

425 FHWA NEPA Documentation for ER Program PCEs

Introduction

The Emergency Relief (ER) Program provides funding for the repair or reconstruction of Federal-aid highways and roads on Federal lands that have suffered serious damage because of natural disasters or catastrophic failures from an external cause resulting in an emergency declaration by the Governor of the State or by the President. All repair projects under the ER Program must comply with NEPA and related laws and authorities. This guidance details ODOT's standardized environmental review process and documentation for ER Program repair projects.

Applicability

The procedures herein are applicable to ER Program repairs, both emergency and permanent repairs, that do not exceed the impact thresholds (i.e., kickouts) identified in Section IV.A.1.b of ODOT's PCE Agreement and that meet the criteria to be classified as a CE under 23 CFR 771.117(c)(9). If a repair project does not meet the criteria in 23 CFR 771.117(c)(9) or could exceed the PCE Agreement kickouts, these procedures are not applicable and ODOT's standard process and documentation for a PCE or CE would apply, as appropriate. See [Section 420 of the ODOT NEPA Manual](#) for more information.

If a repair project does not have a FHWA nexus (e.g., is using state funds), other Federal, state, and local environmental requirements could still apply. Please contact ODOT NEPA Program staff with questions regarding the applicability of NEPA and other environmental requirements.

NEPA for ER Program Repair Projects

Funds from the ER Program can be used for two categories of projects: emergency repairs and permanent repairs. Emergency repairs are undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of the damage, or to protect the remaining facilities (23 CFR 668.103). Permanent repairs are undertaken after a disaster to restore the highway to its pre-disaster conditions. If emergency situations involve immediate threats to public health or safety, or immediate threats to property, including natural resources,

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emergency repairs can start as soon as possible with NEPA documentation occurring afterward. All other repairs require the completion of NEPA prior to the start of repair work.

FHWA has a CE category - 23 CFR § 771.117(c)(9) – for repairs to transportation facilities damaged in emergencies or disasters:

[23 CFR 771.117\(c\)\(9\)](#) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act ([42 U.S.C. 5121](#)):

(i) Emergency repairs under [23 U.S.C. 125](#); and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

An emergency repair projects to restore essential traffic, minimize the extent of damage, or protect remaining facilities is normally classified as a CE under 23 CFR 771.117(c)(9)(i). Permanent repair projects qualify as a CE under 23 CFR 771.117(c)(9)(ii) if the work meets the criteria in (A) and (B) ¹. When a repair project under the ER Program consists of the actions described in 23 CFR 771.117(c)(9)(i) or (ii) and does not exceed the PCE Agreement kickouts, the “ODOT and FHWA Oregon Division ER PCE Form” (Form # 734-5461) (ER PCE Form) is used to document NEPA classification, determination, and approval, as well as and document that other relevant environmental requirements have been addressed (e.g., Section 106, ESA, etc.).

¹ Temporary construction easements outside of the existing right-of-way do not automatically preclude application of this CE category. Reach out to ODOT NEPA Program and FHWA OR Division Office staff with questions.

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Use of the ER PCE Form

This section includes information and instructions for using the ER PCE Form.

Completing the ER PCE Form

The ER PCE Form consists of two separate sections – Section 1: Emergency Repair and Section 2: Permanent Repair - to address NEPA compliance for both emergency and permanent repair work associated with the same emergency or disaster event. This format is consistent with the Detailed Damage Inspection Report (DDIR), a FHWA form that provides information about the damage, cost estimates, and other details to help distinguish between repairs meeting the criteria for emergency repairs and permanent repairs and determine eligibility for funding.

Section 1 and Section 2 of the ER PCE Form are intended to be completed and used separately in most cases. Emergency repairs are often temporary in nature and performed right away to address immediate threats to public health, safety or property. In these situations, the PCE determination, classification, and approval for the emergency repair is documented in Section 1 of the ER PCE Form after the start of the repair work. At a later point in time, if a permanent repair is planned to restore the transportation facility to its original condition, the PCE determination, classification, and approval is documented in Section 2 of the ER PCE Form before the repair work can commence.

Depending upon the nature of the event, damages to a facility, and transportation system needs, there may be scenarios where emergency repairs are all that is needed to finalize the site and no further repairs are necessary. When finalizing the project as an emergency repair, Section 2 of the ER PCE Form may be left blank and the PCE determination, classification, and approval for the emergency repair is documented in Section 1.

[Table 1](#) explains how to fill out each of the fields on the ER PCE Form. Step-by-step instructions for processing the ER PCE Form are listed in [Table 2](#).

Preparation and Approval

ODOT staff and managers who prepare and/or approve the ER PCE Form must meet the minimum qualifications detailed in Section IV.A.8.a-c of the PCE Agreement. This guidance refers to ODOT staff meeting these qualifications as “Qualified Preparers” and “Qualified Approvers”.

The ER PCE Form is processed and approved by ODOT with no project-level FHWA review or approval required. However, the REC should coordinate with the FHWA Operations Engineer during the environmental review process and the signed ER PCE Form is provided to the FHWA Operations Engineer for the purpose of FHWA approving reimbursement in the Financial Management Information System (FMIS).

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Compliance with other Environmental laws and authorities

Other environmental laws, executive orders and regulations may also apply, such as the Endangered Species Act (ESA), National Historic Preservation Act (NHPA), Clean Water Act, and others. Emergency and permanent repair projects must comply with these and other applicable authorities, which may have their own emergency exemptions and expedited procedures for compliance.

If impacts to regulated resources are unavoidable, the REC should coordinate with the environmental discipline specialist for that resource. Throughout the emergency repair, the REC should continue to coordinate with the emergency response team to document their efforts as they relate to environmental resources and to convey accurate information to the environmental discipline specialist and/or regulatory agencies. The REC and/or discipline specialist should notify regulatory agencies and obtain verbal approval and after-the-fact permits as required by the situation.

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Table 1. ER PCE Form Fields

| Field | Instructions |
|-------------------------------------|---|
| FHWA Disaster Number | Enter the Federal Disaster Identification Number (or Disaster Number) from the Detailed Damage Inspections Report (DDIR). The Disaster Number is assigned by the FHWA Oregon Division Office and provided to the ODOT and/or LPA crew working on the emergency work (e.g., OR2017-01). |
| Agency Site Number(s) | Enter the Agency Site Number(s). |
| Counties or ODOT District or Region | Enter the county, district, or region where the project repair project is located. |
| Repair Location | Describe the repair project location and termini. A copy of the map from the DDIR or a standard Project Vicinity Map is required as supporting documentation. |
| Section 1: Emergency Repair | |
| Description of Work | <p>Using information from the Maintenance District Office, DDIR, and/or Local Agency as appropriate, complete Section 1 of the ER PCE Form by describing all emergency repair work conducted for the purpose of: minimizing the extent of the damage; protecting remaining facilities; or restoring essential traffic. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • installation/removal of barricades and detour signs • flagging and pilot cars • temporary substitute highway traffic service • temporary detour roadway connection or bridges • removal of debris or slides • removal of drift piling on bridges • placing riprap to relieve or prevent scour • replacement of washed-out embankments and approach fills • regrading or roadway surfaces, fills, and embankments. <p>To document compliance with other environmental laws and regulations, the “Description of work” should also summarize any emergency consultation processes with other federal/state agencies and any other federal/state approvals required. Any applicable consultation evidence (i.e., email, correspondence and/or findings documentation) is required as supporting documentation and must be included with the ER PCE Form set in ProjectWise.</p> |
| Section 2: Permanent Repair | |
| Description of Work | Describe all permanent repair work planned to restore the damaged site to its pre-disaster condition, including upgrades to meet existing codes and standards and/or warranted to address conditions that have changed |

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| Field | Instructions |
|--|---|
| | since the original construction. Include the date of the Presidential or Governor's emergency or disaster declaration in the project description. |
| A. Section 106 Compliance via ODOT's Programmatic Agreement | For both Historic and Archaeology (as applicable), and in coordination with the appropriate ODOT staff resource specialists, check the box(es) to select the appropriate project level finding(s) and enter the date(s). Any applicable consultation evidence (i.e., email, correspondence and/or findings documentation) is required as supporting documentation and must be included with the ER PCE Form set in ProjectWise. |
| B. Tribal Coordination | Using information provided by an ODOT Archaeologist, summarize any tribal consultation efforts with federally recognized tribes. Note any concerns that were expressed during Tribal consultation and how those concerns were addressed. |
| C. Endangered Species Act via ODOT's Programmatic Agreement | Check the box(es) to select the appropriate ESA effects determination(s) in coordination with the appropriate ODOT staff resource specialists. Any applicable consultation evidence (i.e., email, correspondence and/or findings documentation) is required as supporting documentation and must be included with the ER PCE Form set in ProjectWise. |
| D. Other Relevant Coordination, Clearances, Approvals, or Permits (check all that apply) | Check the box(es) to select all resource/discipline areas potentially affected by the permanent repair or that require clearances, approvals, permits, regulatory coordination, and/or consultation. See Section 426 of the NEPA Manual for more information. For each check box, a new field will drop down. In the drop-down field(s), include applicable compliance information and describe all relevant clearances, approvals, permits, regulatory coordination, and/or consultation. Coordinate with the ODOT staff resource specialists as applicable. Any applicable resource consultation evidence (i.e., email, correspondence and/or findings documentation) is required as supporting documentation and must be included with the ER PCE Form set in ProjectWise. |

Table 2. ER PCE Form Steps

| Who Completes the Step? | Steps in the Process |
|--------------------------|--|
| REC / Qualified Preparer | Complete Disaster/Repair Information – Using information from the Maintenance District Office, DDIR, and/or Local Agency as appropriate, complete the fields at the top of the ER PCE Form. A copy of the map from the DDIR or a standard Project Vicinity Map is required as supporting documentation. |
| REC / Qualified Preparer | Complete Section 1: Emergency Repair – See Table 1 above. |
| REC / Qualified Preparer | REC Preparer Signature - Electronically sign/date the ER PCE Form. |

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| Who Completes the Step? | Steps in the Process |
|---|--|
| REC / Qualified Preparer | Submittal to NEPA Program - Upload the ER PCE Form and any required supporting documentation to ProjectWise by creating a set in the CE_PCE_NGD_Projects folder. |
| REC / Qualified Preparer; ODOT staff resource specialists | Complete Section 2: Permanent Repair – When the permanent repair is planned to restore the transportation facility to its original condition, complete Section 2 of the same ER PCE Form. See Table 1 above. As part of preparing Section 2 of the ER PCE Form, the REC will consult with ODOT staff resource specialists, as applicable and appropriate. Any applicable resource consultation documents (i.e., email, correspondence and/or findings documentation) are required as supporting documentation and must be included with the ER PCE Form set in ProjectWise. |
| REC / Qualified Preparer | REC Preparer Signature - Electronically sign/date the ER PCE Form. |
| REM/Qualified ODOT Approver | ODOT Approver Signature – The ODOT Region Environmental Manager (REM) (or their designated Qualified staff, such as the Region’s designated and Qualified Environmental Lead) confirms that use of the ER PCE Form is appropriate and that it is complete and accurate. The REM/Qualified ODOT Approver electronically signs and dates the ER PCE Form. |
| REC / Qualified Preparer | Submittal to FHWA for FMIS - Email the signed ER PCE Form to the FHWA Operations Engineer for the purpose of FHWA approving reimbursement in FMIS. |
| FHWA Oregon Division Operations Engineer | The FHWA Operations Engineer will sign the ER PCE Form and email a signed copy of the ER PCE Form back to the REC/Qualified Preparer. |
| REC / Qualified Preparer | Submittal to NEPA Program - Update the previously created ER PCE Form set in the CE_PCE_NGD_Projects folder with any new supporting documents as necessary. |