

NEPA Basics and NEPA Practice at ODOT



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- NEPA policy and project support
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National Environmental Policy Act (NEPA) Basics Takeaways

1. What is NEPA and when does it apply
2. NEPA umbrella concept and why it is important
3. NEPA class of action – what it is and how it is determined





What is NEPA and what does it require?



- Federal law that establishes a national environmental policy and provides a framework for federal agency environmental decision-making
- Requires federal agencies to consider the effects of their actions on the natural and human environment
- Requires documentation, disclosure, interagency coordination & public involvement
- Procedural, does not require specific decisions/outcomes
- For FHWA, FRA, and FTA, regulations implementing NEPA in *Environmental Impact and Related Procedures* at 23 CFR § 771



When does NEPA apply?

NEPA applies to major federal actions – projects that involve any of the following:

-  Federal funding
-  Federal approval
-  Federal permit



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- Section 4(f) of 1966 U.S. DOT Act (49 USC 303)
 - Clean Air Act and amendments
 - Endangered Species Act Section 7
 - Migratory Bird Treaty Act
 - Clean Water Act Section 401(b)
 - E. O. 11988 (Floodplain Management)
 - Resource Conservation and Recovery Act
 - Comprehensive Environmental Response, Compensation and Liability Act
 - Clean Water Act Section 404
 - Farmland Protection Policy Act
 - National Historic Preservation Act Section 106
 - Land and Water Conservation Fund Act Section 6(f)(3)
 - Wild and Scenic Rivers Act
 - Clean Air Act and amendments
 - Highway Noise Standards
 - Public Involvement Requirements
 - NEPA case law
- In Oregon:*
- Land Use Actions / Goal Exceptions
 - Fish Passage Statute
 - Removal/Fill Law
 - AND MORE, including state and local requirements...

NEPA Umbrella

Most Federal agencies, including FHWA, manage the NEPA process as an "umbrella" under which all applicable environmental laws, executive orders, and regulations are considered and addressed during the NEPA process, prior to NEPA document approval.

NEPA Class of Action

- Determines NEPA process and documentation
- Based on significance of impacts

Categorical Exclusion

- Project types that normally do not involve significant environmental impacts

Environmental Assessment (EA)

- Significance of effects is unknown, or project does not fit a CE category and is not expected to require an EIS

Environmental Impact Statement (EIS)

- Prepared for projects expected to have a reasonably foreseeable significant effect on the quality of the human environment
- Per 23 CFR 771.115(a) - new controlled access freeway, highway project of four or more lanes on a new location, construction or extension of fixed transit facility, new construction or extension of separate roadway for buses not in ROW, new construction of major railroad lines or facilities

Environmental Assessments (EAs) & Environmental Impact Statements (EISs)

EA



Concise, focused on potentially significant impacts



Can limit analysis to No Build/Build alternatives



Leads to either a Finding of No Significant Impact (FONSI) or preparation of an EIS



Must be completed in 1 year

EIS



Full disclosure document of benefits and impacts of project



Requires analysis of range of reasonable alternatives



Leads to a Record of Decision (ROD)



Must be completed in 2 years



Categorical Exclusions

- Most projects are classified as categorical exclusions
- Categorically-excluded FHWA actions are listed in 23 CFR 771.117 (see **HANDOUT 1**)
- Categorical exclusion process and documentation focuses on demonstrating that the project:
 - Qualifies for the categorical exclusion, does not have unusual circumstances, AND
 - Complies with all other applicable federal environmental requirements.
- Categorical exclusion timelines, documentation requirements, and approval authorities vary depending on project specifics



Identify the categorical exclusion from 23 CFR 771.117...

1. A multiuse path project that will infill a section of bicycle and pedestrian path between an earlier segment and an existing built portion.

C(3) - Construction of bicycle and pedestrian lanes, paths, and facilities

2. A project to upgrade curb ramps, close unneeded crosswalks, and upgrade pedestrian push buttons at 3 intersections.

C(15) - Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons

3. A project to construct a new 4-lane highway connecting two urbanizing areas.

TRICK QUESTION! This is a type of project that would normally require an EIS per FHWA's NEPA regulations.

NEPA Practice at ODOT Takeaways

1. Understanding the PCE Agreement – when it applies and how it benefits project schedule
2. Types of PCE and CE documentation and process
3. How to address project changes





ODOT-FHWA Programmatic Categorical Exclusion (PCE) Agreement

- Authorizes ODOT to approve categorical exclusions on behalf of FHWA for projects below certain impact thresholds (i.e., PCE kickouts)
- Identifies documentation, process requirements for PCEs and minimum qualifications for preparers/approvers
- Cannot be used for direct recipient projects or other projects where ODOT does not have oversight

ODOT Misc. Contracts and Agreements
No. 73000-00042251

**PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, OREGON DIVISION
AND
THE OREGON DEPARTMENT OF TRANSPORTATION
REGARDING APPROVAL OF ACTIONS CLASSIFIED AS
CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

THIS PROGRAMMATIC AGREEMENT ("Agreement") made and entered into this 10th day of March 2025, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") AND THE STATE OF OREGON, acting by and through its DEPARTMENT OF TRANSPORTATION ("ODOT"), each herein referred to individually as "Party" and collectively referred to as "Parties", hereby provides as follows:

WITNESSETH:

A. **Whereas**, the National Environmental Policy Act of 1969 (NEPA), 42 United States Code (U.S.C.) §§ 4321-4370h (2014), direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded from those requirements;

B. **Whereas**, the Federal Highway Administration's (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

C. **Whereas**, the United States (U.S.) Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA's primary responsibilities (49 CFR 1.81 (a)(5));

D. **Whereas**, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS (23 CFR 771.117(c)-(d));

E. **Whereas**, the Oregon Department of Transportation (ODOT) is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and assists FHWA in fulfilling its obligations under NEPA for the ODOT projects with a FHWA-nexus (23 CFR 771.109);

F. **Whereas**, by the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, an Oregon state agency may enter into agreements with units of local government or other state

Categorical exclusion approved by ODOT = PCE
Categorical exclusion requiring approval by FHWA = CE



Does my project meet the criteria to be a PCE?

Consider the “PCE Kickouts”

(see HANDOUT 2)

- i. Involves use of properties protected by Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. 303) that requires preparation of an Individual Section 4(f) Evaluation;
- ii. **Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);**
- iii. Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);
- iv. Requires an Individual Permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act;
- v. 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;
- vi. Requires a formal Wild and Scenic River Section 7(a) consultation with, and determination from, the official river administering regulatory agency;
- vii. **Results in changes that substantially affect traffic patterns temporarily or permanently;**
- viii. **Requires the acquisition of more than minor amounts of right-of-way or displacement of businesses, nonprofit organizations and/or residents;**
- ix. Does not conform to the State Implementation Plan which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas;
- x. Requires an individual project-level formal consultation under Section 7 of the Endangered Species Act;
- xi. Requires an exception to Oregon Statewide Planning Goals;
- xii. Involves capacity expansion by construction of a new highway or local roadway where none existed previously or by addition of new through lanes (excludes bus on shoulder improvements and passing lanes);
- xiii. Is required by FHWA to be processed as a CE for reasons that are not reflected in the above impact thresholds.



PCE Consult Clauses

Thresholds, or
triggers, for a
discussion with
FHWA

(see HANDOUT 2)

FHWA consultation is required to confirm a project is a PCE if the action:

- Is defined as a “Type I project” per 23 CFR 772.5 and the current ODOT Noise Manual for purposes of a noise analysis;
- Will result in more than 1.5 acres of impacts to wetlands and waters.
- **Will result in detours of more than 20 minutes out of direction travel for any mode.**
- **ROW - Requires more than 10 percent of a parcel for parcels under 10 acres in size, 1 acre for parcels 10 to 100 acres in size, and 1 percent of the parcel for parcels greater than 100 acres in size, or acquisition will impair existing land functions (such as net loss of parking, and substantial loss of residential front yards).**
- Is anticipated to result in controversy on environmental grounds.



My project is a PCE, what documentation do I need? What process do I follow?

“Standard” PCE

Projects in 23 CFR 771.117 that don't exceed kickouts

No Ground Disturbance (NGD) PCE

No direct or indirect ground disturbance

Advanced Investigation (AI) PCE

Advanced investigation projects with a FHWA nexus

Emergency Repair (ER) PCE

Repair projects under FHWA's ER Program

Surplus ROW and Advanced Acquisition (ROW) PCE

Coming soon

All PCE documentation:

- Should be prepared by an environmental specialist:
 - With experience addressing NEPA compliance for transportation projects
 - Knowledgeable with FHWA and ODOT procedures for environmental analysis and NEPA compliance
- Must be reviewed and approved by ODOT; consultants and/or local agencies cannot sign PCE documentation as preparers or approvers.

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|--|---|---|
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Oregon
Department of
Transportation | <h2 style="margin: 0;">FHWA and Oregon DOT
PCE Determination and Approval
Form</h2> | 
U.S. Department of Transportation
Federal Highway
Administration |
|--|---|---|

Project Name:	ODOT Key #:
Federal Aid #:	Region:
City / County:	FHWA Nexus:
Project Sponsor:	Highway Name:
Project Description:	
Project Termini:	
Beginning MP:	Ending MP:
Required Attachments:	Environmental Documentation ☐ Project Vicinity Map ☐

 Oregon Department of Transportation	FHWA and Oregon DOT PCE Validation Document	 U.S. Department of Transportation Federal Highway Administration
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Project Name:	Region:
Federal Aid #:	ODOT Key #:
City / County:	FHWA Nexus:
Project Sponsor:	Highway Name:
Project Description:	
Project Termini:	
Beginning MP:	Ending MP:
Attachments: Revised Project Vicinity Map (if project scope change since date of PCE Determination / Approval) ☐	

Discipline / Resource	Required Compliance / Status Information (click for Guidance)	Required Attachments
1. Right-of-Way		None
2. Land Use		List Attachment(s) or None
3. Community Impacts		None
4. CWA §404 / Wetlands / Waters & U.S. Coast Guard		List Attachment(s) or None
5. Floodways & Floodplains		List Attachment(s) or None
6. Water Quality		None
7. ESA / T&E Species		List Attachment(s) or None
8. NHPA §106 (Cultural Resources)		List Attachment(s) or None
9. Visual Resources		List Attachment(s) or None
10. §4(f) USDOT Act		List Attachment(s) or None
11. §6(f) LWCF Act		List Attachment(s) or None
12. Air Quality		None
13. Noise		None
14. Hazardous Materials		None
15. Tribal Coordination	See Attached	Tribal Coordination Summary
16. Public Outreach		None
17. Other Required Federal Agency Approvals		None
18. Environmental Commitments		None
19. Preliminary Investigation (PI) Activities		List Attachment(s) or None

ODOT certifies that this project has been reviewed and documented following the provisions of the [FHWA and ODOT Programmatic Categorical Exclusion Agreement](#). ODOT certifies that neither significant environmental effects, as described in [23 CFR §771.117\(a\)](#), nor unusual circumstances, as described in [23 CFR §771.117\(b\)](#), will result. Such unusual circumstances include: significant environmental impacts; substantial controversy on environmental grounds; significant impacts on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

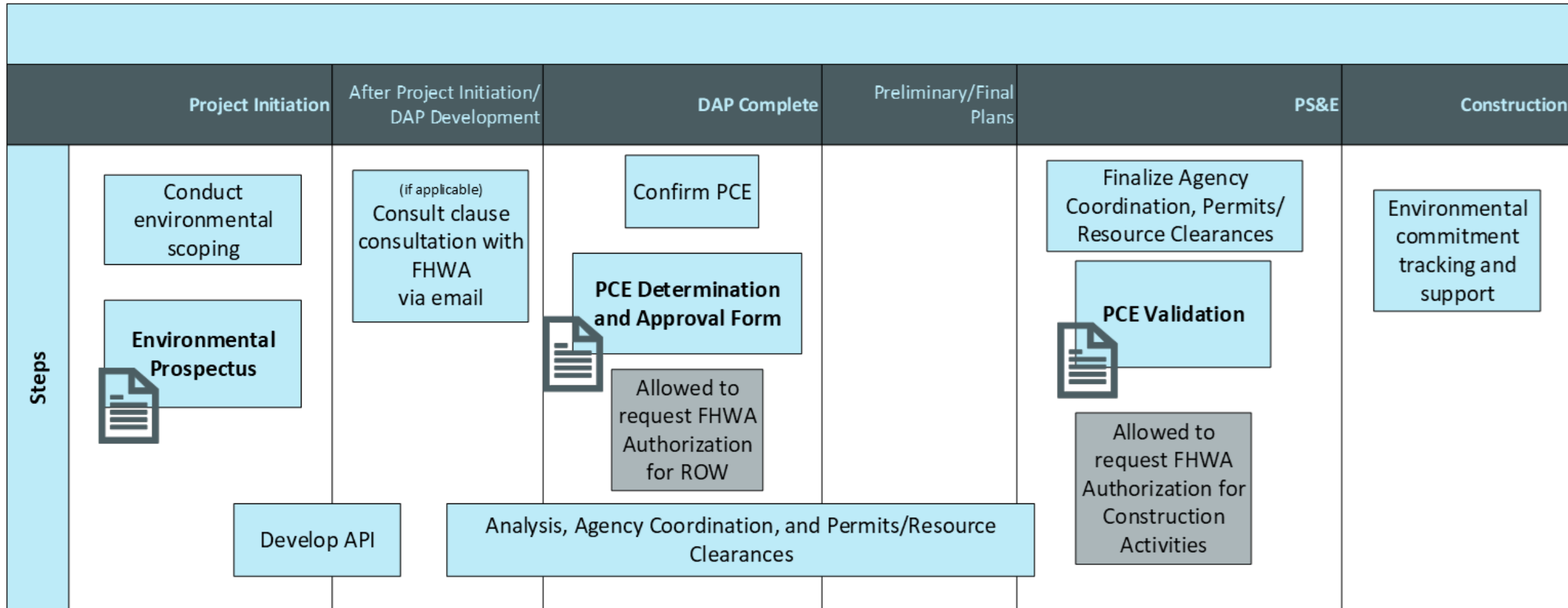
This project qualifies as a categorical exclusion as outlined in [23 CFR §771.117](#) under the following listed CEs:

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ODOT Preparer	ODOT Approver
Upon completion, upload this form (with required attachments and PCE Peer Review Checklist and Comment Log) to the appropriate Location per current filing protocols.	



Standard PCE Process (avg 14 – 24 months)



(see HANDOUT 7)

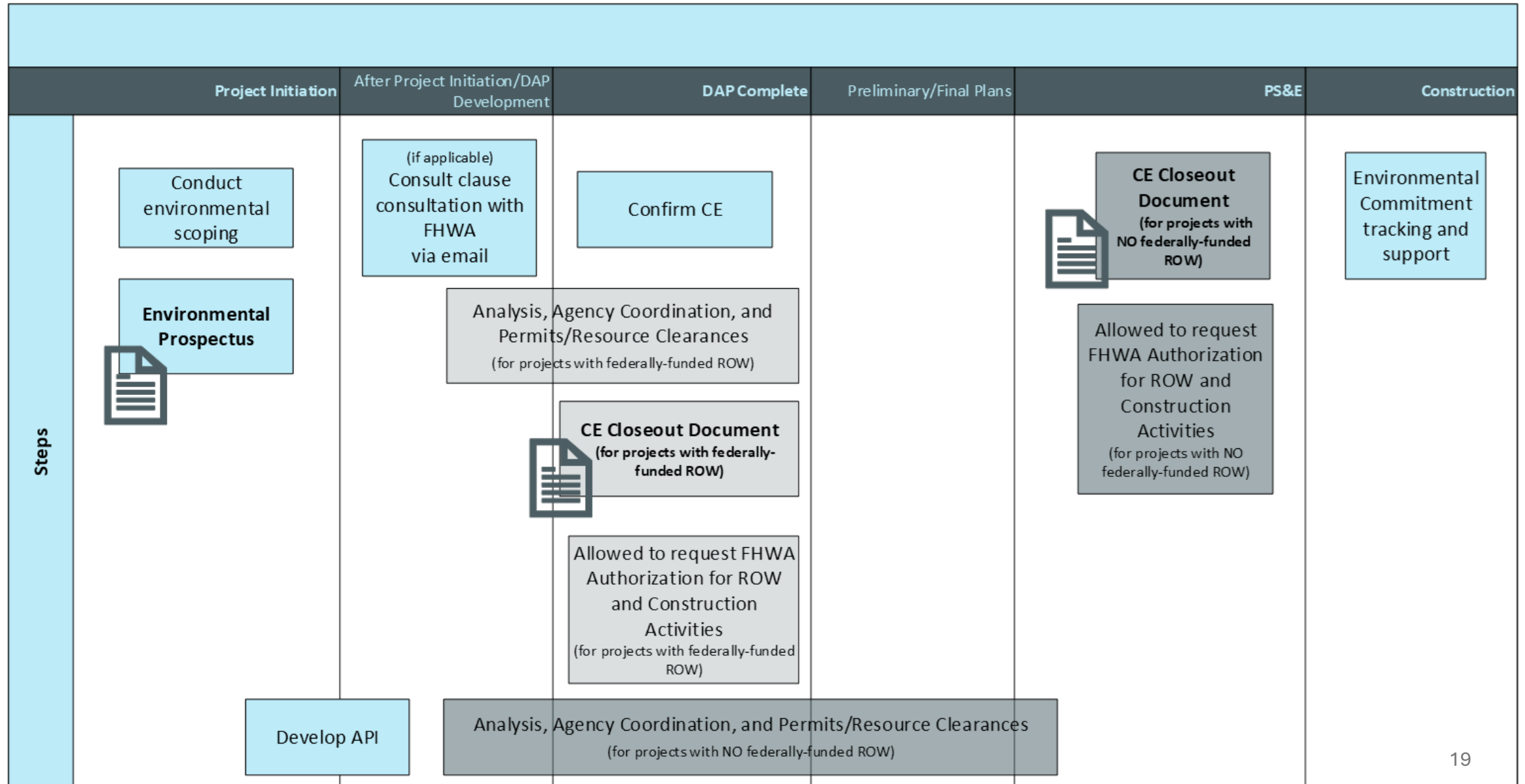
CE Documentation

- CEs are prepared when a categorical exclusion project exceeds a PCE kickoff(s)
- CEs must be individually reviewed and approved by FHWA OR Division
- Requires Environmental Prospectus and project vicinity map
- **CE Closeout**
 - Summarizes how environmental issues identified on EP were addressed during project development
 - Identifies PCE kickoff(s)
 - Documents compliance with environmental laws and required consultation with agencies/tribes
 - Identifies environmental commitments
 - **Allows final design, ROW acquisition, and any construction activities (including utility relocation) and/or purchase of construction materials or rolling stock to proceed**



CE Process (avg 30+ months)

(see HANDOUT 7)





Project Changes and NEPA Re-evaluations

- Notify the REC of project changes occurring **during project development/environmental review**, providing them with the updated project description and map
- If project changes are made **after a PCE or CE has been completed or during construction**, a NEPA re-evaluation is required – coordinate with REC to determine required re-evaluation documentation

Project changes related to the environmental review can include but are not limited to:

- refinements to project limits
- adjustments to project scope
- additions or removal of project elements
- updates to key assumptions or construction timing

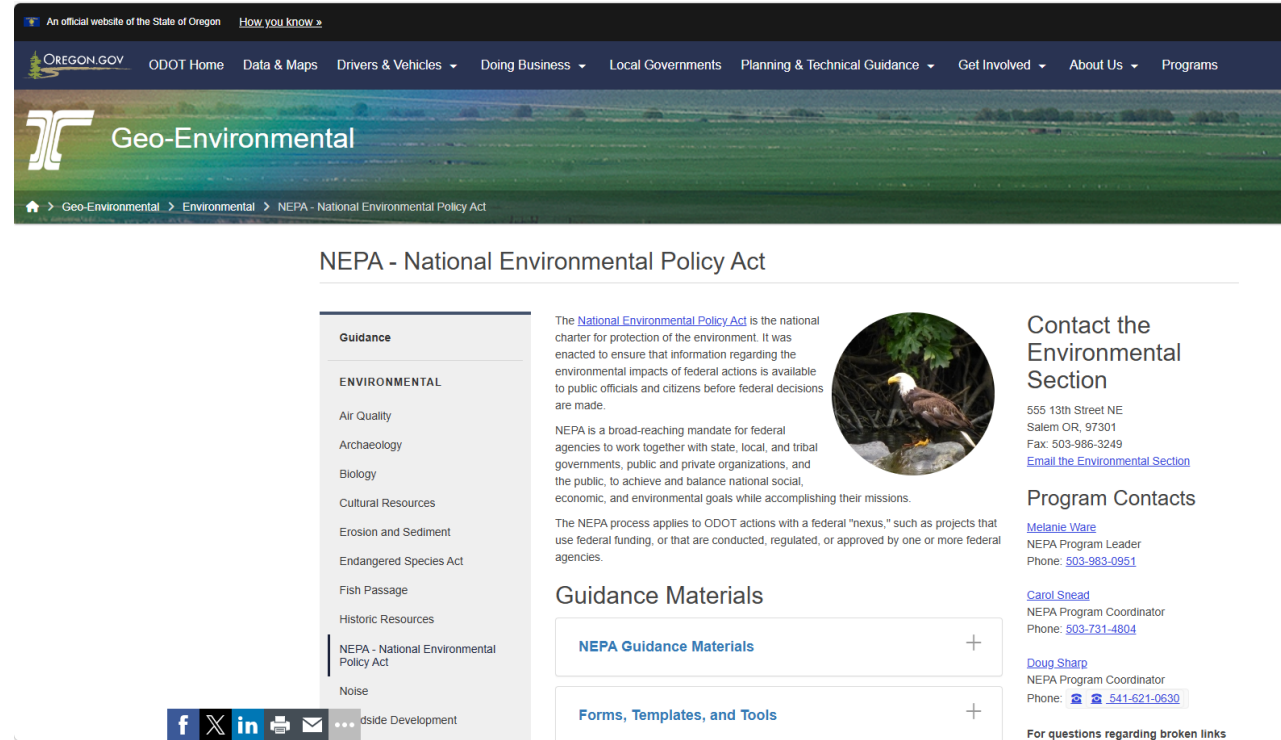


EAs and EISs for Certified LPA Projects

- Need for an EA or EIS is generally identified during early planning efforts, before project is programmed in the STIP and well before project initiation
- EA/EIS documents and related environmental studies are generally prepared by consultants, and the process supported by ODOT Environmental Project Manager (EPM)
- For projects expected to require an EA or EIS, approach to NEPA compliance should be determined in coordination with ODOT NEPA Program staff, EPM, and FHWA

NEPA Resources

- **ODOT REC**
Most important resource!
Coordinate early and often.
- **ODOT NEPA Manual**
Currently being updated, NEPA Manual website will always have most current version
- **ODOT Geo-Environmental NEPA website**
Includes all forms and links to manual
- **LAG Manual – Section C, Chapter 6**



The screenshot shows the ODOT Geo-Environmental website. The header includes the Oregon.gov logo and navigation links: ODOT Home, Data & Maps, Drivers & Vehicles, Doing Business, Local Governments, Planning & Technical Guidance, Get Involved, About Us, and Programs. The main banner features the text "Geo-Environmental" over a landscape image. Below the banner, the breadcrumb trail reads: Home > Geo-Environmental > Environmental > NEPA - National Environmental Policy Act.

NEPA - National Environmental Policy Act

Guidance

ENVIRONMENTAL

- Air Quality
- Archaeology
- Biology
- Cultural Resources
- Erosion and Sediment
- Endangered Species Act
- Fish Passage
- Historic Resources
- NEPA - National Environmental Policy Act**
- Noise

The [National Environmental Policy Act](#) is the national charter for protection of the environment. It was enacted to ensure that information regarding the environmental impacts of federal actions is available to public officials and citizens before federal decisions are made.

NEPA is a broad-reaching mandate for federal agencies to work together with state, local, and tribal governments, public and private organizations, and the public, to achieve and balance national social, economic, and environmental goals while accomplishing their missions.

The NEPA process applies to ODOT actions with a federal "nexus," such as projects that use federal funding, or that are conducted, regulated, or approved by one or more federal agencies.



Contact the Environmental Section

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Guidance Materials

[NEPA Guidance Materials](#) +

Forms, Templates, and Tools

[Forms, Templates, and Tools](#) +

For questions regarding broken links



Questions?

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NEPA EDITION

- Your table (or Zoom breakout room) is your team.
- 6 questions with one tie-breaker.
- 30 seconds per question to discuss and finalize answers with your team. Zoom teams have 5 minutes to complete the Trivia Q&A sheet.
- Record answers on provided answer sheet. Zoom groups email answer sheets to ODOTCertification@odot.oregon.gov after scores are tallied.
- **No** external assistance (e.g., Google, AI, phone a friend).
- Winners (to be announced after lunch) get bragging rights and a small prize for the table!



Question #1

Which of the following statements best describes the primary purpose of the National Environmental Policy Act (NEPA)?

- a) NEPA mandates environmental protection by requiring the mitigation of adverse impacts that result from agency actions.
- b) NEPA requires Federal agencies to select the project alternative that results in the least environmental harm.
- c) NEPA requires Federal agencies to consider the environmental impacts of their actions prior to making a decision on a particular course of action.
- d) NEPA requires State and local agencies to consider the environmental impacts of their actions prior to making a decision on a particular course of action.



Question #2

What does the NEPA umbrella concept mean?

- a) NEPA requirements comprise all of the applicable environmental regulations on a project.
- b) All applicable environmental laws, executive orders, and regulations are considered and addressed as part of the NEPA process, prior to the NEPA document decision and approval.
- c) Requires federal agencies to fund a centralized mitigation bank to offset the cumulative ecological impacts of all projects within a single watershed.
- d) Requires state and local agencies to comply with NEPA requirements for transportation projects.



Question #3

What are the 3 basic “classes of action” that determine how compliance with NEPA is carried out and documented?





Question #4

TRUE or FALSE:

ODOT's PCE Agreement allows ODOT to approve certain types of categorical exclusions without additional FHWA review.





Question #5

Which of the following projects could not be documented and processed as a PCE?

- a) Project where all work will occur within the existing agency right-of-way (i.e., no ROW acquisition).
- b) Project that requires a 10 minute out-of-direction detour during construction.
- c) Project that will result in the displacement of one occupied residence.
- d) Project that will not increase impervious surface, change drainage patterns, or substantially modify the existing stormwater conveyance system.



Question #6

TRUE or FALSE:

A NEPA re-evaluation is only required when new, potentially significant impacts are identified during construction.

The background of the slide is a light purple color with several large, stylized question marks in yellow and pink. The question marks are scattered across the slide, some appearing as if they are floating or dripping. In the top left corner, there is a small orange icon of a speech bubble with a white exclamation mark inside.

Tiebreaker

(Price is Right Rules)

According to the U.S. DOJ, NEPA is the most frequently litigated federal environmental statute.

Between 2006 – 2024, the U.S. Court of Appeals issued 439 NEPA case decisions.

How many of those decisions were in the 9th Circuit, which covers western states including Oregon?