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***Chapter 5******NEPA and Environmental Processes*****A. NEPA Overview**

The National Environmental Policy Act (NEPA) is triggered for projects in the Federal-Aid Highway Program (FAHP) either through FHWA funding or when an approval from the Federal Highway Administration (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.

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

This chapter focuses on Federal Highway Administration 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 the order those resources are considered in ODOT’s Part 3 and FHWA’s Categorical Exclusion template. Informational resources via hyperlinks are provided for each discipline following discussion of that item.

FHWA’s approval of NEPA decisions for FAHP projects is not a guaranteed approval of any other local, state, or federal requirement.

**General NEPA and environmental information can be found on ODOT’s [e-Guide](#). All environmental technical work should be accomplished via [ODOT environmental templates and forms](#). The templates and forms should be downloaded from ODOT’s website for every new Local public agency FAHP project. Local public agencies and consultants should not use a template or form from a previous or concurrent project because templates and forms are updated regularly to incorporate the newest regulatory and policy information; always check the website for the most current templates and forms. Always check each individual discipline website on the [Geo-Environmental Section webpage](#) as well, since not all templates and forms are located in one place.**

**All environmental documents produced for a FAHP Local public agency project by the Local public agency or their consultant are required to be reviewed and approved by ODOT Region Environmental staff to ensure the Local public agency’s Federal-aid Highway project complies fully with FHWA NEPA and other federal and state agency environmental regulations. 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 FAHP local project as the environmental permitting processes progress and evolve.**

## Local public agency FAHP NEPA / Environmental Approval Responsibilities

Discipline/Resource	Required Process, Permit, Clearance, or Approval	Responsibility
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><b>Perform negotiations/acquisition process</b></li> </ul>	<ul style="list-style-type: none"> <li>ODOT/LA/CONS*</li> <li>LA/CONS*</li> <li>ODOT/LA/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><b>Obtain local land use permits</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS*</li> <li>LA/CONS**</li> <li>LA/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>LA/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>LA/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><b>Obtain 404 Corps/DSL permit</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS**</li> </ul>
Water Quality	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li><b>Obtain DEQ certification permit</b></li> <li><b>Prepare and submit Stormwater Plan to DEQ</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS**</li> <li>LA/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><b>Obtain Biological Opinion or other permit coverage (from NMFS/USFWS) if needed; otherwise use FHWA's FAHP ESA Programmatic</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li><b>LA/CONS* w/ ODOT</b></li> <li><b>FHWA or ODOT, for FHWA</b></li> </ul>
NHPA Section 106 (Cultural Resources)	<ul style="list-style-type: none"> <li><b>Obtain permits for surveys on federal/private lands</b></li> <li>Perform field surveys, reconnaissance, research</li> <li>Prepare impact assessment and findings</li> <li><b>Make Determinations of Eligibility</b></li> <li><b>Prepare Findings of Effect</b></li> <li><b>Consult with SHPO for concurrence</b></li> </ul>	<ul style="list-style-type: none"> <li><b>ODOT</b></li> <li>LA/CONS*</li> <li>LA/CONS*</li> <li><b>ODOT, for FHWA</b></li> <li><b>ODOT, for FHWA</b></li> <li><b>ODOT, for FHWA</b></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>LA/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>LA/CONS*</li> <li><b>LA/CONS* ODOT</b></li> <li><b>FHWA</b></li> </ul>
Section 6(f)(3)	<ul style="list-style-type: none"> <li>Prepare impact assessment</li> <li>Survey and mapping</li> <li><b>ROW negotiations/acquisitions</b></li> <li><b>Obtain Section 6(f)(3) Conversion Approval from NPS</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS*</li> <li>LA/CONS*</li> <li><b>ODOT</b></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><b>Obtain Indirect Source permit (Lane Co.) if needed</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS*</li> <li>LA/CONS*</li> <li>LA/CONS**</li> </ul>
Noise	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>Perform noise study(s)</li> <li><b>Perform surveys for recommended abatement</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS*</li> <li>LA/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><b>Containment and/or cleanup plan(s)</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li>LA/CONS*</li> <li>LA/CONS**</li> </ul>
Tribal Coordination	<ul style="list-style-type: none"> <li><b>Tribal consultation and coordination</b></li> </ul>	<ul style="list-style-type: none"> <li><b>ODOT, for FHWA</b></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>LA/CONS*</li> <li>LA/CONS*</li> </ul>
Environmental Commitments	<ul style="list-style-type: none"> <li>Capture/document environmental commitments</li> <li><b>Database entry and track environmental commitments</b></li> </ul>	<ul style="list-style-type: none"> <li>LA/CONS*</li> <li><b>ODOT</b></li> </ul>

[Text in Blue](#) indicates a process that is done after NEPA approval. All other items are required for FHWA NEPA Approval. [Text in Red](#) indicates a task that only ODOT can do—either on behalf of FHWA or as per ODOT Policy. [Text in Purple](#) is performed by FHWA. \* ODOT needs to review and concur on any

## **1. NEPA Scoping and Project Classification**

ODOT has developed documents, called the Project Prospectus (Part 1, Part 2, and Part 3) to assist with NEPA and project scoping. These documents comprehensively assess 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 may result in a change in the NEPA classification.*

Part 3 of the Project Prospectus identifies known potential environmental resources, constraints, and probable processes that could be required that are associated with the proposed project, and recommends a NEPA classification (CE, EA, or EIS). Additional information regarding the project Prospectus is available within this *LAG Manual* in Section B, Chapter 2 and Section C, Chapter 3. *For the most recent version of the Part 3, contact the LAL.*

A project will be classified as a Categorical Exclusion (CE), an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), depending upon what is known about the potential significance of the proposed project's potential environmental impacts, as documented in the Part 3. Generally, EA and EIS NEPA processes take longer to complete than the NEPA process for a CE. *FHWA primarily relies on ODOT recommendations for NEPA classifications.*

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

### **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/or natural/cultural resources, or are projects that are likely to create significant public controversy.

### **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".

### **Categorical Exclusion (CE)**

CE projects are actions that generally do not individually or cumulatively result in significant environmental impacts. *Many Local public agency FAHP projects are CE projects.*

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.

## 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 with 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. ODOT has developed recent guidance for Re-evaluations. See Resources below for a link to the guidance.

## 3. Resources

- [National Environmental Policy Act](#)
- [Council on Environmental Quality](#)
- [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](#)
- [ODOT Re-evaluation Guidance](#)
- FHWA's [Technical Advisory T6640.8A](#) Guidance from 1987 for preparing and processing NEPA and Section 4(f) documents
- FHWA's [Eco-Logical Summary of Federal Laws & Requirements](#)
- ODOT's [e-Guide](#) portal of the Geo-Environmental website
- ODOT's Geo-Environmental Section's [Manuals, Procedures and Practices](#)
- [ODOT environmental templates and forms](#)
- ODOT's [Geo-Environmental Section website](#)
- [ODOT-FHWA EIS Template](#)
- [FHWA-ODOT Programmatic Categorical Exclusion Agreement \(pdf document\)](#)
- [LGS website for current guidance for completing a project Prospectus](#)
- [Project scoping and Part 3 guidance](#)
- [Completion Guidance for the Categorical Exclusion \(CE\) Closeout Document](#)
- [Region Environmental Coordinator \(REC\) website](#)
- ODOT's [REC Manual \(pdf document\)](#)

## **B. Right Of Way**

**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 document classification (CE, EA or EIS).

**Regulatory Framework.** Right of way impacts are generally considered under the NEPA umbrella. 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 use of particular properties may trigger other environmental considerations such as Section 106 of the NHPA; Section 6(f) of the Land and Water Conservation Act; and, Section 4(f).

*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.

**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.

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

### **Resources:**

- [ODOT's Right of Way Manual](#)
- [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970](#)

## **C. Land Use**

**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.

**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, Coastal Management Zones. OAR 731-015-0075 and 731-015-0085 require ODOT and local agencies who are the sponsors of FAHP 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 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.

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

**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/or special land use considerations, such as project compatibility with acknowledged comprehensive plans as well as the need for local permits.

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

### **Resources:**

- [Oregon Statewide Planning Goals](#)
- [State Agency Coordination Rule \(OAR 731-015-0005 through 0135\)](#)
- Placeholder for new ODOT Land Use Guidance for NEPA Compliance

## **D. Socio-Economics**

**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.

**Regulatory Framework.** Socio-economic impacts are those which should be broadly captured under the NEPA umbrella.

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

**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 socioeconomic 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 and/or time in minutes and impacts from those detours to the community, both to residents and visitors.

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

**Resources:**

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

## **E. Environmental Justice**

**Overview.** Environmental justice 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.

**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 FAHP projects.

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

**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.

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

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 indentifiedindentified 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.***

**Resources:**

- [Executive Order 12898](#)
- [DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations](#)
- FHWA's [Environmental Justice Order](#)
- [FHWA's Environmental Justice website](#)
- [FHWA's Environmental Justice Guidance](#) December 11, 2011

## **F. Wetlands and Waterways**

**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 and/or creating wetlands must be made in accordance with a variety of laws and regulations.

**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) 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 (USACOE) for review and concurrence before submitting the permit application. Permit applications are submitted to both the Department of State Lands (DSL) and the USACOE.

When impacts exceed regulatory thresholds, a permit must be obtained by the local public agency 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 impact 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.

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

**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.

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

### **Resources:**

- [Clean Water Act](#)
- [Oregon Removal/Fill Law](#)

- [Geo-Environmental Section Wetlands Program](#)
- [1987 U.S. Army Corps of Engineers Wetland Delineation Manual](#)

## **G. Water Quality**

**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.

**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 Storm water 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.

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 FAHP projects must conform to the water quality mitigation requirements of ODOT's Project Delivery Notice (PDLT ON) # 05 as clarified by ODOT Geo/Environmental Section Technical Bulletin 09-02(b). The bulletin provides triggers for stormwater treatment and water quality and flow control management criteria and goals. Guidance on the selection and design of treatment facilities is available in ODOT's Hydraulics Manual, Chapter 14.

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

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

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

#### **Resources:**

- [Department of Environmental Quality \(DEQ\)](#)
- [Protection of Wetlands, Presidential Executive Order 11990](#)
- [Preservation of the Nation's Wetlands, U.S. Department of Transportation Order DOT 5660.1A](#)
- [Clean Water Act Section 401](#)
- [Clean Water Act Section 404](#)
- [Oregon Department of Environmental Quality Stormwater](#) Guidelines
- [ODOT's Water Resources website](#)
- [ODOT Stormwater Management Program web page](#)
- [Project Delivery Notice \(PDLT ON\) # 05](#)
- [Geo/Environmental Section Technical Bulletin 09-02\(b\)](#)
- [ODOT Hydraulics Manual, Chapter 14](#)
- [Underground Injection Control \(UIC\) program](#)

## **H. Biological Resources**

**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 FAHP projects in concert with their natural environment. Biological resources include but are not limited to threatened, endangered and sensitive fish & wildlife species along with their habitats. Mitigation and monitoring requirements for native species establishment with minimal invasive species interference may apply.

**Regulatory Framework.** *Federal Endangered Species Act.* All FAHP projects must comply with the Endangered Species Act (ESA). The federal ESA is managed by the National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (USFWS), collectively referred to 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 are located, an evaluation of the impact of that project on those species/habitats must be conducted.

Most FAHP projects must use the new FHWA FAHP ESA Programmatic Agreement process to cover ESA consultation. See References section for a link to that website, guidance, templates, and forms.

Other Federal and state laws and regulations pertaining to biological resources 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 Law.

*Professional Qualifications Requirement.* ODOT requires local agencies that assign ESA document preparation and consultation work to consulting firms to only hire 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 Biological Assessments. To become an ODOT-qualified biologist, ODOT requires an individual to meet minimum educational requirements, to attend a training course on ODOT's ESA compliance process, and to pass a written exam. To retain qualified-biologist status, ODOT requires the individual to participate in refresher training (because of new developments related to ESA compliance, reporting, mitigation or monitoring) when it is offered. If the Local agency will use their internal staff to complete ESA documents and make ESA effects determinations, the Local agency must also have an ODOT-qualified biologist on staff. An individual is not required to attend ODOT-qualified biologist training to perform non-ESA biological work.

**Completed Deliverable.** Deliverables vary depending upon the environmental law evoked and the potential project impacts to regulated 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 must be completed for each project unless a programmatic agreement is used: No effect (NE) determination or Biological Assessment. The Services will respond to a Biological Assessment with a Letter of Concurrence (for not likely to adversely affect (NLAA) impacts) or a Biological Opinion (for likely to adversely affect (LAA) impacts). Programmatic agreements provide additional methods of ESA compliance for projects that meet the terms and conditions of the programmatic coverage.

A Biological Opinion 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 is not allowed under NLAA or NE determinations. The ESA can carry civil and criminal penalties for violations.

*Are Specific Templates Required?* Yes. ODOT has developed a number of ESA templates to document NE, NLAA and LAA determinations. Additionally, there is a suite of templates required to document ESA consultation, inspection, mitigation, and monitoring for use of the FHWA FAHP ESA Programmatic Agreement (see References below for a link to that website).

#### **Resources:**

- [ODOT Biological Resources Website](#)
- [FHWA FAHP ESA Programmatic Agreement/Permit](#) website
- [Endangered Species Act](#)
- [Section 7 of the Endangered Species Act](#)
- [Magnuson-Stevens Act](#)
- [Biological Assessment Template](#)
- [Biological Assessment Evaluation Checklist](#)
- ODOT [Endangered Species Act Biological Assessment Guidance Manual](#)
- ODOT [Guidance Manual for Writing Biological Assessment Documents](#)
- [No Effect determination form](#)

- [Migratory Bird Treaty Act](#)
- [MBTA Highway Division Directive](#)
- [U.S. Department Fish and Wildlife, Division of Migratory Bird Management](#)
- [Bald and Golden Eagle Protection Act](#)
- [National Bald Eagle Management Guidelines](#)
- [Oregon Department of Fish and Wildlife](#)
- [Oregon Endangered Species Act](#)
- [Fish Passage Statute \(ORS 496.138\)](#)
- [OAR 635.100.100 – 635.100.130](#)
- [OAR 635-412-005 through 0040](#)
- [Fish Passage Plan](#)
- [Oregon Department of Agriculture](#)
- [ORS 564, OAR 603.073 \(plants\)](#)

## **I. Section 106 of the National Historic Preservation Act (Cultural Resources)**

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

**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).

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.

*Professional Qualifications Requirement.* ODOT requires local agencies to assign Section 106 field studies, document preparation, and consultation work to consultants who are pre-qualified by ODOT to provide cultural resource (archaeological and historic resources) assistance to LPAs, in coordination with ODOT cultural resources staff, for their FAHP projects. To become an ODOT-qualified cultural resource specialist, ODOT requires an individual to meet minimum educational requirements (see below), to attend a training course, and to pass a written exam. ODOT requires qualified cultural resource specialists (consultants) to attend the **Cultural Resources Consultant Qualification Program training course** to outline Section 106 and other cultural resource document expectations, increase communication efficiency, and improve cultural resources documentation quality.

ODOT holds the **Cultural Resources Consultant Qualification Program training course** twice a year, every two years. Consultants must attend the course and pass a written exam with a minimum passing score of 80%. To remain qualified, consultants are required to attend a refresher course every two (2) years. A list of qualified consultants is kept by ODOT [here](#).

*Minimum Educational Requirements.* 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 FAHP local public agency projects.**

**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 local agencies may hire consultants to do general research, field reconnaissance, and write impact assessments that consider Section 106 resources, local agencies cannot conduct consultations (with Tribes or with SHPO), make eligibility determinations, or make effects determinations on FAHP projects.

*Is a Specific Template Required?* ODOT requires that certain templates be used for each type of Section 106 determination. The 2011 Section 106 Programmatic Agreement amongst ODOT, FHWA, SHPO and ACHP outlines the different types of documentation required for Section 106. ODOT's Archaeology Resources Standard Statement of Work and ODOT's Archaeology Website include further information related to Archaeological Requirements.

#### **Resources:**

- [Section 106 of the National Historic Preservation Act](#)
- [36 CFR, Part 800](#) (Section 106 Implementing Regulations)
- [National Historic Landmark](#) website
- [National Register of Historic Places](#)
- [Oregon Revised Statute 358.](#)
- ODOT's [Cultural Resources Manual](#)
- ODOT's [Archaeology Website](#)
- ODOT's [Archaeology Resources Standard Statement of Work](#)
- [Native American Tribes](#)
- [Secretary of the Interior's Professional Qualification Standards](#)
- Qualified Archaeologist as defined by [Oregon Revised Statute \(ORS\) 390.235](#)

### **J. Visual Resources**

**Overview.** If any local public agency FAHP 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 and/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.

**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(ies) of jurisdiction may be necessary to demonstrate compliance.

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

**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.

*Is a Specific Template Required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

**Resources:**

- FHWA [Visual Impact Assessment for Highway Projects](#)
- [Wild and Scenic Rivers Act](#)
- [Columbia River Gorge National Scenic Area Act](#)
- [Scenic Byway designations](#)
- [List of officially designated scenic highways](#) in Oregon
- [Oregon Scenic Highway Program](#)
- [FHWA’s Context Sensitive Solutions \(CSS\) website](#)

**K. Section 4(f)**

**Overview.** Section 4(f) references the 1966 U.S. DOT Act, which has since been codified in 23 CFR 774. Section 4(f) 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 and/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. **FAHP local public agency projects that include Section 4(f) considerations should involve the LAL and FHWA at the point the potential involvement is known.***

**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.

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

**Completed Deliverable.** Every FAHP 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.

*Is a Specific Template Required?* ODOT and FHWA require that specific templates be used for documenting Section 4(f), which vary depending upon the type of Section 4(f) resources and the potential uses.

**Resources:**

- [Section 4\(f\) of the U.S. DOT Act](#)
- [23 CFR 774](#)
- FHWA's [Section 4\(f\) Policy Paper](#)

## **L. Section 6(f) of the Land and Water Conservation Fund Act**

**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 to only properties that receive LWCF funding.

**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 park lands 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 also be of at least equal fair market value to the conversion area(s).

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.

*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 Local public agency FAHP projects.  
*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.*

**Completed Deliverable.** All Conversion Requests are developed in collaboration with OPRD by ODOT and the Local public agency 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?* There are templates required by NPS and ODOT, and are available on ODOT's and OPRD's websites. The Local public agency should work through the LAL to determine which template(s) are required for their specific conversion.

**Resources:**

- [LWCF Act](#)
- [LWCF 6\(f\)\(3\) - NPS Website-6\(f\) Compliance Regulations](#)
- [LWCF 6\(f\) Manual - NPS Guidance for Completing 6\(f\) Conversion Requests](#)
- [LWCF 6\(f\) - OPRD Website: LWCF Grant Program](#)

## **M. Air Quality**

**Overview.** The following nine areas are currently designated as non-attainment or maintenance of the National Ambient Air Quality Standards:

- Portland (Maintenance Area for Carbon monoxide (CO))
- Salem (Limited Maintenance Area for CO)
- Eugene-Springfield (Maintenance Area for CO)
- Medford-Ashland (Maintenance Area for CO and PM<sub>10</sub>)
- Grants Pass (Maintenance Area for CO and PM<sub>10</sub>)
- Klamath Falls (Nonattainment PM<sub>2.5</sub>, Maintenance Area for CO and PM<sub>10</sub>)
- Lakeview (Maintenance Area for PM<sub>10</sub>)
- La Grande (Maintenance Area for PM<sub>10</sub>)
- Oakridge (Nonattainment PM<sub>2.5</sub> and Maintenance for PM<sub>10</sub>)

**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/or 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.

*Professional Qualifications. Requirement to conduct an air quality report:* The air quality expert shall have 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 the BS degree if the applicant also has a minimum of 4 years' experience in civil or environmental engineering. In addition, the expert must have a minimum of two years' experience in research, analysis, and performing 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. The expert should have a 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. The expert must also have a thorough understanding of the Transportation Conformity Rule OAR 340-252 and 40 CFR 93.

**Completed Deliverable.** The ODOT REC and ODOT Air Quality Specialist can assist in determining if conformity applies and what level of work is necessary. The Local public agency, 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 Local public agency 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 CO or PM area, project level conformity may be required. For CO areas a qualitative or quantitative CO hot spot analysis may be required.

*Is a specific template required?* For CE projects that require a “quantitative” CO analysis, the standard scope of work template to use when hiring a consultant can be found here: [Statement of Work Template for Categorical Exclusion project that requires a CO quantitative hot-spot analysis](#). For all required documentation, the ODOT Air Quality Specialist can provide assistance to the Local public agency for estimate of hours needed to conduct a quantitative CO hot spot analysis, an air quality report, or a qualitative CO analysis memo.

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 part 3 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.

#### **Resources:**

- [Clean Air Act](#)
- [National Ambient Air Quality Standards](#)
- [FHWA’s Interim Guidance Update on Mobile Source Air Toxic Analysis in NEPA](#)

- [Transportation Conformity Rule](#)
- [40 CFR Part 93](#)
- [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](#)

## **N. Noise**

**Overview.** FAHP 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 impact the project schedule and budget if the decision regarding the need for a noise study is postponed.

**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 (Manual) and the FHWA Noise Standard (23 CFR 772).

*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 function of the TNM model. Additional requirements are found in section 10.4.1 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.*

**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

*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.

**Resources:**

- [FHWA Noise Standards 23 CFR 772](#)
  - [FHWA FAQs for Highway Traffic Noise](#)
  - [FHWA Highway Traffic Noise: Analysis and Abatement Guidance \(revised January 2011\)](#)
  - [ODOT Noise Policy \(Manual\)](#)
  - ODOT [Sample Noise Study](#)
  - [ODOT Statement of Work \(SOW\) for Noise Studies](#)
  - [Air and Noise section in the Sample Documents](#)
  - [Highway Traffic Noise: Analysis and Abatement Guidance](#)

## **O. Hazardous Materials**

**Overview.** The Local public 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 public 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 public agency is not liable for cleanup, as is often the case, the Local public agency 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.

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

*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.

**Completed Deliverable.** To meet these laws and regulations and protect both the Local public 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.

The hazardous materials assessment may identify testing required before construction.

*Is a specific template required?* For CEs, use CE template. 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. No other specific templates are required.

**Resources:**

- [Resource Conservation and Recovery Act](#)
- [CERCLA](#)
- ODOT's [Hazardous Materials Corridor Assessment template](#) see HazMat 01

**P. Tribal Coordination**

**Overview.** The Local public agency should consult early with ODOT (in project scoping or planning) for all FAHP local projects to ensure tribal consultation for the Local public agency project, *by ODOT staff on behalf of FHWA*, is accomplished in a timely manner using the most complete project description and mapping information possible. Local agencies 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. **\*\*Local agencies cannot coordinate with Tribes nor conduct Tribal consultation on behalf of ODOT or FHWA for FAHP Local public agency-sponsored projects.\*\***

**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.

*Professional Qualifications Requirement.* Only FHWA can engage in government-to-government consultation with federally recognized Indian Tribes. In some cases, FHWA, ODOT, and the Tribes have agreements in place which allow ODOT to coordinate with the Tribes on behalf of FHWA.

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

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

**Resources:**

- [Tribes and Treaty Ceded Areas of Oregon](#)

## **Q. Public, Stakeholder, and Agency Involvement**

**Overview.** Public, stakeholder, and agency involvement needs to be an early and continuing part of the transportation and FAHP 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, local agencies should contact the ODOT 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.

### **Regulatory Framework.**

*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.

**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.

*Is a specific template required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

### **Resources:**

- [ODOT's Public Involvement Policy](#)
- [ODOT's Public Involvement Website](#)
- [FHWA's Public Involvement Website](#)
- SAFETEA-LU Defines "[interested parties](#)"
- [Public Involvement Policy: Transportation Project Development and NEPA](#)

## **R. Environmental Commitment Tracking**

**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 Local public agency should establish an "environmental commitments file" for each FAHP Local public agency project. Establishment of this file generally coincides with preparation of all NEPA documentation.

**Regulatory Framework.** FHWA policy, applicability, and responsibilities for fulfilling environmental commitments are codified in [23 CFR 77 1.105\(d\)](#), [77 1.109\(b\)](#), and [77 1.109\(d\)](#). 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.*

*Professional Qualifications Requirement.* The FAHP project sponsor (i.e, the Local public agency) should always have a comprehensive knowledge of the status of all environmental commitments for a project.

**Completed Deliverable.** ODOT maintains an Environmental Commitment Tracking System (ECTS) that captures environmental commitments at a project-level. The Local public agency 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 Local public agency's discretion, such as right of way, access, maintenance, other permits, and agreements. The Local public agency's environmental commitments file is shared with ODOT so that commitments may be entered into ODOT's Environmental Commitment Tracking System.

*Is a specific template required?* For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

**Resources:**

- [23 CFR 771.109\(b\)](#)