

Section 426 –Resource Guidance for PCE Approvals & CE Closeout Documents

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426.0 Introduction

Various resource and discipline analysis and documentation must be provided to address the resource/discipline categories identified in the *PCE Approval* and *CE Closeout Documents*. The purpose of the analysis and documentation is to summarize how environmental issues identified during scoping were considered, minimized, avoided, and/or resolved during project development; and, to demonstrate compliance with applicable environmental laws, regulations, and guidance. **The following 19 sections** provide guidance and example language for writing the resource/discipline narratives of the *PCE Approval* and *CE Closeout Documents*, including how to document compliance with the applicable laws. The Required Attachments sections within each resource narrative discussion list supporting documents that may be required depending on project-specific considerations, as per the guidance for each resource or discipline. It is unnecessary to provide documentation that is not called out in the Required Attachments sections for each resource or discipline *unless* FHWA has specifically requested that documentation.

426.1 Right-of-Way

Required Compliance / Status Information

For both PCEs and CEs, summarize the estimated right-of-way impacts resulting from the project as follows:

1. Include the number and estimated acres (rounded to the nearest tenth) of property acquisitions and/or easements (permanent and/or or temporary) needed for the project.
2. For PCEs and CEs, identify the number of displaced residential and/or business *buildings or structures* (e.g., shed or other outbuilding).
3. For CEs, identify the number of displaced residential and/or business *tenants and/or owners* resulting from the project.
4. Indicate if any mitigation measures or other environmental commitments require acquisition or easement; and indicate if acquisitions or easements for the project are from any of those protected properties and refer to those relevant sections for details.
5. State if any mandatory and prospective staging, borrow (material source), and/or disposal sites associated with the project have been identified, and include those location(s) on a Revised Project Vicinity Map.

***Projects that require more than a minor amount of right-of-way acquisition cannot be processed as a PCE.** The factors to consider and document in determining whether a project would have more than minor impacts will typically involve the context and intensity of the impact, including, but not limited to: the amount of right-of-way needed (total acreage), the number of properties and/or easements to be acquired, and if property owners appear to be willing sellers. For assistance in determining whether right-of-way impacts would be more than minor, contact ODOT NEPA Program staff or FHWA Oregon Division Environmental Program Manager.¹

***Projects that would result in any displacements of persons (i.e., residential or business owners or tenants) cannot be processed as a PCE.** For instances where real property (e.g., a shed or other outbuilding) would be acquired but residential or business owners/tenants would not be displaced, contact ODOT NEPA Program staff or FHWA Oregon Division Environmental Program Manager.¹

¹ As per PCE Agreement, impact threshold (Section IV.A.1.b.ix.) – “Requires the acquisition of more than minor amounts of right-of-way or displacement of owners and/or tenants.”

Attachments

If no right-of-way acquisitions are needed for the project, or if the project requires only a minor amount of right-of-way acquisition:

- No attachments are required. Insert “None”.

If any mandatory and prospective staging, borrow (material source), and/or disposal sites associated with the project have been identified:

- Include those location(s) on a Revised Project Vicinity Map.

Example Compliance / Status Language

For PCEs and CEs

- (i) No right-of-way acquisitions, permanent or temporary easements are required for the project. All work will occur within the existing ODOT right-of-way.
- (ii) No right-of-way acquisitions are required for the project.
 - a. However, up to [*quantity*] temporary easements totaling approximately [*xx.x*] acres will be needed.
 - b. And/or up to [*quantity*] permanent easements totaling approximately [*xx.x*] acres will be needed.
 - c. There are acquisition and/or easement needs for mitigating impacts to the following protected property(ies):
 - i. Describe the acquisition needs [*acres*] and associated mitigation measures [*protected property type/name, type of mitigation, etc.*].
 - ii. Describe the easement needs [*acres*] and associated mitigation measures [*protected property type/name, type of mitigation, etc.*].
- (iii) The project will require minor amounts of right-of-way acquisition. Up to [*quantity*] property(ies) totaling [*xx.x*] acres from [*xx*] property owners are required for the project.
 - a. No residential or business owners or tenants will be displaced.
 - b. Although the project will acquire right-of-way, the property (ies) will be acquired from a limited number ([*quantity*]) of property owner(s) – OR – the properties are a compilation of very minor but multiple “individual strips” of land from several different property owners.

- c. There are acquisition and/or easement needs for mitigating impacts to the following protected property(ies):
 - i. Describe the acquisition needs [*acres*] and associated mitigation measures [*protected property type/name, type of mitigation, etc.*].
 - ii. Describe the easement needs [*acres*] and associated mitigation measures [*protected property type/name, type of mitigation, etc.*].

For CEs

- (iv) The project requires [*xx*] acquisition(s) totaling [*xx.x*] acres and/or would result in the displacement of up to [*xx*] residential and/or business owners and/or tenants.
 - There are acquisition and/or easement needs for mitigating impacts to the following protected property(ies):
 - i. Describe the acquisition needs [*acres*] and associated mitigation measures [*protected property type/name, type of mitigation, etc.*].
 - ii. Describe the easement needs [*acres*] and associated mitigation measures [*protected property type/name, type of mitigation, etc.*].

426.2 Land Use

Required Compliance / Status Information

Describe any inconsistencies with the Statewide Planning Goals. If a project has a previously approved/completed goal exception, note the date of the approval. Consult an ODOT Region Planner to assist with or prepare the Land Use narrative.

***If the project requires a goal exception that has not been previously approved/completed, it cannot be processed as a PCE.²**

If the PCE or CE includes an activity that would significantly affect land use per OAR 731-015-0035, describe the project's compatibility with acknowledged comprehensive plans per OAR 731-015-0085. Include any local land use approvals/permits that are needed and whether any of the acknowledged comprehensive plan's general provisions would be substantially affected, as well as a summary of coordination with Planning officials of affected cities and counties.

For projects in the Columbia River Gorge National Scenic Area, describe compliance with the Columbia River Gorge National Scenic Area Management Plan.

Attachments

If the project does not require an exception to any of the Statewide Planning Goals:

- No attachments are required. Insert "None".

If the project requires a Goal Exception:

- Attach a copy of the adopted findings of fact and statement of reasons demonstrating that the standards for a statewide goal exception either (1) have been met, or (2) have not been met. **NOTE:** Normally, a local government approving a proposed goal exception will adopt the findings of fact and statement of reasons into the local comprehensive plan. Findings of fact and statement of reasons for denied goal exceptions are typically not incorporated into the local comprehensive plan.

² As per PCE Agreement, impact threshold (Section IV.A.1.b.xii.) – "Requires an exception to Oregon Statewide Planning Goals."

Example Compliance / Status Language

- (i) The project is consistent with the applicable local comprehensive plan and the Statewide Planning Goals. There are no special land use considerations that need to be addressed for the project.
- (ii) The [*Planning officials or office*] was consulted regarding the need for land use approvals or permits and determined that no local approvals or permits are required. The project is consistent with the [*acknowledged comprehensive plan*].
- (iii) The project would [*describe activity that could significantly affect land use per OAR 731-015-0035*]. The [*Planning officials or office*] was consulted regarding the need for land use approvals or permits and determined that a Conditional Use Permit was required to limit lighting and noise impacts for proposed night construction activities. The project is consistent with the [*acknowledged comprehensive plan*].
- (iv) The project is outside the UGB on rural lands and would [*describe activity that could significantly affect land use per OAR 660-012-0065*]. The [*Planning officials or office*] was consulted regarding the need for land use permits/actions and determined that [xx] Goal exception(s) for Planning Goal(s) [*number(s) and title(s) of Goal(s)*] would be required and [x] Comprehensive Plan Amendment(s) would be required to approve the project. [*See specific project example below*]
 - a. The land at the site of the proposed Siskiyou Rest Area is zoned Exclusive Farm Use (EFU). As a result, this project required goal exceptions to Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services), and 14 (Urbanization) from the Jackson County Land Use Planning Department to locate the rest area on rural land. A copy of the approved goal exceptions, dated September 9, 2009, is attached. On July 6, 2014, the Jackson County Board of Commissioners adopted an ordinance amending a condition of the approval of the Goal Exception for Planning Goal 11. A copy of that ordinance is also attached.
- (v) The project is within the Columbia River Gorge National Scenic Area. Project actions are consistent with the types of actions allowed for transportation facilities in the Gorge.
- (vi) The project is located within the Columbia River Gorge National Scenic Area; land use adjacent to the project is designated as [*designation*]. The project was designed to be consistent with the Columbia River Gorge National Scenic Area Management

Plan and [*jurisdiction*] land use ordinances or policy. A National Scenic Area permit was issued on [*date*]. No exceptions to Statewide Planning Goals are required.

426.3 Socioeconomics

Required Compliance / Status Information

This section addresses potential benefits and impacts to the community from the project, and sets up the next section that addresses environmental justice concerns. In order to adequately summarize the environmental justice concerns, it is necessary to address each specific condition outlined below in this section.

For both PCEs and CEs, address EACH of the following 5 conditions to describe all traffic pattern impacts, any included mitigation measures associated with anticipated closures, detours, and lane reductions, and project benefits to the community:

1. Describe the estimated temporary or permanent **roadway and/or access closure** duration (e.g., 2-3 weeks, less than 6 months, 2-3 weekends, etc.) OR state “no roadway or access closures are required”.
 - a. If there will be temporary or permanent roadway and/or access closure impacts, describe the intensity of the impact to communities and/or travelers (e.g., how many and who are affected such as 2 businesses, 3 residents, communities/travelers between MP x and MP xx to the south of I-84, the Highland Neighborhood in Salem; etc.).
 - b. Describe mitigation measures associated with anticipated closures.
2. Describe the **length of any required detour** in miles and in time to drive the detour (e.g., less than 1 mile or less than 5 minutes out of route, 14 miles or less than 15 minutes out of route, etc.) OR state “no detour is required”.
 - a. If there are closures and/or detours, describe **timing of the closure** and/or detour with respect to the local community and travelers on that facility and surrounding connecting state or local system highways or streets, as closures/detours are scheduled to:
 - i. avoid school start/let out times
 - ii. avoid and/or minimize disruptions to scheduled local events, summer recreation season, or other statewide or local community event
 - b. Describe mitigation measures associated with anticipated closures, detours, and lane reductions.
3. Specifically address **potential business impacts** relating to detours including *length in miles* and *estimated time in minutes*. Describe mitigation measures associated with anticipated detours.

4. As appropriate, address any **project impacts to emergency services**, OR state “no impacts will result to emergency services” (e.g., police, fire, medical, etc.).
5. Describe project benefits to the community that will result when the project is constructed.

***Projects that would substantially affect traffic patterns either temporarily or permanently cannot be processed as PCEs.** For CEs, the analysis should consider stakeholder engagement/perception when determining traffic pattern impacts and mitigation measures. Therefore, the public involvement narrative of the CE Closeout Document should describe outreach efforts to those potentially impacted.¹

Attachments

- No attachments are required. Insert “None”.

Example Compliance / Status Language

Address **each of the five conditions** listed on the previous page, with example language displayed below in order of level of potential impact (NOTE: *Scenario (i)* is an example that properly justifies and supports the use of the standard EJ language in the EJ narrative of the PCE Approval and CE Closeout; *Scenario (ii)* is an example of a project that **may** require an EJ analysis be performed depending on the project impact specifics and how the project addresses all of the specific EJ conditions in the next section 426.4; *Scenario (iii)* is an example of a project that will not meet the PCE Agreement and must be processed as a CE for FHWA review and approval):

- (i) The project will: (1) Not result in temporary or permanent roadway and/or access closures; (2) Not require any detours or result in traffic delays (and will therefore avoid school and other community event disruptions); (3) Not result in impacts to businesses; and (4) Not result in impacts to emergency services. The project will benefit the community by *[describe project benefits to all community members]*.
- (ii) The project will result in *[number and type]* temporary or permanent roadway and/or access closures as follows: *[insert closure location(s) and other information about the temporary and/or permanent roadway and/or access closure(s) and any mitigation measures]*. The project will require a detour route *[describe the detour route details and include detour length (miles), or state no detour is required]* and/or will result in delays to travelers *[describe delays, or state that the project will not cause any delays and/or include mitigation measures]*. The project team determined that these closures and/or delays would not substantially affect traffic patterns because *[insert*

¹ As per PCE Agreement impact threshold (Section IV.A.1.b.viii.) – “Results in changes that substantially affect traffic patterns temporarily or permanently.”

explanation (e.g., ODOT policy of less-than-20-minute delays; other justified reason including mitigation measures)]. The project will result in impacts to businesses as follows: [describe business impacts such as traffic detours, partial or full building displacement and/or relocation, or other temporary or permanent types of impacts (e.g., loss of 2 out of 25 parking spaces, etc.) and state if those impacts are to EJ-owned business(es); also include any mitigation measures for these impacts]. The project will result in impacts to emergency services as follows: [describe any impacts to emergency services and include mitigation measures the project will incorporate]. The project will benefit the community in the following ways [describe project benefits to all community members].

- (iii) [For CEs] As noted in the ROW section, the project will result in [number] [business and/or residential tenant/resident displacements and/or relocations]. In addition to those displacements and/or relocations, [follow Scenario (ii) guidance above].

426.4 Environmental Justice

Required Compliance / Status Information

Environmental Justice for transportation projects is guided by the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, as well as DOT Order 5610.2(a) and FHWA Order 6640.23A.

For ODOT, transportation projects that meet the following conditions, based on the minor level of associated environmental impacts and ODOT's and FHWA's past experiences with similar actions, are not likely to have disproportionately high and adverse effects on Environmental Justice (EJ) populations. No project-level EJ analysis is required if **all** of the following conditions are met. ***Refer to the previous section 426.3 in addition to addressing the specific EJ conditions below.**

1. The project qualifies as a CE under 23 CFR 771.117.
2. The project does not involve known local concerns or issues regarding EJ or Title VI populations.
3. As applicable, the project will provide detours for all temporary closures of roadways, sidewalks, and multiuse paths (See below Frequently Asked Questions [FAQs] for further information).
4. As applicable, project detours will not cause more than minor impacts to autos/trucks, pedestrians, and/or non-motorized vehicles (e.g., bicycles, skateboards, etc.). Minor detour impacts are herein defined as (See below FAQs for further information):
 - a. Detours shall not exceed 60 days in duration;
 - b. Auto/truck detours shall not exceed (whichever is applicable):
 - i. Five miles for projects wholly or partially within the UGB of a city/town with a population $\geq 2,500$;
 - ii. 10 miles for projects in a rural setting where a local roadway network exists; or
 - iii. 30 miles for projects in a rural setting without a local roadway network.
 - c. Pedestrian detours shall not exceed 0.5 mile out of direction;
 - d. Non-motorized vehicle detours shall not exceed 1 mile out of direction
5. Temporary project impacts will not prohibit local access to essential services including transit, schools, jobs, grocery stores, medical care, emergency services, community centers, and recreational resources.
6. The project will not cause temporary or permanent residential or business displacements.
7. The project is not a "Type I" project requiring a noise analysis.
8. The project will not eliminate existing on street parking (See below FAQs for further information).

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For projects referencing this project-level exemption from detailed EJ analysis, these conditions are considered to be environmental commitments for the project.

To document compliance with the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, as well as DOT Order 5610.2(a) and FHWA Order 6640.23A:

1. If all conditions required for exemption from project-level EJ analysis are met, document this finding in the PCE Approval Document or CE Closeout Document per example (i), below. Assuming that project scope or community demographics do not change, no additional EJ analysis is required (See below FAQs for further detail on the conditions from exemption).
2. If **any** of the conditions required for exemption from project-level EJ analysis are not met, an EJ analysis should be initiated using localized census tract data and other relevant information sources:
 - a. Provide demographic information on the general population, using EPA's **EJScreen** or **EnviroAtlas** (see links below) or other GIS/other local tools, in the project study area.
 - [EJScreen: Environmental Justice Screening and Mapping Tool | US EPA](#)
 - [EnviroAtlas | US EPA](#)
 - b. Coordinate with local EJ community leaders, if relevant, and state whether there are, or are likely to be, minority or low-income persons in the EJ study area that may be subject to temporary and/or permanent impacts from the project.

If there are no minority or low-income populations in the study area or when it has been determined that there will be no adverse effects on identified EJ populations by the proposed project (based on the EJ analysis), no additional EJ analysis is required. Document a determination of no adverse impacts (see example [ii] below).

When there are minority and low-income populations in the study area that may be adversely impacted:

3. Discuss efforts to ensure meaningful opportunities for public participation, including activities to increase low-income and minority participation. Include the views of the affected population(s) about the project and any proposed mitigation. Also, discuss if and/or how the project will incorporate any potential mitigation measures and/or if the project design will change based on the minority and/or low-income community's input (i.e., new or modified alternatives).
4. Summarize the beneficial and adverse effects of the project on the overall population and on minority and low-income populations. References to other sections should be cited as appropriate (i.e., Air Quality, Noise, Socioeconomics, Right-of-Way, etc).
5. If adverse effects appear likely, analyze the impacts on the minority and/or low-

income populations, comparatively, with respect to the impacts on the overall population within the project area. Include any consideration given to mitigation measures (as defined in 40 CFR 1508.20) to avoid or mitigate the adverse effects; any activity that demonstrates sensitivity to special needs should be highlighted, such as accommodations for transit dependency and/or addressing the need for translators for Limited English Proficient (LEP) persons.

If there are no disproportionately high and adverse effects on minority and/or low-income populations once mitigation and benefits are considered, document a finding of no disproportionately high and adverse effects (see example (iii) below).

Although not common, if the EJ analysis (#2-5 above) determines a finding of disproportionately high and adverse effects on an EJ population after taking benefits and mitigation into account, contact the FHWA Oregon Division Environmental Program Manager and ODOT NEPA Program staff.

Attachments

- No attachments are required. Insert “None”.

Example Compliance / Status Language

- (i) *[Insert this wording verbatim]*. This project meets all required conditions for exemption from project-level EJ analysis per section 426.4 of the ODOT NEPA Manual. Therefore, no minority or low-income populations would be disproportionately adversely impacted by the project. In accordance with E.O. 12898, DOT Order 5610.2(a), and FHWA Order 6640.23A, no project-level EJ analysis is required.
- (ii) *[Insert EJ analysis as described in #2 above]*. No minority or low-income populations have been identified that would be adversely impacted by the proposed project as determined above. Therefore, in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23, no further EJ analysis is required.
- (iii) *[Insert EJ analysis as described in #3 - #5 above]*. Based on the above discussion and analysis, the project 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.

Frequently Asked Questions for Conditions for Exemption from Detailed EJ Analysis

1. Regarding the conditions for exemption #2 and #3, what is meant by “As applicable?”
“As applicable” is an acknowledgement that many projects will not require formal detours of

roadways, sidewalks, bike lanes, and/or multi-use paths and instead will rely on established traffic management⁵ and ADA temporary pedestrian access management⁶ standards during construction.

2. Regarding the conditions for exemption #3.b.i. and #3.b.ii., what is meant by “local roadway network?”

In rural areas, the local roadway network often consists of one or more rural arterials linked to smaller local roads in a grid fashion where intersections are spaced at intervals, consistent with population density. If the rural arterial were to require temporary closure or access restrictions, the traveling public could use the “local roadway network” as options for detours.

However, in some of the more remote rural areas, there may be either no local roadway network at all, or there may be some local interconnecting roads that are not capable of serving as a detour because of primitive conditions or considerable out of direction travel. For the purposes of this guidance, such areas are considered to not have a local roadway network.

3. Regarding condition for exemption #7, what is meant by “existing on-street parking?”

For the purposes of this guidance, the term “existing on-street parking” refers to “designated” or “authorized” areas of parking as well as areas where undesignated parking may be occurring. This condition primarily concerns residential-oriented parking that could be serving a low-income community. Removal of undesignated/unauthorized on-street parking could constitute an adverse EJ effect, and therefore such projects do not qualify for the exemption from detailed EJ analysis.

⁵ Traffic Control Plans (TCP) Design Manual, Chapter 3, Section 3.4.1
(<https://www.oregon.gov/odot/Engineering/Pages/TCP-Manual.aspx>)

⁶ <https://www.oregon.gov/odot/Engineering/Pages/Accessibility.aspx>

426.5 CWA Wetlands/Waters of the State/U.S. & U.S. Coast Guard Coordination

Required Compliance / Status Information (for Section 404)

For both PCEs and CEs, document compliance with CWA Section 404 as follows:

1. Summarize impacts to wetlands and waters, including acreage.
2. State whether a nationwide or individual permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act is required; if a nationwide permit is required include the number and any required mitigation.
3. State whether an Oregon Department of State Lands (DSL) removal-fill permit is required.

***Projects requiring an individual permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act cannot be processed as PCEs.⁷ For CEs requiring an individual permit:**

4. Document U.S. Army Corps of Engineers (ACOE) coordination that has been completed with regard to the identification of the Least Environmentally Damaging, Practicable Alternative, as well as any required mitigation. Contact ODOT NEPA Program staff or FHWA Oregon Division Environmental Program Manager, if needed.

Attachments

- No attachments are required. Insert “None”.

Example Compliance / Status Language

- (i) There are no wetlands and/or waters in the project area and no impacts to wetlands and/or waters are anticipated as a result of project activities. A permit under Section 404

⁷ As per PCE Agreement, impact threshold (Section IV.A.1.b.v.) – “Requires an Individual Permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.”

of the Clean Water Act or Section 10 of the Rivers and Harbors Act is not required. An Oregon DSL removal-fill permit is not required.

- (ii) A [*acreage*]-acre wetland is located in the [*location*] of the project area. Minor impacts to this wetland are anticipated. ACOE and Oregon DSL permits are required. DSL issued Permit No. [*number*] for this project on [*date*]. The project has been permitted under ACOE Nationwide Permit [*NWP #*].
- (iii) The project will impact an [*acreage*]-acre ditch/wetland located in the [*location*] of the project area. The ACOE will regulate the ditch as a water of the U.S.; the Oregon DSL did not take jurisdiction over this ditch. The project has been permitted under ACOE Nationwide Permit [*NWP #*] and the ACOE is not requiring ODOT to provide compensatory mitigation.

Required Compliance / Status Information (for U.S. Coast Guard (USCG))

For PCEs, document compliance with USCG U.S.C. Title 33, Section 514 (for alteration of any bridge over a navigable waterway) as follows:

1. State the type of approval needed from USCG (existing bridge permit deviation/construction plans approval [for drawbridge repair impacts <180 days per U.S.C. Title 33, Section 499(d)], and/or a temporary rule change [for drawbridge repair impacts >180 days per U.S.C. Title 33, Section 491]).
2. Summarize extent (scope) and duration of bridge replacement or repair needed.
3. Summarize coordination to/from/with USCG (dates of ODOT transmittal and USCG approval letters).
4. Summarize proposed or required mitigation, include in Environmental Commitments section of PCE Approval.
5. Enter "USCG bridge alteration approval" in the "Other Federal Approvals" section of the PCE Approval.

***Projects requiring a new bridge permit (includes work bridges that span the entire waterway) under U.S.C. Title 33, Sections 523 & 525 cannot be processed as PCEs.⁸ For CEs requiring a new USCG bridge permit:**

6. State that the bridge requires a new permit under U.S.C. Title 33, Sections 523 & 525.

⁸ As per PCE Agreement, impact threshold (Section IV.A.1.b.iv.) – "Requires a U.S. Coast Guard permit."

7. Summarize coordination to/from/with USCG (dates of ODOT and/or FHWA transmittal and USCG approval letters).
8. Summarize proposed or required mitigation, include in “Environmental Commitments” section of CE Closeout.
9. Enter “USCG new bridge approval” in the “Other Federal Approvals” section of the CE Closeout.

Attachments

- Attach USCG approval letter(s).

Example Compliance / Status Language

- (i) The [*name of bridge if applicable*] Bridge over the [*name of navigable waterway*] is located in the [*location*] of the project area. Impacts to the bridge lift and waterway navigation schedule will last less than 180 days and require USCG approval for a deviation to an existing bridge permit. See attached approval letter(s). Required mitigation as part of USCG approval includes [*summarize approved mitigation measures*].
- (ii) The [*name of bridge if applicable*] Bridge over the [*name of navigable waterway*] is located in the [*location*] of the project area. Impacts to the bridge lift and waterway navigation schedule will last more than 180 days and require USCG approval for a temporary rule change to an existing bridge permit. See attached approval letter(s). Required mitigation as part of USCG approval includes [*summarize approved mitigation measures*].
- (iii) A new/relocated bridge over the [*name of navigable waterway*] will be located in the [*location*] of the project area. The new/relocated bridge requires USCG approval for a new bridge permit. See attached approval letter(s). Required mitigation as part of USCG approval includes [*summarize approved mitigation measures*].

426.6 Floodways and Floodplains

Required Compliance / Status Information

To document compliance with floodway/floodplain regulations for both PCEs and CEs:

1. State whether the project is located within a designated regulatory floodway or the 100-year floodplain.

If the project is located within a designated regulatory floodway or the 100-year floodplain:

2. State whether the project would modify the designated regulatory floodway elevation, or result in an increase of more than 1 foot of surface water elevation in the 100-year floodplain. In addition, state that a “no-rise certification” *is* or *is not* needed.
3. State whether the project *will* or *will not* create a change to the established flood elevation. Summarize the findings of the hydraulic engineer’s hydraulics analysis including practicable alternatives to locating the project in the base floodplain, identifying impacts of the proposed action and measures to minimize the impacts, and restore and preserve the floodplain, as appropriate. Also, state any benefits (e.g., removal of fill or tidegate, siting the project outside of the 100-year floodplain, riparian plantings/rehabilitation, etc.) to the floodplain that may be gained by the project including the proposed mitigation.
4. Contact your Region Planner to determine if any floodplain or floodway development permits are necessary and list those, along with the applicable jurisdiction name.

***Projects that would result in an increase in the designated regulatory floodway elevation, or an increase of more than 1 foot of surface water elevation in the 100-year floodplain, cannot be processed as PCEs.⁹ Contact ODOT NEPA Program staff and/or FHWA Environmental Program Manager for further guidance.**

Attachments

- No attachments are required. Insert “None”.

⁹ As per PCE Agreement, impact threshold (Section IV.A.1.b.vi.) – “Results in an increase in the designated regulatory floodway elevation, or an increase of more than 1 foot of surface water elevation in the 100-year floodplain when no regulatory floodway is designated.”

Example Compliance / Status Language

For PCEs and CEs

- (i) The project is not located within a designated regulatory floodway or within the 100-year floodplain.
- (ii) The project involves fill/removal activities within the floodway and 100-year floodplain of *[name of waterway/system]* and a floodplain development permit was required by the *[City/County Name Planning Department]*. The project will not result in a rise in the 100-year floodplain elevation and a No Rise Certificate was prepared and stamped by ODOT's hydraulic engineer on *[date]*.
- (iii) The project will occur within the *[name of the "regulatory floodway" or "100-yr floodplain"]*. However, the hydraulic engineer's analysis found that there will be no increase in the designated regulatory floodway elevation, and not more than 1 foot of rise of surface water elevation in the 100-year floodplain. A floodplain development permit was issued by *[jurisdiction]* on *[date]*.

Specific project examples:

- (iv) The improvements to OR 62 are not within the 100-year floodplain of the Rogue River, but the outfalls from the new water quality facilities will be constructed within the 100-year floodplain. As a result, a floodplain development permit from the City of Shady Cove is required.
- (v) Although there are numerous streams adjacent to, or crossed by, the Interstate within the project limits, this project will not involve work within a mapped floodway or floodplain. A floodplain development permit was not required for this project.

426.7 Water Quality

Required Compliance / Status Information

For both PCEs and CEs, describe the project's stormwater management requirements and strategies. Include:

1. Stormwater treatment triggers, if any. Refer to the [FAHP User's Guide](#).
2. The size of the contributing impervious area (CIA; the treatment obligation).
3. The area of roadway whose runoff is being treated (the mitigation) and whether it is onsite or offsite.
4. A statement comparing the obligation with the mitigation. Identify any surplus treatment. If the mitigation is offsite, address any discrepancy between the ADT classes of the project and mitigation sites. ADT classes are defined in the [FAHP User's Guide](#).
5. The water quality BMPs that are being used.
6. Whether the treatment obligation is being satisfied using surplus credits generated by a previous project within the same 4th-field HUC.
7. If flow control is required, state what flow control BMPs will be used; if flow control is not required, describe why.

Attachments

- No attachments are required. Insert "None".

Example Compliance / Status Language

The following are idealized examples that are not intended to be copy and pasted "as-is" but can be modified or referenced when completing PCE and CE documentation.

- (i) The project design includes no features that are stormwater management triggers. However, the design will reduce pollutants in stormwater runoff to a negligible amount by closing scuppers on the bridge and routing water to an upland area where it will be subject to natural dispersion and infiltration.
- (ii) Because the project will reconstruct the roadway down to subgrade, it triggers a stormwater management obligation for runoff draining from a CIA of 0.73 acre. Pollutants will be removed by allowing stormwater draining from the CIA to sheet-flow

- into a roadside vegetated area where it will be subject to natural dispersion and infiltration. Flow control is not required because the receiving water is an estuary.
- (iii) Because the project will change drainage patterns and reduce natural treatment by installing a drainage curb and inlets where none previously existed, it triggers a stormwater management obligation for runoff draining from a CIA of 1.04 acres. Pollutants will be removed by routing stormwater through curb cuts into bioretention rain gardens behind the curbs. Flow control is not required because the size of the drainage basin upstream from the discharge point is greater than 100 mi².
 - (iv) Because the project will add a travel lane expanding the roadway by 0.62 acre, it triggers a stormwater management obligation for runoff draining from a CIA of 1.60 acres. Onsite treatment of stormwater is not practicable due to limited right of way at the project site. Instead, runoff draining from a 1.72-acre section of highway two miles east of the project site within the same 4th-field HUC will be treated in two new biofiltration swales. This will generate 0.12 acre of surplus credit for use on a future project. Flow control is not required because the size of the drainage basin upstream from the project discharge is greater than 100 mi².
 - (v) Because the interchange reconfiguration will reconstruct and expand impervious surfaces by 0.65 acre, it triggers a stormwater management obligation for runoff draining from a CIA of 3.25 acres. A drainage system of curbs, inlets, and pipes will route stormwater to two combined biofiltration swale / dry detention ponds that will remove pollutants, and attenuate flows to match preconstruction discharges.

426.8 Endangered Species Act (ESA), Magnuson-Stevens Act (MSA), and Marine Mammal Protection Act (MMPA)

Required Compliance / Status Information

Summarize the Endangered Species Act (ESA) effect determinations and coordination/consultation for all Federally-listed and proposed species, and designated and proposed critical habitat, under the regulatory authority of U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) (together known as “the Services”). Summarize the effect determinations and coordination/consultation for Essential Fish Habitat (EFH) under the Magnuson-Stevens Act (MSA) and regulatory authority of NMFS. If marine mammals could be harassed (typically the result of pile driving in marine or estuarine environments), describe the permit application pathway pursued to address take under the Marine Mammal Protection Act (MMPA).

***Projects that would require an individual formal ESA Section 7 consultation cannot be processed as PCEs.¹⁰**

Attachments

Document compliance for USFWS ESA, NMFS ESA, MSA, and MMPA trust species by attaching the following completed documentation that apply. ESA compliance with both Services must be referenced. More than one document may need to be attached.

- ESA Determination of No Effect;
- FHWA-approved or Services-approved Federal-Aid Highway Program (FAHP) ESA-MSA Programmatic Biological Opinion (BO) Notification(s) and required attachments/supplements;
- Not Likely to Adversely Affect (NLAA) Concurrence Letter from the Services;
- Likely to Adversely Affect Biological Opinion from the Services; and/or,
- Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA) MMPA application and permit (if finalized).

¹⁰ As per PCE Agreement, impact threshold (Section IV.A.1.b.xi.) – “Requires an individual project-level formal consultation under Section 7 of the Endangered Species’ Act because the project cannot be processed with the Federal Aid Highway Programmatic Biological Opinion with USF&WS and NMFS.”

Refer to the [FAHP User's Guide](#) for more information regarding compliance for USFWS ESA, NMFS ESA, MSA, and MMPA trust species.

Example Compliance / Status Language

For PCEs and CEs

ESA Determination of No Effect:

- (i) A No Effect determination memo (NEM) was completed by ODOT biologist [*name*] for the project on [*date*].

FAHP ESA-MSA Programmatic BO Notification(s):

- (ii) ODOT biologist [*name*] determined that project activities may affect Federal ESA-listed species and/or associated critical habitat and/or EFH as documented on the attached FAHP Programmatic BO Notification. [*ESA Section 7 and/or MSA*] consultation was required and completed under the FAHP Programmatic BO issued by [*NMFS in December 2012 (or correct date) and/or USFWS in 2014 (or correct date)*]. The FAHP ESA-MSA Programmatic Notification was approved by FHWA on [*date*], by USFWS on [*date*] and by NMFS on [*date*] or the project was Notification Only for [*USFWS and/or NMFS*].

NLAA Concurrence Letter

- (iii) ODOT biologist [*name*] determined that project activities are Not Likely to Adversely Affect (NLAA) Federal ESA-listed species and/or associated critical habitat. USFWS and/or NMFS concurred with this determination on [*date*].

Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA) MMPA application and permit (if finalized):

- (iv) An IHA or LOA application was submitted to NMFS Office of Protected Resources on [*date*] to address the anticipated take of marine mammals under the MMPA. NMFS issued the LOA or IHA permit on [*date*] or the LOA or IHA permit is expected by [*date*].

For CEs

Likely to Adversely Affect Biological Opinion for CEs)

Formal ESA Section 7 consultation was initiated with the USFWS and/or NMFS concerning potential noise disturbance impacts to [*impacted species*]. USFWS and/or NMFS issued their Biological Opinion on project effects to those species on [*date*].

426.9 National Historic Preservation Act (NHPA) Section 106

Required Compliance / Status Information

Describe the Section 106 evaluation of the cultural resource area of potential effect (APE), using the ODOT Section 106 documentation for “historic” and “archaeological” resources. Document one of the following Section 106 project-level findings based on the most severe effect from Section 106 documentation:

- No Historic Properties Affected,
- No Historic Properties Adversely Affected, or
- Historic Properties Adversely Affected.

***Projects that result in a determination of “Adverse Effect” on historic properties protected by Section 106 of the National Historic Preservation Act (NHPA) by FHWA cannot be processed as PCEs.¹¹**

Attachments

Document completion of Section 106 by including the following information:

- For a Section 106 Finding of No Historic Properties Affected, there are two possible ways to document compliance:
 - For projects eligible for “spreadsheet clearance” documentation under the 2011 Section 106 Programmatic Agreement (PA), no attachments are required. See example *(i)* below regarding language for the final PCE or CE document.
 - For projects requiring a Stipulation 4C memo under the PA, attach the 4C PA Memo. See example *(ii)* below regarding language for the final PCE or CE document.

For a Section 106 Finding of No Historic Properties Adversely Affected, attach the SHPO or THPO signed project-level finding. See example *(iii)* regarding language for the final PCE or CE document.

¹¹ As per PCE Agreement, impact threshold (Section IV.A.1.b.iii.) – “Results in a determination of “Adverse Effect” on historic properties protected by Section 106 of the National Historic Preservation Act (NHPA) by FHWA.”

- For CEs that have a Section 106 Finding of Adverse Affect, attach the SHPO or THPO signed project-level finding and the executed Section 106 Memorandum of Agreement. See example (iv) below regarding language for the final CE Closeout document.

Example Compliance / Status Language

For PCEs and CEs

- (i) The Section 106 finding for this project is No Historic Properties Affected. The finding is documented via spreadsheet clearance using Stipulation [xxx] by [name] for historic on [date] and using Stipulation [xxx] by [name] for archaeological resources on [date].
- (ii) The Section 106 finding for this project is No Historic Properties Affected. The clearance is documented via PA Memo using Stipulation 4C [or Stipulation] by [name] for historic on [date] and by Stipulation 4C [or Stipulation] by [name] for archaeological resources on [date].
- (iii) The Section 106 finding for this project is No Historic Properties Adversely Affected. SHPO [and/or] THPO concurred on [date] with the Joint FOE finding that no adverse effect would occur to historic properties.

For CEs

- (iv) The Section 106 finding for this project is Historic Properties Adversely Affected. SHPO and/or THPO concurred on [date] with the Joint FOE finding that adverse effects would occur to [historic and/or archaeological properties]. The mitigation was codified in a Memorandum of Agreement among [signatories] executed on [date].

426.10 Visual Resources

Analysis of Potential Visual Impacts

A formal assessment of visual resources impacts *could* be required if the project would impact one or more of the following designations:

- FEDERAL: Wild & Scenic Rivers, National Scenic Byways, Coastal Zone Management, National Scenic Areas, National Parks & Monuments, some USFS and BLM Lands

***Projects that require a formal Section 7a Determination for activities within or adjacent to any Wild & Scenic River boundary cannot be processed as a PCE.¹²**

- STATE: State Scenic Waterways, State Scenic Highways, [State Scenic Bikeways](#), [State Heritage Program](#) (e.g., [heritage trees](#), [historic cemeteries](#)), areas subject to the [Oregon Forest Practices Act](#)
- LOCAL: Comprehensive Plans - Goal 5 Resources; city and county codes; public/stakeholder concern over adverse visual impacts

If one or more of the above visual resources is present within or adjacent to the project API, the preparer of the PCE Approval or CE Closeout is encouraged to contact NEPA Program staff to discuss the particular scenario. The mere presence of a visual resource does not warrant a formal [FHWA visual impact assessment \(VIA\)](#).

Required Compliance / Status Information

Some general guidelines for investigating and documenting potential impacts to visual resources for PCE and CE projects include, but are not limited to:

1. For projects where there are no visual resources present within or adjacent to the project API, preparation of a VIA is not required. See example *i* below for sample language to use in PCE Approval Documents and CE Closeout Documents when no visual resources are present. Most PCE and CE projects will fall into this category.
2. If visual resources are present within or adjacent to the project API, review the [FHWA VIA scoping questionnaire](#) to assist in considering what level of visual impact analysis

¹² As per PCE Agreement impact threshold (Section IV.A.1.b.vii.) – “Requires a Wild and Scenic River Section 7 Determination from the river administering agency.”

should be conducted, if any. It is important that the VIA scoping questionnaire be used as a preliminary guide only – it is not definitive.

3. Contact the jurisdictional authority (ies), as appropriate, to discuss the project and any potential requirements concerning visual resources. Identify and coordinate with advocates/stakeholders for the potentially impacted visual resource(s), as appropriate, to determine their issues and concerns.
4. Contact NEPA Program staff if, after (1) reviewing the VIA scoping questionnaire, and (2) initiating coordination with the jurisdictional authority (ies) and/or stakeholders, you believe that a preparation of a project VIA is necessary.
5. When visual resources are present but a VIA is not prepared, summarize the primary coordination efforts and provide a brief explanation for why the visual resources would not be adversely affected. See examples (ii) and (iii), below.
6. When visual resources are present and a VIA Memo or Abbreviated VIA is prepared, summarize the visual issues, coordination efforts, findings, and any proposed mitigation (e.g., the project design and/or construction materials will be modified to avoid or reduce visual impacts to the satisfaction of the jurisdictional authority [ies] and/or stakeholders). See example *iv*, below.
7. A “VIA Memo” would be the highest level of FHWA VIA documentation expected for a PCE, while an “Abbreviated VIA” would be the highest level of FHWA VIA documentation expected for a CE. For projects where there would be severe visual resources impacts to a sensitive resource, the FHWA NEPA class of action would likely be an EA or EIS and the VIA would minimally be equivalent to a technical report.

Attachments

If no VIA was completed for the project:

- No attachments are required. Insert “None”.

If a VIA was completed for the project:

- Attach the VIA Memorandum or Abbreviated VIA.

Example Compliance / Status Language

- (i) No designated or otherwise sensitive visual resources are present within or adjacent to the project API, and therefore no visual resources would be adversely affected by the project.

- (ii) This safety project would install rumble strips, safety reflectors, new road striping, and replacement signage and guardrail between MPs 20 and 35 of Oregon Highway 6, which is part of the Trees to Sea Scenic Byway. This section of byway is also through the Tillamook State Forest. The FHWA VIA scoping questionnaire score was nine, which is indicative of a low-impact project that does not require a formal VIA. Following a review of the Trees to Sea Corridor Management Plan, coordination with the ODOT Scenic Byway Coordinator, and coordination with Tillamook State Forest staff, it was determined that the project would not create adverse visual impacts to the Trees to Sea Scenic Byway or the Tillamook State Forest. The Tillamook State Forest requested that no construction occur during April and May because of planned logging operations within the project limits. No additional mitigation is recommended or required.
- (iii) Signs proposed for placement on OR 260 between approximately MP 12.6 and MP 17.7 is within the Rogue River State Scenic Waterway and National Wild and Scenic River corridors. The Rogue River State Scenic Waterway is administered by the Oregon Parks and Recreation Department (OPRD); the Rogue River Wild and Scenic River is administered by the Bureau of Land Management (BLM). Of the approximately 21 curve warning signs (plus chevrons) that will be constructed in this corridor, only 5 signs are visible from the Rogue River, due to the presence of visual obstructions (vegetation, buildings, topographic features) between the river and the highway.
- (iv) The FHWA VIA scoping questionnaire score was eight, which is indicative of a low-impact project that does not require a formal VIA. Based on coordination with both agencies, the OPRD will not require a Notification of Intent for this project and because the project does not involve instream work, the BLM concluded that a Section 7(a) Determination was not required. To mitigate the visual impact of the signs within these scenic waterway corridors, ODOT will paint the backs of the signs brown, so that they visually blend in with the surrounding area. Both OPRD and BLM have provided written concurrence (by email) with the color chosen for the signs. No additional visual resource mitigation was required.
- (v) As described in the VIA Memo, the Fossil Heritage Trail Project includes construction of new and replacement sidewalks and paths in key locations that will improve pedestrian access and circulation to local business, schools, residential areas, and recreational and fitness trails throughout the city of Fossil. The project would also construct improvements to the intersection of OR 19, OR 218, and Washington Street. OR 218 (Shaniko-Fossil Highway) is a state-designated scenic byway - the Journey Through Time Scenic Byway. An existing interpretive kiosk for the scenic byway would be temporarily impacted by construction activities in Fossil, but would remain open during construction. Coordination with the Fossil public works director and Condon Chamber

of Commerce (who also represents Fossil) did not indicate concerns with the project's visual impacts to the scenic byway or conflicts with the scenic byway's goals or objectives. To help meet the scenic byway's enhancement and marketing strategies, local stakeholders requested that a representative fossil "motif" be incorporated into the project design.

- (vi) The VIA Memo concluded that only minor visual changes are anticipated – most of them being beneficial. The construction of new and replacement sidewalks and paths would not introduce incompatible visual elements – travelers would likely perceive project elements as visually consistent with the theme of the scenic byway. Changes visible to travelers would not alter the visual character or key views within the project area, including views from the Journey Through Time Scenic Byway. The project will not create long-term adverse impacts on visual quality or adverse changes to viewer exposure or awareness. ODOT and the city of Fossil have signed an IGA regarding incorporation of representative fossil features into the project design. No additional mitigation is proposed.

426.11 Section 4(f) of the USDOT Act

Required Compliance / Status Information

To document compliance with Section 4(f) of the U.S. Department of Transportation Act:

1. State whether any properties protected by Section 4(f) (i.e., publicly owned public parks, recreation areas, wildlife or waterfowl refuges, or publicly or privately owned historic sites listed or eligible for listing on the National Register of Historic Places) are present within or adjacent to the project API.

If Section 4(f) resources are present but Section 4(f) does not apply (i.e., the project would not affect it or result in a Section 4(f) use):

2. Document the reasoning and approach taken to determine that Section 4(f) either does not apply or that impacts from the project would not result in a Section 4(f) use or temporary occupancy.

If Section 4(f) resources are present and those resources are subject to a use or a temporary occupancy:

3. Summarize the Section 4(f) determination (i.e., temporary occupancy, *de minimis*, and/or nationwide programmatic) for **all** potential Section 4(f) properties (i.e., publicly owned public parks, recreation areas, wildlife or waterfowl refuges, or publicly or privately owned historic sites listed or eligible for listing on the National Register of Historic Places).

***A project requiring an individual 4(f) evaluation cannot be processed as a PCE.**¹³ For CEs requiring an individual 4(f) evaluation, contact the FHWA Oregon Division Environmental Program Manager and ODOT NEPA Program staff to determine specific language and attachments for the CE.

Attachments

If there are no properties protected by Section 4(f) within or adjacent to the project API, or if Section 4(f) property (ies) are present but the project would not affect them:

- No attachments are required. Insert “None.”

¹³ As per PCE Agreement, impact threshold (Section IV.A.1.b.ii.) – “Involves use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that require preparation of an Individual Section 4(f) Evaluation.”

If Section 4(f) resources are present and Section 4(f) does apply, attach the following for each impacted Section 4(f) resource, as applicable:

- Approved Temporary occupancy documentation;
- Approved Section 4(f) *de minimis* documentation; or
- Approved Nationwide programmatic evaluation document.

Example Compliance / Status Language

- (i) There are no publicly owned public parks, recreation areas, wildlife or waterfowl refuges, or publicly or privately owned historic sites listed or eligible for listing on the National Register of Historic Places within the project API. Therefore, the project would not create a Section 4(f) use or temporary occupancy.
- (ii) The [*4(f) property name*] is within the project API [*location*]. The [*4(f) property name*] is considered a Section 4(f) resource [*explain linkage – as a historic site, public park, recreation area, or refuge*]. This project will not involve any work within the [*historic site/public park/recreation area/refuge*] or acquisition of [*historic site/public park/recreation area/refuge*] property. Therefore, no Section 4(f) use or temporary occupancy will occur.
- (iii) A prospective construction staging area [*location*] is within the boundary of [*4(f) property name*], which is administered by the [*official with jurisdiction*] and is considered a Section 4(f) resource. Construction staging at this location of [*4(f) property name*] meets the criteria for temporary occupancy, and the official with jurisdiction over [*4(f) property name*] provided written concurrence on [*date*] that the conditions of temporary occupancy will be met. No property acquisition will occur. Consequently, this project will not result in a use of Section 4(f) resources.
- (iv) The [*bridge name*] is located within the project API and the project would [*description of project activities*]. FHWA OR Division approved a Nationwide Programmatic Section 4(f) Evaluation for Projects That Necessitate the Use of Historic Bridges for the [*bridge name*] on [*date*]. There are no other publicly owned public parks, recreation areas, wildlife or waterfowl refuges, or publicly or privately owned historic sites listed or eligible for listing on the National Register of Historic Places within the project area.
- (v) There [*is/are*] NRHP-eligible resources within the project API: [*resource name(s)*]. As historic resources, the [*resource name(s) is/are*] subject to protection under Section 4(f); for historic properties, a *de minimis* impact is one that results in a Section 106 determination of “no adverse effect” or “no historic properties affected”. SHPO concurred that the project would have No Adverse Effect to the [*resource name(s)*] on

[*date*]. Subsequently, FHWA approved a Section 4(f) *de minimis* finding for the [*resource name(s)*] on [*date*].

- (vi) The [*4(f) property name*] is located within the project API, is administered by the [*official with jurisdiction*], and is considered a Section 4(f) resource. The project would [*description of project activities*]. These project activities would not adversely affect the activities, features, or attributes qualifying [*4(f) property name*] for protection under Section 4(f). FHWA approved a Section 4(f) *de minimis* finding for the [*resource name(s)*] on [*date*].

426.12 Section 6(f) of the LWCF Act

Required Compliance / Status Information

If a project will affect any property that has been acquired, developed, or improved with funds from the Land and Water Conservation Fund (LWCF) program, the Oregon Parks and Recreation Department (OPRD) and the National Park Service (NPS) will need to be consulted to determine if formal NPS review is needed to evaluate whether the project might cause potential Section 6(f) conversions and/or temporary non-conforming uses. *ODOT NEPA Program staff can assist with OPRD and NPS consultation and coordination.*

To document compliance with Section 6(f) of the LWCF Act:

1. After discussions with ODOT NEPA Program and/or OPRD LWCF Program staff, state whether any properties that received LWCF funds (6(f) properties) are within or adjacent to the project area.

If there are 6(f) properties within or adjacent to the project area:

2. Describe in general terms how the project might affect the 6(f) property.
3. Based on discussions with ODOT NEPA Program and/or OPRD LWCF Program staff, state whether the project has the potential to cause a temporary non-conforming use and/or a conversion of use.

If the project might result in a conversion or a temporary non-conforming use:

4. Summarize consultation efforts with OPRD and NPS. The summary should include the determination made by OPRD and/or NPS regarding whether the project will require **formal NPS consultation/review** (if known at this time) and what the next steps might be to resolve any potential temporary non-conforming use or permanent conversion.
5. Describe in general terms the possible mitigation that might be needed, if known at this time (i.e., replacement property, payment in lieu, property enhancements, etc.).

***Contact ODOT NEPA Program staff if it appears likely that the project could result in a temporary non-conforming use (TNCU) or a permanent conversion of use.**

Attachments

If, after coordination with ODOT NEPA Program and/or OPRD LWCF Program staff, it is determined that there are no properties that received LWCF grants within or adjacent to the project area that could be potentially impacted by the project, then no further coordination is needed:

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- No attachments are required Insert “None”.

If 6(f) properties are determined to be present within or adjacent to the project area but the project would not require temporary or permanent easements or acquisitions:

- Attach documentation of coordination with OPRD; including OPRD’s determination (email or letter), that formal NPS consultation/review is not required.

If 6(f) properties are determined to be present within or adjacent to the project area and the project would require temporary or permanent easements or acquisitions, and formal NPS consultation/review is required to evaluate whether any might cause potential Section 6(f) conversions or temporary non-conforming uses:

- Attach email or letter from NPS stating their formal consultation/review determination and schedule of future actions needed.

Example Compliance / Status Language

- (i) There are no properties that received LWCF funds within or adjacent to the project area.
- (ii) The [*name of property adjacent to/within the project study area*] received LWCF funds. No temporary or permanent easements or acquisitions of the [*property name*] are required for the project. Therefore, the project would not result in a temporary non-conforming use or a permanent conversion of use. [*For projects that were coordinated with OPRD, describe the determination made by the OPRD contact (name, title, date and type of communication)*] that the project activities will not require formal NPS consultation/review.
- (iii) The [*property name*] received LWCF funds. The project would [*acquire and/or temporarily use approximately xx.x acres*], resulting in possible formal NPS review to determine if temporary non- conforming uses and/or permanent conversions of use may be caused by the project [*list the following commitments in the Environmental Commitments section of the CE Closeout or the PCE Approval documents*]
 - a. A temporary non-conforming use(s) would not result in a significant impact on public outdoor recreation activity at [*property name*]. Accesses to and within [*property name*] will [*remain open during construction (or) will be rerouted – describe the reroute or detour*]. According to OPRD [*OPRD contact name and title*], NPS will formally review requests for temporary non-conforming use to determine the required future actions needed to resolve the impacts.
 - b. A permanent conversion of use(s) would not result in a significant impact on public outdoor recreation activity at [*property name*]. Accesses to and within [*property name*] will [*remain open during construction (or) will be rerouted – describe the reroute or detour*]. According to OPRD [*OPRD contact name and*

title], NPS will formally review requests for permanent conversions of use to determine the required future actions needed to resolve the impacts.

426.13 Air Quality

Required Compliance / Status Information

Projects in nonattainment or maintenance areas must be coordinated with an ODOT Air Quality Specialist. An air quality narrative for regional conformity, project-level conformity and Mobile Source Air Toxic (MSAT) are necessary for each project. Standard language examples are given below.

***Projects that do not conform to the Air Quality State Implementation Plan cannot be processed as PCEs.**¹⁴ This is not a normal circumstance in Oregon, but if a project does not conform, contact ODOT NEPA Program staff or FHWA Oregon Division Environmental Program Manager.

Attachments

No attachments are required. Insert "None".

Example Compliance / Status Language

Regional Conformity

ATTAINMENT – NO ANALYSIS

For projects that are within attainment areas provide a reference to the project as listed in the Statewide Transportation Improvement Program (STIP) and provide a statement similar to:

- (i) The **[project name]** is listed in the **[20## - 20##]** STIP and is not in an air quality nonattainment or maintenance area. Conformity does not apply.

MPO MAINTENANCE or NONATTAINMENT

For projects in an MPO nonattainment or maintenance area, provide a reference to the project as listed in the current conforming Transportation Improvement Program (TIP) (project #s) with a statement similar to:

- (ii) The **[project name]** as described in this **[PCE/CE]** is the same in design concept and scope as the project that is listed in the conforming **[20##]** MTIP **[project number]**.

¹⁴ As per PCE Agreement, impact threshold (Section IV.A.1.b.x.) – “Does not conform to the Air Quality State Implementation Plan.”

EXEMPT RURAL MAINTENANCE and NONATTAINMENT

For projects in rural (outside of MPOs) nonattainment or maintenance areas that are exempt from regional conformity because the project type is listed in [40 CFR 93.126](#), [40 CFR 93.127](#) or [40 CFR 93.128](#), provide a reference to the project as listed in the current STIP by ODOT Key Number with a statement similar to:

- (iii) The **[project name]** as described in this **[PCE/CE]** is the same in design concept and scope as the project that is listed in the **[20## - 20##]** STIP **[ODOT Key Number]** and is exempt from the requirement to demonstrate conformity as listed in **[choose 40 CFR 93.126, 40 CFR 93.127 or 40 CFR 93.128]**.

NON-EXEMPT RURAL MAINTENANCE and NONATTAINMENT

For projects in rural nonattainment or maintenance areas that are not exempt from regional conformity (listed in either 40 CFR 93.126, 40 CFR 93.127 or 40 CFR 93.128), contact the ODOT Air Quality Specialist as soon as possible to conduct rural regional conformity analyses. Rural regional conformity requires an extensive level of effort and coordination with multiple Federal and State agencies.

Project-level Conformity

ATTAINMENT

For projects that are within attainment areas, provide a statement similar to:

- (iv) *This project is in an attainment area and conformity does not apply. No air quality analysis is needed.*

EXEMPT

For exempt projects define the exemption from [40 CFR 93.126](#) (i.e. Table 2 Exempt Projects) or [40 CFR 93.128](#) and provide a statement similar to:

- (v) *The **[project name]** project, which will **[list action from Table 2]** is exempt from project-level conformity and no air quality analysis is needed.*

NON-EXEMPT

For Table 3 projects ([40 CFR 93.127](#)) and other non-exempt projects contact an ODOT Air Quality Specialist regarding coordination of project-level hot spot analysis. Provide the conclusions from hot spot analysis provided by the ODOT Air Quality Specialist.

Example of PM₁₀ or PM_{2.5} Qualitative Analysis (AADT less than 125K and less than 8% trucks)

- (vi) The Build AADT volumes for Opening Year [20##] of [XX] and Build Year [20##] of [XX] vehicles are well below the EPA guidance threshold of 125,000 AADT and 8% trucks. Therefore, this project is not a project of local air quality concern. Since this project is not a project of local air quality concern then the requirements of the CAAA and 40 CFR 93.116 are met without requiring a hot-spot analysis. The project will not cause or contribute to any new violations of any standard, increase the frequency or severity of any existing violation or any standard or delay timely attainment of the NAAQS or any transportation control measures.

Example of CO Qualitative Analysis (LOS A, B, C)

- (vii) The project involves [describe project], therefore the project falls under the 40 CFR 93.127 Table 3 project list. Affected intersections are LOS C or better in opening year 20XX and build year 20XX and no CO impacts are likely to occur and therefore a quantitative analysis was not required. The project will not cause or contribute to any new violations of any standard, increase the frequency or severity of any existing violation or standard or delay timely attainment of any standards or the transportation control measures.

Example for CO Quantitative Analysis (LOS D, E, or F)

- (viii) The project involves [describe project], therefore the project falls under the 40 CFR 93.127 Table 3 project list or project is non-exempt. The intersection has a LOS [D, E or F] in [20##] (build year) and therefore a hot spot analysis was conducted which predicted 8-hour CO concentrations of [X.X] parts per million (ppm) in [20##] (opening year) and [X.X] ppm in [20##] (build year) which are well below the CO National Air Quality Standards of 9 ppm. These concentrations include background. The 1 hour CO concentrations predicted for [20##] (opening year) and [20##] (build year) will be [X.X] ppm and [X.X] ppm respectively, which are also well below the 1 hour CO National Ambient Air Quality Standard of 35 ppm. The project will not cause or contribute to any new violations of any standard, increase the frequency or severity of any existing violation or standard or delay timely attainment of any standards or the transportation control measures.

Mobile Source Air Toxics (MSAT) Considerations

EXEMPT

For projects that are listed in [23 CFR 771.117\(c\)](#) include this language:

- (ix) For MSAT considerations, this project falls in the category of 'Exempt or a Project with No Meaningful Potential MSAT Effects because it qualifies as a categorical exclusion under 23 CFR 771.117 (c) [**specify CE type from 23 CFR 771.117(c)**].

For projects that are listed in [23 CFR 771.117\(d\)](#), [40 CFR 93.126](#), or projects that have no meaningful impacts on traffic volumes or vehicle mix - except auxiliary lanes or if Annual Average Daily traffic (AADT) is greater than 140,000⁵ include this language:

- (x) For MSAT considerations, this project is exempt under the Clean Air Act conformity rule under 40 CFR 93.126 or this project is exempt because it has no meaningful impacts on traffic volumes or vehicle mix.

LOW POTENTIAL for MSAT EFFECT

For projects that are listed in 40 CFR 93.127 - except auxiliary lanes or if AADT is greater than 140,000¹⁵ include this language:

For MSAT considerations, this project has a low potential for MSAT. Include summary of MSAT qualitative analysis from an air quality report or provided by an ODOT Air Quality Specialist.

¹⁵ If the project is an auxiliary lane project that is longer than one mile or extends beyond two interchanges or if AADT is greater than 140,000, contact the ODOT Air Quality Specialist regarding MSAT requirements.

426.14 Noise

Required Compliance / Status Information

State whether the project is a Type I project and why it does or does not meet the definition of Type I. If the project is not a Type I project, noise studies are not required. Include a summary of applicable local noise ordinances that would apply to the project during construction. If a noise study is performed, summarize estimated noise impacts from the study and state if noise abatement will be considered during final design. If abatement will not be considered, provide the basis for not including abatement, referencing the ODOT Noise Policy feasible and reasonable criteria. If abatement is to be further considered, there must be a “Statement of Likelihood” as described in the Noise Manual. Section (iii) of the examples below contains an example of a statement of likelihood.

Attachments

If a noise study was not required (project is not Type I), or if a noise study was performed, but noise abatement was not recommended:

- No attachments are required. Insert “None”.

If a project is Type I and the study indicates that noise abatement is recommended for further consideration:

- Attach one or more figure(s) from the noise study that depict the location of the noise barriers recommended to be constructed.

Example Compliance / Status Language

To describe the project status, include one of the following statements, similar to:

- (i) A noise study was not required [*reasoning*]. No noise abatement will be further considered or constructed.
- (ii) A noise study was required [*reasoning*] and completed on [*date*]. It was found that [*number and type of impacted land uses*] were found to be impacted by traffic noise. The noise study found that no abatement considered meets ODOT’s reasonable and feasible criteria [*describe how abatement did not meet feasible or reasonable criteria*]. The study has been reviewed and approved by an ODOT Noise Specialist. Unless there is a change in project scope, or the ODOT Noise Policy, abatement will not be considered further.

- (iii) A noise study was required [*reasoning*] and completed on [*date*]. The noise study found that [#] noise walls meet ODOT's feasibility, design goal, and cost effectiveness criteria. Based on the study, ODOT intends to incorporate noise abatement in the form of [# of barrier(s) and/or # of berm(s)] at: [*noise barrier/berm location and/or "name" (from study, e.g. barrier 1A)*], with respective lengths of [*xx feet*] and average heights of [*xx feet*]. Calculations based on preliminary design data indicate that the [(*name of barrier(s) or (name of berm(s))*)] will reduce noise levels by five to [*xx*] dBA for [*xx*] residences at a cost of [*\$amount*]/benefitted receptor.
- a. If applicable include: There were also [*number and type of impacted land uses*] identified as noise impacted [*location*] where noise abatement was not found to [*describe how abatement did not meet feasible or reasonable criteria*]. Noise abatement is not recommended for these locations.

If, during final design, conditions have substantially changed, noise abatement may not be necessary. The final decision of the noise abatement will be made upon: (1) completion of the project final design and, (2) completion of the public involvement processes as outlined in [ODOT's Noise Manual](#).

426.15 Hazardous Materials

Required Compliance / Status Information

To document compliance with hazardous material regulations for both PCE and CE projects:

1. State whether a hazardous material assessment was required.

If a hazardous material assessment was required:

2. List hazardous materials identified in the project area;
3. Summarize estimated impacts as identified in the hazardous material study; and
4. Summarize special provisions, conclusions and recommendations, and proposed mitigation (when applicable).

Attachments

- No attachments are required. Insert “None”.

Example Compliance / Status Language

- (i) The project does not involve right-of-way acquisition or excavation below the existing roadway prism. Therefore, no hazardous material assessment was required.
- (ii) ODOT Region [#] or consultant [*company*] hazmat coordinator [*name*] completed a Limited Level 1 Site Assessment on [*date*]. The assessment concluded that there are no hazardous material sites that will likely impact the construction of this project. Excavated shoulder material from the project limits can be managed as clean fill in accordance with ODOT's directive for the management of surface soils. No additional hazmat evaluation was recommended.
- (iii) ODOT Region [#] or consultant [*company*] hazmat coordinator [*name*] completed a Limited Level 1 Site Assessment on [*date*]. Hazardous materials and [*contamination type*] were identified in the project area. Contract special provision specifications are required that instruct the contractor on requirements for handling and disposal of hazardous materials encountered during construction.
- (iv) ODOT Region [#] or consultant [*company*] hazmat coordinator [*name*] completed a Limited Level 1 Site Assessment on [*date*]. The evaluation included the testing of bridge coatings and other bridge elements to detect hazardous materials including asbestos and heavy metals. Lead was discovered in paint on the bridge and special provisions will be

required for worker safety; however, based on the Toxicity Characteristic Leaching Procedure (TCLP) test, the lead paint on the bridge is considered a solid waste and may be disposed of at a certified landfill. No asbestos was detected in samples from the bridge.

- (v) An additional test of shoulder material within the project area was conducted to determine if the shoulder material contained hazardous materials (report dated *[date]*). This evaluation concluded that shoulder material meets the ODOT shoulder material standard and is considered clean fill. No additional hazmat evaluations are required.

425.16 Tribal Coordination

Required Compliance / Status Information

The ODOT Archaeologist for each project provides a PABST database summary of tribal coordination efforts with federally recognized Tribes. The summary includes any concerns that were expressed during Tribal coordination and how those concerns were addressed. In addition to cultural resource interests, some projects may require Tribal coordination for fish, wildlife, and plant resources of interest to Tribes and those coordination efforts are included in the summary.

Tribal coordination is documented by attaching the PABST database summary provided by the ODOT archaeologist to the PCE or CE document.

Attachments

- Attach the PABST database Tribal Coordination Summary provided by ODOT Archaeologist.

Compliance / Status Language

- (i) *“See attached Tribal Coordination Summary.”* This verbiage is locked into the PCE Approval and CE Closeout forms.

426.17 Public Outreach/Engagement

Required Compliance / Status Information

For both PCEs and CEs, provide a summary of public involvement activities, input received and ODOT responses, including whether and/or how input was incorporated into the project.

***Projects that would result in controversy on environmental grounds and/or substantially affect traffic patterns cannot be processed as a PCE.** For CEs where the analysis considered stakeholder engagement/perception of potential impacts, describe engagement efforts with those potentially impacted. For projects that are environmentally controversial, discuss the potential for environmental controversy with FHWA to determine if the project can be processed as a PCE or if a CE is needed.¹⁶

Efforts to engage Environmental Justice (EJ) populations and neighborhoods should be described in the EJ section. Public notices and public review and comment for proposed Section 4(f) *de minimis* impact findings should be described in the Section 4(f) section.

Attachments

- For PCEs where there is no controversy on environmental grounds, no attachments are required. Insert “None”.
- For PCEs and CEs that involved extensive engagement with the public and/or stakeholders resulting in public comments that included concerns about the impacts of the project, include the public/stakeholder engagement plan and a summary of comments received.
- For CEs that had previous facility or corridor planning efforts, include references, citations, and/or attachments as necessary to demonstrate the public and/or stakeholder involvement that occurred during planning, in addition to the engagement done for the project in the current PE phase of development. Include public and stakeholder engagement plans, public meeting summaries, and a summary of comments received.

All documentation regarding public and stakeholder outreach, input, engagement, and coordination activities, as well as summaries of any previous planning efforts and current project and/or public meeting documentation that pertains to environmental decisions should be retained within the respective ODOT Region project files in ProjectWise and made available to FHWA upon request.

Example Compliance / Status Language

- (i) Notifications and surveys were distributed to appropriate neighborhood associations

and community groups to learn about their views and concerns about the project. [xx] comments were received. An open house/public meeting was held on [date]. Prior to construction, a follow-up with stakeholders and the general public will be provided to present the final construction schedule, project expectations and traffic control plan information.

- (ii) A public open house/meeting was advertised in the [publication]. In addition, direct newsletter mailings were sent to residents and businesses within the impacted area(s) of the project. The open house/meeting was held on [date].
- (iii) A project information paper, website and communication plan identifying key stakeholders and their contact information is in place. The project was added to the mailing list for projects in Klamath and Lake Counties. There are currently 888 subscribers to the mailing list. In August, 2017, a letter was sent to 50 property owners in the vicinity of the project regarding the improvements, particularly emphasizing the installation of rumble strips. Additional communications will take place with nearby residents and communities prior to construction. The website will also be updated with traffic impacts and periodic news releases will be sent.

¹⁶ As per PCE Agreement, impact thresholds (Section IV.A.1.b.) – viii “Results in changes that substantially affect traffic patterns temporarily or permanently.” and/or xiii “Is controversial. In cases when controversy is anticipated, ODOT will discuss the potential for controversy with FHWA to determine if the project can be processed under this Agreement.”

426.18 Other Federal Agency Approvals Required for the Project

Required Compliance / Status Information

State if other Federal agency NEPA approvals (i.e., separate from FHWA's NEPA approval) are required for the project. If another Federal agency NEPA approval is required, list the agency, the type of approval, and the date of approval. If another Federal agency's NEPA approval is pending, provide an expected timeframe for completion.

Refer also to Chapter 200, NEPA and Transportation Projects of this manual for more information regarding other Federal Agency approvals and NEPA applicability. Federal Agency permits and other types of approvals that are described in other sections of the PCE Approval or CE Closeout documents, such as a Clean Water Act Section 404 permit, an Endangered Species Act Biological Opinion, a U.S. Coast Guard bridge permit, approvals from U.S. Forest Service or BLM, Section 6(f) conversion or temporary non-conforming use approvals, etc. **should also be listed in this section.**

Attachments

- No attachments are required. Insert "None".

Example Compliance / Status Language

- (i) No other Federal agency NEPA approvals, permits, or other types of Federal agency approvals are required for the project.
- (ii) The following Federal agency approvals and/or permits are required for the project:
 - a. U.S. Army Corps of Engineers – Section 404 Fill/Removal Permit (dated or anticipated by xx/xx/xxxx).
 - b. U.S. Coast Guard – Bridge Permit/Deviation/Temporary Rule Change Approval(s) (dated or anticipated by xx/xx/xxxx).
 - c. U.S. Forest Service – Approval Letter and NEPA Decision Memo for Permanent Easement (dated or anticipated by xx/xx/xxxx).
 - d. National Park Service – C&S Form and Approval for Temporary Non-Conforming Use (dated or anticipated by xx/xx/xxxx).

426.19 Environmental Commitments

Required Compliance / Status Information

Environmental commitments are obligations, responsibilities, or other type of commitment to do something that is unique to a specific project, and therefore different from, or in addition to, standard operating procedures.

For PCEs and CEs, list environmental commitments that will be implemented during design, construction, maintenance, monitoring, or another phase of project development. Do not list activities that are included in the ODOT Standard Specifications for Construction, such as erosion and sediment control, pollution control, turbidity monitoring, MBTA compliance, etc. The following types of environmental commitments and/or planned enhancements should be listed, as appropriate:

- Archaeological monitors;
- Aesthetic design treatment and/or landscaping;
- For CEs with a Section 106 project-level Finding of Adverse Effect, state “see attached MOA for a list of obligations”;
- When mitigation measures are required to support a Section 4(f) *de minimis* finding or a Section 4(f) net benefit finding, list those measures;
- For CEs requiring an individual Section 4(f) evaluation, list mitigation commitments included in the Section 4(f) evaluation;
- For projects citing the exemption from project-level EJ analysis, include the project-specific conditions for exemption as environmental commitments;
- Mitigation proposed to offset adverse socioeconomic and environmental justice impacts;
- Noise abatement that will be considered in final design;
- Section 6(f)(3) replacement property;
- Environmental commitments for wetland monitoring and establishment;
- ESA-listed species habitat enhancements;
- Water quality improvements; and/or
- Hazmat cleanup that extend beyond the duration of the project construction contract.

Attachments

- No attachments are required. Insert “None”.

Example Compliance / Status Language

- (i) This project has incorporated the following Environmental Commitments:
 - [*Specifically list commitments – see examples below*]
 - An archaeological monitor [**from the (name) Tribe**] will be present during ground-disturbing activities.
 - The concrete box beams for the new superstructure of the Deer Creek Road Bridge will be stained brown consistent with the Oregon Parks and Recreation Department Scenic Waterway NOI authorization.
 - Fulfillment of obligations in the Memorandum of Agreement among FHWA, SHPO, ODOT, and Wallowa County to resolve the Section 106 Adverse Effect for the Deer Creek Road: Wallowa River Bridge #63C114 Project. ODOT Miscellaneous Contracts and Agreements No. 30501. [*list commitments*]
 - Per the MOA to Resolve the Section 106 Adverse Effect for the 8th Street/Lee Street Grade Road: Umatilla River Bridge (#59C111) Project among FHWA, Oregon SHPO, USACE, ODOT, and fully executed on July 31, 2017, FHWA and ODOT are obligated for the following: [*list commitments*]
 - During construction, a 2-mile auto/truck detour will be implemented for less than 60 days. Pedestrians and non-motor traffic will be able to use the existing sidewalks.
 - Approximately 30 yds³ of remnant concrete or artificial fill will be removed as offset for placement of approximately 30 yds³ of concrete fill for abutments in the functional floodplain at the Wallowa API.
 - Jackson County will purchase 0.03 mitigation credits from the Rogue Valley Mitigation and Conservation Bank as mitigation for permanent wetland impacts from this project.
 - Spraying of all invasive weeds within the project area will be completed at the request of the USFS.

- Highway closure restrictions (contract special provisions) were put in place to prevent impacts to the Sweet Home Jamboree festival. Worked with the USFS to include notification on their on-line campground reservation system.