800 Construction & Environmental Requirements

810 Overview

While the ODOT inspector assigned to the project is in charge of all phases of construction inspection, including the environmental component, the Region Environmental Coordinators (RECs) play a direct role in ensuring that environmental commitments and associated permits (developed through the PCE/CE NEPA process) are adhered to through ODOT's plans, specifications, and project permits. RECs should be aware that there are specific ODOT Standard Specifications for Construction, which are applicable to all ODOT projects. Some of these specifications are directly applicable to the environmental component of project work and include but are not limited to the 245, 280, 290, 320, 1030, and 1040 sections.

820 Special Provisions

During project development, the REC may determine that ODOT's standard specifications do not adequately address all environmental commitments. In such instances, the REC should coordinate with the appropriate specialist(s) and the region's specifications writer in drawing up Special Provisions for a project. The REC can use the Boilerplate Special Provisions (a unique set of specifications for a project) which can be crafted and inserted into the Special Provisions document commonly referred to as the "Specials" for a specific project.

830 Project Inspection

A REC is involved with a project from scoping through construction and accordingly, they should be familiar with the project's design as well as the Standard Specifications and "Specials" that govern construction work. Referencing project environmental commitments contained in the final PCE/CE documentation, specifications, programmatic agreements, and permits will assist the REC in monitoring the project during construction.

The REC visits the construction site to ensure that the project's environmental commitments are carried out as detailed in the plans and specifications and agency permits. Normally the REC contacts ODOT's project inspector 24 hours ahead of the time that they will be visiting the project site. ODOT staff cannot direct the Contractor, but can make suggestions, point out problems, and refer the Contractor to relevant plan sheets and specifications. In doing site visits, the REC is not an enforcer but a facilitator of best management practices.

Occasionally, the REC may also be involved in some aspects of project implementation such as working on fish salvage or in identifying/protecting certain resources discovered during project construction. The REC's role is to ensure that the project is constructed on time, on budget, and with the least environmental impacts.

840 Environmental Permits

Permits and their requirements will vary from project to project depending on the nature of the work. Below is a brief description of the most common permits obtained for ODOT construction work statewide. There may also be local permits required, such as land use applications, noise permits, floodplain permits, etc. Work with your Region Planners, ODOT Noise Program staff, etc. to identify and obtain these permits.

Storm Water Discharge Permit

National Pollutant Discharge Elimination System Storm Water Discharge Permit (NPDES 1200-CA). Each of the five ODOT Regions holds its own 1200-CA permit. These five equivalent permits regulate stormwater discharges originating from construction sites that disturb 1 acre or more of land. The permit requires the development of an erosion and sediment control plan (ESCP), as well as the correct installation, proper use, monitoring, and maintenance of erosion control Best Management Practices (BMPs) to prevent sediment-laden waters leaving ODOT construction sites. Please refer to language in the 00280 section of the Specifications which can be modified for projects that disturb less than 1 acre of land and are considered 'low risk' per Technical Advisory GES 12-01A. The ESCP is a living document and must be updated to reflect current conditions. For example, if BMPs not shown on the plans are installed, the contractor can mark up the plans to show what was installed on the ground. If a turbid stormwater discharge occurs, the REC is notified by Construction. ODOT Environmental staff then contact DEQ within 48 hours to self-report the discharge and explain how conditions were corrected. A copy of this discharge permit must be kept by the contractor on all relevant active construction sites.

FAHP, NMFS & USFWS

The National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) have each issued a statewide programmatic Biological Opinion (BiOp) to FHWA Oregon Division and ODOT. These two BiOps are collectively referred to as the Federal-Aid Highway Program (FAHP) Programmatic. The FAHP Programmatic addresses compliance with Endangered Species Act (ESA) Section 7 and the Magnuson Stevens Act (MSA), and covers ODOT-sponsored Federal-Aid highway construction projects that have a stormwater "trigger,"

direct in-water work, terrestrial habitat removal or modification, and noise and/or visual disturbances to listed species. FAHP Programmatic environmental stewardship commitments are essentially are the same for both NMFS and USFWS.

For projects covered by the FAHP Programmatic, the REC (or Biologist) must conduct at least one Environmental Inspection Report per calendar construction year. The inspection focuses on erosion and sediment control, pollution control, sensitive areas (no work zones), fish and wildlife protection and site restoration. If applicable, the Fish Salvage Report must be submitted to the appropriate agency no later than two weeks post-salvage. Construction cannot close out the project until a FAHP Completion Report is satisfactorily completed. The FAHP requires annual post-construction monitoring and reporting until the site is stabilized. The contractor must keep a copy of the FAHP Notification on active construction site.

USACE/DSL Permit

Process for U.S. Army Corps of Engineers (USACE)/Department of State Lands (DSL) 404 Nationwide Joint Permit.

If a project involves unavoidable removal and/or fill within a water of the U.S. or State, including wetlands, a removal-fill permit may be required from the USACE and / or DSL. The agencies have developed a Joint Permit Application to align both federal and state regulatory requirements. The USACE may occasionally be the lead federal agency for ODOT projects.

Projects are required to address the mitigation sequence via alternatives analysis to avoid-minimize-mitigate. If unavoidable permit impacts are proposed, the agency prefers the federal hierarchy of preference for compensatory mitigation, which is use of a bank, in-lieu fee credit purchase, and lastly permittee responsible. Site restoration plans addressing temporary impacts should be included with permit submittals, including erosion and sediment control plans as appropriate. Stormwater management plans should also be included when required to obtain a Section 401 Water Quality Certification. A condition of this permit and the NPDES permit is meter turbidity monitoring (see 290.30(a) (8)). Turbidity monitoring is done by the construction contractor, and monitoring data sheets are turned into the construction office. Additional information is available on the Geo-Environmental Wetlands webpage.

Migratory Bird Treaty Act (MBTA) Take Permit

ODOT has one statewide MBTA take permit with USFWS that is based on due diligence to protect migratory birds. The Environmental Resources Unit in the Geo-Environmental Section manages the permit; it is renewed every three years, and take limits are based on historic take and projected future take over the duration of the permit. During project development, RECs

and/or Region biologists should identify construction activities that may affect nesting birds and scope the project area (vegetation and structures) the year prior to construction for evidence of and potential for nesting the year prior to construction. If possible, a separate small contract can be let to remove trees and brush outside of the nesting season ahead of construction. ODOT environmental staff or AHPIS-Wildlife Services (under an ODOT Inter-Governmental Agreement) may also need to prohibit birds from nesting in the construction area throughout the duration of the project. Use project-appropriate language in the 290.36 section.

Fish Passage Plan

For projects with in-water work that requires dewatering, or for projects that may trigger Oregon Fish Passage Rules, an ODFW Fish Passage Plan, 245 Temporary Water Management specifications, and applicable 290.34(c) specifications are required. Typically, the project Biologist will work with the ODOT Fish Passage Coordinator, the ODFW / ODOT Liaison, the ODOT / NOAA Liaison, and possibly the District Fish Biologist to get an approved fish passage plan in place prior to the submittal of the JPA.

850 Other Environmental Items during Construction

The following is not an exhaustive list of other environmental constraints, commitments, etc. that may occur during construction.

Protection of Sensitive Cultural Resource Sites

For projects that have known or likely cultural (archaeological and/or historic) resource sites within or near the areas of work, care must be taken to protect resources. If areas can be avoided, they should be shown as 'no work' zones on the plans and delineated in the field. In such cases, No Work Zones should be identified in the Special Provisions and discussed at the pre-con meeting. In other cases, a monitor may be required to be present during ground disturbing activities. The monitor could be a Tribal representative, a consultant Archaeologist or an ODOT staff Archaeologist or Architectural Historian. This information should be noted in the Special Provisions and discussed at the pre-con meeting. Projects may also include an Inadvertent Discovery Plan which will outline certain protocols should cultural material be encountered during construction.

Include the following language in 290.90 payments "No separate or additional payment will be made for orange plastic mesh fencing."

Protection of Sensitive Natural Resource Sites

For projects that have known natural resource sites (e.g., sensitive habitat, wetlands, etc.) within or near the areas of work, care must be taken to protect resources. If areas can be avoided, they should be shown as 'no work' zones on the plans and delineated in the field. In such cases, No Work Zones should be identified in the Special Provisions and discussed at the pre-con meeting. In other cases, a monitor may be required to be present during ground disturbing activities. The monitor could be a Biologist, Wetlands Specialist, or REC.

Include the following language in 290.90 payments "No separate or additional payment will be made for orange plastic mesh fencing."

4(f) Temporary Occupancy or 6(f) Approval for Temporary Non-Conforming Uses

For both 4(f) and 6(f) temporary impacts, it is important that the construction activities/impacts be constrained to only the areas that the relevant official with jurisdiction has signed off on. During construction, the REC should check to make sure that the plans are being adhered to in this regard.

Staging Areas and Disposal Sites

The agency may designate project specific staging sites for the storage of construction, office trailers, and materials which are used prior to and during construction. Additionally, if waste material is generated from a project the question arises as to who is responsible for designating an appropriate disposal site. Two ODOT documents are provided in the Appendix to assist RECs in work through the issue with their respective project delivery team.

• Highway Division, Project Delivery Team, Operational Notice PD-10,

Disposal of Excess Excavation Materials, (Revised 2018) provides guidelines to Project Teams working on projects, which will generate excess excavation materials.

• Technical Services, Geo-Environmental, Geo-Environmental Bulletin, GE08-04(B), designating construction staging and disposal sites, (validated 2018) informs project teams of their responsibility regarding the location of construction staging and disposal sites. It assists the team in determining when it is appropriate to designate these sites. The Bulletin's intent is not to increase the use of mandated staging and disposal sites but to clarify Agency and Contractor responsibilities with this decision making process. The guidance also creates a distinction between Contractor designated versus Agency designated staging and disposal sites. The

guidance is intended to complement PD-10 by clarifying responsibilities outlined in the original operational notice.