consultation with the Services must be initiated.

b. Not Likely to Adversely Affect (NLAA)

If a project is not likely to adversely affect a species or their designated critical habitats, then informal consultation with the Services is required. Consultation for NLAA determinations consists of ODOT submitting a Biological Assessment (BA) to the Services. The BA outlines the proposed project, the project area and the potential impacts. The components of a BA are more fully described in the ODOT [Endangered Species Act Biological Assessment Guidance Manual](#). The Services reviews the BA, and if in agreement with the affects determination, responds with a Letter of Concurrence. This completes the ESA compliance process. If the project scope or scale changes such that the project may result in a LAA, the local agency must coordinate with the [Regional Local Agency Liaison](#) to determine if consultation with the Services should be reinitiated.

c. Likely to Adversely Affect (LAA)

If a project is likely to adversely affect a species or their designated critical habitats formal consultation with the Services is required. For LAA determinations, ODOT submits a BA (as described in the preceding paragraph) to FHWA for review. FHWA submits the BA to the Services. The Services have 135 calendar days to review the BA and provide the action agency (FHWA) with a Biological Opinion (BiOp) or a jeopardy opinion. The BiOp includes an Incidental Take Statement (ITS), mandatory terms and conditions and conservation recommendations. The ITS will quantify the amount of a listed species and/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.***

Receipt of the BiOp from the Services completes the ESA compliance process. If the project scope or scale changes such that the project may result in impacts to listed species or their designated critical habitats that are not included in the BiOp and ITS, the local agency must contact the [Regional Local Agency Liaison](#) to determine if consultation with the Services should be reinitiated. If a jeopardy opinion is issued, the project will not be allowed to move forward as currently proposed.

d. Preparation of ESA Documentation

The local agency is responsible for the preparation of appropriate ESA documentation. For most local agency projects, a consultant generally performs the impact assessment and develops the ESA documentation (a NE memo or BA). Officially, the federal action agency

(when federal funds to local agencies pass through ODOT, the federal action agency is FHWA) makes the effects determination and then consults with [the Services](#).

e. Determining the Federal Nexus Other than FHWA

When federal funds for local agency transportation projects do not pass through ODOT, ODOT has no oversight of local agency compliance with ESA.

f. Consultation Reinitiation Requirements

Reinitiation of consultation with the [Services](#) is triggered by any of the following situations:

- The amount or extent of take specified in the BiOp is exceeded;
- New information reveals additional effects of the action that were not considered in the BA;
- The action is later modified in a way that causes an effect that was not considered in the BA;
- A new species is listed or new critical habitat is designated that may be affected by the action.

2. Magnuson-Stevens Act Compliance

The [Magnuson-Stevens Act](#) (MSA) requires consultation for all actions with a federal nexus that may adversely affect Essential Fish Habitat (EFH). A project impact assessment on EFH can be included in the [ESA](#) BA or as a stand alone EFH consultation if ESA-listed species or designated critical habitat will not be affected by the project. The components of an EFH consultation are described in the ODOT [Guidance Manual for Writing Biological Assessment Documents](#).

3. ODOT Consultation Processes for ESA and MSA

ODOT has revised its procedures and contract requirements for the consultant community to provide BAs under Section 7(a)(2) of the [ESA](#). Biological Assessments must address specific impacts to listed species and their habitat(s); describe particular actions to avoid, minimize and mitigate adverse impacts; and provide documentation to justify conclusions drawn.

To maximize efficiency and resources in the ESA consultation process and to enhance the value of its outcome, ODOT has outlined specific processes and procedures to conduct Section 7 consultations. Qualification of consultants is used to provide and track expectations and outcomes. ODOT requires local agencies to only assign BA consultation work to consulting firms that retain at least one biologist who is pre-qualified by ODOT to write and review BAs. The qualified biologist must provide his or her signature on completed Biological Assessments to signify that they assure the quality of the BA regardless of who wrote it.

To become a qualified biologist, ODOT requires an individual to meet minimum educational requirements, to attend a two-day training course, and to pass a written exam. ODOT offers the two-day training every other year. Additionally, ODOT expects qualified biologists to participate in a one-day re-qualification training every three years. Re-qualification training is offered in conjunction with the standard qualification training annually.

The BA qualification training includes a guidance manual with a BA template that outlines the format and placement of information. The cost of training and testing is the responsibility of the consultant and/or the consulting firm. For additional information about the ODOT BA Qualification Training Program, please visit the ODOT Training Module site on the [Geo-Environmental website](#).

4. Migratory Bird Treaty Act Compliance

The [Migratory Bird Treaty Act \(MBTA\)](#) is a strict liability (see “strict liability in Glossary”) federal law that makes it unlawful to take, import, export, possess, sell, purchase, or barter any migratory bird, with few exceptions. The law also applies to feathers, eggs, nests and products made from migratory birds. Nests containing eggs or young are particularly problematic for transportation projects because moving them is a violation of the MBTA and there is no incidental take permit (ITP).

Federal-aid projects should consult the ODOT [MBTA Highway Division Directive](#) for guidance and strategies to comply with the MBTA. Additionally, local agencies should consider developing an [Avian Protection Plan](#) (APP) and working with USDA APHIS Wildlife Services under the ODOT-APHIS Inter-Governmental Agreement (IGA). Currently, APPs are the best protection against prosecution in the event of an incidental take of any of the species covered by the MBTA. If a federal ESA BA is being written for a project, migratory bird protection and conservation actions should be included in the document. For a list of species covered by the MBTA and for additional MBTA information, refer to the [U.S. Department Fish and Wildlife, Division of Migratory Bird Management](#) website.

For further information about how to incorporate these considerations into a project, contact the [Regional Local Agency Liaison](#).

5. Bald and Golden Eagle Protection Act Compliance

The [Bald and Golden Eagle Protection Act \(BGEPA\)](#) provides for the protection of bald and golden eagles by making it illegal, except under certain specified conditions, for anyone to knowingly, or with wanton disregard for the consequences of his/her actions take, disturb, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald or golden eagle, alive or dead, or any part, nest or egg thereof. Bald and golden eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior.

Similar to the MBTA, the BGEPA currently has no provision for an ITP. Federal-aid projects should consult the ODOT [Bald Eagle Technical Services Advisory](#) and the [National Bald Eagle Management Guidelines](#) for guidance on BGEPA compliance.

For further information about how to incorporate these considerations into a project, contact the [Regional Local Agency Liaison](#).

6. State Endangered Species Act (SB533) Compliance

a. [Fish and Wildlife \(ORS 496.171 – 496.192, OAR 635.100.100 – 635.100.130\)](#)

The long-term goal for species listed under the [Oregon Endangered Species Act](#) is to manage the species and their habitats so that the status of the species improves to a point where

listing is no longer necessary. The local agency must consult with [Oregon Department of Fish and Wildlife](#) (ODFW) to determine whether a proposed action on public land, or land it leases or for which it holds a recorded easement, has the potential to appreciably reduce the likelihood of the survival or recovery of a threatened or endangered animal. [Oregon Department of Fish and Wildlife](#) may issue an incidental take permit for a state-listed threatened or endangered species if it determines that such take will not adversely impact the long-term conservation of the species or its habitat.

b. [Plants \(ORS 564, OAR 603.073\)](#)

The intent of Oregon laws pertaining to state threatened and endangered plants is to protect and conserve these species. In the absence of a scientific take permit from the [Oregon Department of Agriculture \(ODA\)](#), no person shall (or attempt to) take, import, export, transport, purchase or sell any threatened or endangered plant on public land. Local agencies are required to determine and document whether listed plants occur or are likely to occur on public lands targeted for action. If the threatened or endangered plant is on private land that will become incorporated into state land, then it must be treated as if it is on state land. If a listed plant occurs or is likely to occur, the local agency should determine, prior to the action, whether the proposed action has the potential to appreciably reduce the likelihood of the survival or recovery of any population of the listed species. Results of the effects analysis shall be provided to the [ODA](#) for review and for project approval.

7. Oregon State Fish Passage Statute Compliance

Per [OAR 635-412-005 through 0040](#), when owners of hydraulic facilities (culverts, tidegates, diversions, dams, etc.), replace or modify these facilities, the owners must ensure compliance with state fish passage requirements. This Oregon Administrative Rule (OAR) applies to all projects that contain hydraulic structures.

Numerous construction activities associated with hydraulic facilities can “trigger” this state statute. Activities which trigger the fish passage law are further defined as follows:

a. Roadbed installation or replacement at culverts includes any activity that:

- (i) creates a road which crosses a channel;
- (ii) widens a roadfill footprint within a channel; or
- (iii) fills or removes over 50 percent by volume of the existing roadbed material directly above a culvert, except when this volume is exclusively composed of the top 1 foot of roadbed material.

b. Culvert installation or replacement includes any activity that:

- (i) installs or constructs a new culvert, overflow pipe, apron or wingwall within a channel;
- (ii) extends existing culverts, aprons or wingwalls within a channel, except one-time placements of culvert ends which do not extend greater than 1 foot beyond the adjacent road footprint in place prior to August 2001;
- (iii) cumulatively through time makes significant repairs or patches to over 50 percent of the linear length of a culvert;

- (iv) replaces any part of a culvert, except ends which become misaligned or eroded and which are replaced to their original configuration;
- (v) at any point along the linear length of a culvert, reduces the entire inside perimeter of the culvert; or
- (vi) makes replacements, repairs, patches or modifications to an existing culvert that are different than the original configuration and which reduce any level of fish passage for native migratory fish with current access, as determined by the Department, to the culvert.

When an activity triggers the fish passage statute, the local agency must either:

1. comply with state fish passage requirements and design guidelines;
2. submit a waiver (with mitigation) request to [Oregon Department of Fish and Wildlife](#);
- or
3. submit an exemption request to [Oregon Department of Fish and Wildlife](#).

Additional information on these scenarios or subsequent processes can be referenced at: [Fish Passage Statute” \(ORS 496.138\)](#) and [Oregon Department of Fish and Wildlife](#).

H. WATER QUALITY

All ODOT federal-aid projects must conform to the water quality mitigation requirements of ODOT’s [Project Delivery Notice \(PDLT ON\) # 05](#). Guidance on the selection and design of treatment facilities is available in ODOT’s [Hydraulics Manual, Chapter 14](#).

Management of water quality on projects that require a US Army Corps permit under [Clean Water Act Section 404](#) permit or an [Oregon Department of State Lands Removal/Fill](#) permit must be reviewed and approved by the [Oregon Department of Environmental Quality](#) under the [Clean Water Act Section 401](#) requirements. A water quality certification is the mechanism by which the State evaluates whether an activity meets water quality standards and may proceed.

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 listed Threatened or Endangered species must include a description of the stormwater management plan in the Biological Assessment.

Projects using dry wells or injection wells to dispose of stormwater are subject to regulation by the [Underground Injection Control \(UIC\) program](#) administered by the [Oregon Department of Environmental Quality](#).

For additional information contact the ODOT [Regional Local Agency Liaison](#) or visit ODOT’s [Water Resources website](#).

I. WETLANDS AND WATERWAYS

Wetlands and waterways are regulated under section 404 of the [Clean Water Act](#), and the [Oregon Removal-Fill Law \(ORS 196.800-196.990\)](#) law. 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](#) and the US Army Corps of Engineers for review and concurrence before submitting the permit application. Applications are submitted to both the [Oregon Department of State Lands](#) and the U.S. Army Corps of Engineers.

A permit must be obtained from the U.S. Army Corp of Engineers and the [Oregon Department of State Lands](#) 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 U.S. Army Corps of Engineers and [Oregon Department of State Lands](#).

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 and/or creating wetlands must be made in accordance with the [Clean Water Act](#) and Oregon's [Removal-Fill Law](#).

Projects that impact mitigation site wetlands must double the mitigation ratio when replacing such wetlands, in accordance with 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 [Department of State Lands](#) 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.

For further information on wetland delineation, impact and functional assessment, permit application, mitigation and related procedures that should be followed when it is anticipated a project may have an impact on wetlands, refer to ODOT's [Geo-Environmental Section Wetlands Program](#) website. The Corps of Engineers and the Department of State Lands also have useful information on their websites: [Army Corp of Engineers](#); [Department of State Lands](#).

J. EROSION AND SEDIMENT CONTROL

All ODOT projects that will disturb one or more acre of ground, will be required to obtain coverage and operate under one of the National Pollutant Discharge Elimination System 1200 – C/CA General, Construction Permits administered by the [Oregon Department of Environmental Quality](#). Each project needs to have an Erosion and Sediment Control Plan developed and implemented that meets requirements of the permit. Erosion and Sediment Control plans should also address discharges to water quality limited streams and 303(d) listed bodies. Erosion or sediment control-related requirements of other permits or laws, such as the [Endangered Species Act](#), should also be shown in the Erosion and Sediment Control Plan.

For additional information refer to ODOT's [Erosion Control Manual](#) and [Erosion Control Field Manual](#). To purchase hard copies of these manuals, visit the [ODOT Contractor Plans Office Manual Order Form](#) website.

K. SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

Any project, activity, or program funded in whole or 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). Section 106 requires federal agencies to consider the effects of its undertakings to properties eligible for or listed on the [National Register of Historic Places](#).

[36 CFR Part 800](#), the implementing regulations for Section 106 of the NHPA, calls for meaningful coordination with consulting and interested parties to develop a project in a manner that avoids and/or minimizes impacts to cultural resources. In accordance with this, FHWA and ODOT expect that the Section 106 review process would begin early in the project development phase.

The Section 106 review process is complete when a 106 finding is made by FHWA and any necessary mitigation measures are executed by FHWA in consultation with appropriate parties. Local agencies must note that only ODOT may act on behalf of FHWA for purposes of fulfilling the procedural requirements of Section 106. For purposes of Section 106 review, local agencies may not conduct consultations, make eligibility determinations or issue effects determinations. These consultations and determinations must be made by ODOT on behalf of FHWA.

Local agencies must contact the [Regional Local Agency Liaison](#) who will coordinate with ODOT's Geo-Environmental Section to determine the appropriate procedural tools to be employed for compliance with Section 106. For a complete description of the processes and requirements that ODOT will be following for local agency projects refer to ODOT's [Cultural Resources Manual](#) and [Archaeology Manual](#).

The Section 106 review process includes archaeological resources, traditional cultural properties and historic resources as outlined below:

1. Archaeological Resources and Traditional Cultural Properties

Archaeology is the study of human cultures through the analysis of material remains such as discarded tools and buried structural features such as walls, foundations and hearths. Some traces of human activity are obvious, such as chipped stone butchering tools, while some are subtle or microscopic, such as an organic soil stain where an animal was butchered, or microscopic pollen grains left on a milling stone.

Seven federal laws and three Oregon state laws apply to archaeological resources. Of these laws, the three Oregon statutes, the [National Historic Preservation Act](#), [NEPA](#) and [Section 4\(f\) of the](#)

[US DOT Act \(see 23 CFR 774\)](#) are of particular importance. As a result, ODOT's procedures are geared to comply with these legal mandates. In most cases, the regulations primarily consider a site's research potential – that is, a site's potential to provide information about the past.

There are nine federally recognized [Native American Tribes](#) in Oregon. Projects receiving federal-aid are required to consult with all federally-recognized tribes with an interest in the project, including tribes that are not residents of Oregon. In many cases, Oregon's archaeological sites have significance that relate to traditional religious concerns or ethnic history and identify cultural values for these groups which often transcends the research value they contain. Contact the ODOT [Regional Local Agency Liaison](#) for additional information. Additional information is available on [FHWA's website](#).

Archaeological investigations must be performed by persons meeting the [Secretary of the Interior's Professional Qualification Standards for Archaeology](#) or by a Qualified Archaeologist as defined by [Oregon Revised Statute \(ORS\) 390.235](#). Refer to ODOT's [Archaeological Manual](#) for complete information related to Archaeological Requirements.

When archaeological resources are identified, ODOT will evaluate these to determine if they meet eligibility requirements for inclusion in the [National Register of Historic Places](#) and, if they do, ODOT will assess effects to determine whether the project would or would not adversely affect these resources and work with consulting and interested parties to resolve potential adverse effects.

2. Historic Resources

Historic resources in Oregon represent a wide variety of built features that provide a link to Oregon's history – from homestead cabins, to railroad corridors, to extraordinary bridges. Oregon's rich and diverse history is represented in these buildings, structures, sites and objects.

The primary regulations that apply to historic resources are Section 106 of the [National Historic Preservation Act](#), [Section 4\(f\) of the Department of Transportation Act.](#), and [Oregon Revised Statute 358](#).

Historic resources documentation must be prepared by personnel who meet the Secretary of the Interior's [Professional Qualification Standards](#) in the fields of history and/or architectural history. Documentation and resource evaluation must be coordinated with the [Regional Local Agency Liaison](#) and ODOT's Geo-Environmental Section. For further information regarding requirements for historic resources documentation, see ODOT's [Cultural Resources Manual](#).

When historic resources are identified, ODOT will evaluate these to determine if they meet eligibility requirements for inclusion in the [National Register of Historic Places](#) and if they do, ODOT will assess effects to determine whether the project would or would not adversely affect these resources and work with consulting and interested parties to resolve potential adverse effects.

L. AIR QUALITY

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](#); Federal Conformity Rule [40 CFR Part 93](#)).

Oregon currently has nine areas designated as non-attainment or maintenance of the [National Ambient Air Quality Standards](#).

- Portland
- Salem
- Eugene-Springfield
- Medford-Ashland
- Grants Pass
- Klamath Falls
- Lakeview
- La Grande and
- Oakridge

Transportation Conformity Rule requirements apply for both non-attainment and maintenance areas. The “project sponsor” is responsible for project-level conformity requirements.

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/or transportation improvement program (TIP), prior to FHWA making a final environmental decision (e.g. Categorical Exclusion, Finding of No Significant Impact or Record of Decision). The design concept and scope of the project should be the same as when the RTP and TIP were found to conform. The project should also comply with project-level conformity requirements where applicable that pertain to CO, PM-10 or PM2.5 hot-spot criteria. The project should not create new hot spot violations or exacerbate an existing violation if one already exists. A conformity statement to illustrate whether the rule criteria have been met should be included in the air quality report that is conducted for a specific project.

Mobile Source Air Toxics (MSATs) are an emerging issue that must also be addressed, as outlined in [FHWA’s guidance](#).

The results of the MSAT analysis are documented in the air quality report.

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](#). The air quality report should identify if an ISCP is needed for a particular project.

For complete information regarding air quality requirements for transportation projects refer to ODOT’s [Environmental Procedures Manual](#). Any questions regarding Air Quality should be directed to the [Regional Local Agency Liaison](#).

M. NOISE

FHWA regulations governing noise are found in at [23 CFR 772](#).

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

1. the project adds a through lane of traffic;
2. the project will result in an acoustically significant change in noise levels to a noise sensitive development (2-3 decibels), due to a horizontal or vertical shift in alignment of the existing roadway (noise sensitive properties include residences, parks, schools and commercial facilities or any property where development is planned, designed and programmed);
3. the project results in the construction of a new roadway on a new alignment; or
4. the project itself results in a new traffic noise impact (this can occur when shielding next to the highway, such as an embankment, is removed).

FHWA's Noise Analysis and Abatement Policy and Guidance can be found at: [Federal Highway Administration Noise Standard](#). As mandated by [23 U.S.C. 109\(i\)](#), all federal-aid highway projects are to be developed in conformance with this policy. State-funded ODOT projects are also developed in conformance with this regulation.

The FHWA Noise Policy and Guidance lists the requirements for the preparation of traffic noise studies for highway construction projects. The guide defines when noise impacts occur and when noise abatement must be considered. The guide also establishes requirements for information to be given by ODOT to local officials for use in land use planning and transportation projects.

ODOT has developed a [Noise Manual](#) to assist by giving guidance in the analysis of highway traffic noise and the design of noise abatement measures. The manual does not supersede the laws and regulations governing highway construction practices and procedures. The manual may be found at ODOT's [Geo-Environmental Manuals, Procedures & Practices](#) website. The manual provides useful guidance on traffic noise studies and documentation methodology within Oregon. A [sample noise study](#) conducted for an ODOT highway project can also be found in the Air and Noise section in the Sample Documents area of this website.

Contact ODOT's [Regional Local Agency Liaison](#) for assistance in processing noise requirements.

N. HAZARDOUS MATERIALS

FHWA Policies require evaluation of hazardous materials issues early in project development. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and ORS 465 require the responsible party to cleanup contaminated property. Resource Conservation and Recovery Act (RCRA) 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.

The local agency 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 local agency 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 local agency is not liable for cleanup, as is often the case, they 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. Therefore, 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. In addition, 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.

To meet these laws and regulations and protect both the local agency 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.

Hazardous materials assessments are conducted to determine the presence and extent of contamination, asbestos and lead-paint surveys of structures and inventories of wastes and hazardous materials present on site. For additional information, contact the ODOT [Regional Local Agency Liaison](#) or refer to the *ODOT HazMat Program Procedures Guidebook* which can be found on ODOT's the [Geo-Environmental Section Manuals, Procedures and Practices](#) website.

Note that, for NEPA documentation, the discovery of a contaminated site within the project can often be considered a positive impact if the proposed construction will remove or partially remove the contamination or otherwise reduce the contaminated site's significance within the environment. Removal of harmful materials on old structures, such as lead paint, asbestos and mercury containing lamps may also be considered beneficial to the environment but generation and disposal of wastes may be a negative environmental impact.

O. LAND USE PLANNING CONSIDERATIONS

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, Coastal Management Zones and/or [Land and Water Conservation](#)

[Funding Act](#) Section 6(f)(3) properties. OAR [731-015-0075](#) and [731-015-0085](#) require ODOT to consider land use impacts during [NEPA](#) project development.

For additional insight into socioeconomic and land use considerations, see the [Region Environmental Checklist Guidelines](#), the [Socioeconomic Resources](#) chapter of the Environmental Procedures Manual Volume II or contact the [Regional Local Agency Liaison](#).

P. SECTION 6(f)(3) OF THE LAND AND WATER CONSERVATION FUND ACT

In September 1963, the Land and Water Conservation Fund (LWCF) Act became law, see [16 U.S.C. 4601-4](#). The Act established funding 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 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.

Pursuant to federal law, LWCF grant-assisted areas are to remain forever available for "public outdoor recreation use." This is enforced in part through the NEPA compliance process, as Section 6(f)(3) of the Act falls within NEPA and environmental reviews provide analysis regarding the impact of losing public park lands and recreation opportunities, as well as the creation of new replacement park lands and opportunities. As a part of NEPA compliance and the environmental review, Section 6(f)(3) of the LWCF Act ensures that the federal investments in LWCF assisted project areas are continually maintained for public outdoor recreation use, unless the National Park Service approves a substitution property. The substitution property must be of reasonably equivalent usefulness and location and also be of at least equal fair market value. The state has the responsibility for compliance and enforcement of these provisions for both state and locally sponsored projects.

In most situations, the area encumbered within Section 6(f)(3) of the Act exceeds the area that actually received LWCF assistance to assure the protection of a viable recreation entity. The area must reflect a viable self sustaining public recreation site, so in most cases it includes the entire park or recreation management area. These protected areas are depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior.

If an Oregon transportation project has the potential to impact any portion of an LWCF assisted area, or affect users of such areas, the impact can constitute a potential conversion under Section 6(f)(3). In order to determine whether the project could constitute a conversion, it is important in the early planning stages to work with the local park managing jurisdiction and the Oregon State Parks and Recreation LWCF program manager. Failure to do so can delay FHWA approval of the project.

If it is determined that the project will result in a conversion, a conversion proposal must be submitted to the National Park Service via the local jurisdiction and LWCF state program

manager. This is a timely process with various conversion pre-requisite requirements. ODOT's [Regional Local Agency Liaison](#) will coordinate with the appropriate Geo-Environmental staff, as ODOT will need to assist the affected park jurisdiction in providing the information necessary for the potential conversion proposal. The Oregon State Parks and Recreation LWCF program manager can provide guidance on 6(f)(3) conversion pre-requisites. Conversions cannot proceed and be finalized until there is National Park Service approval.

Q. ENVIRONMENTAL COMMITMENT TRACKING

During the environmental review process, the local agency is likely make commitments that will result in avoidance, minimization or mitigation of adverse effects. It is the responsibility of the local agency to document any commitments made and ensure they are carried out in the project plans, specification, contracts and construction, as committed to.

As an initial part of project development, the local agency establishes a project commitment file. See [23 CFR 771.109\(b\)](#). Establishment of this file generally coincides with preparation of the environmental document or may occur at later stages, as appropriate. The 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 and environmental commitments. Other commitments may be added at the local agency's discretion, such as right of way, access, maintenance, permits and agreements.

The local agency maintains the commitment file throughout the life of a project, including any appropriate monitoring requirements. The organization and tracking of commitments is the discretion of the local agency.

The local agency must request concurrence from the [Regional Local Agency Liaison](#) for any significant alteration to mitigation measures that directly or indirectly impact commitments made as part of the environmental process. This includes alterations proposed during the construction or maintenance of the project.

The local agency is responsible for monitoring project development, construction, and maintenance to ensure that environmental commitments are kept and adverse effects are mitigated.

R. ADDITIONAL RESOURCES AND REFERENCES

- ODOT's Geo-Environmental Section's [Manuals, Procedures and Practices](#)
- [Projects Environmental Classification Guidance](#)
- [Region Environmental Checklist Instructions](#)
- [Prospectus Part 3 Instructions](#)
- [Biological Assessment Template](#)
- [Biological Assessment Evaluation Checklist](#)
- [Tribes and Treaty Ceded Areas of Oregon](#)
- [ODOT Operational Notice #02](#)
- [ODOT Operational Notice #04](#)
- [Environmental Baseline Reporting](#)
- [Council on Environmental Quality](#)

- FHWA's [Technical Advisory T6640.8A](#)
- FHWA's [Eco-Logical Summary of Federal Laws & Requirements](#)
- [The Coastal Zone Management Act](#)
- [Protection of Wetlands, Presidential Executive Order 11990](#)
- [Preservation of the Nation's Wetlands, U.S. Department of Transportation Order DOT 5660.1A](#)
- [FHWA/USDOT, Environmental Impact and Related Procedures \(23 CFR 771\)](#)
- [Section 7 of the Endangered Species Act](#)
- [National Historic Landmark website](#)
- [Association of Oregon Counties – Environmental Management for Roads website](#)