

# **ODOT-FHWA NEPA Document**

## **Re-evaluation/Supplemental Guidance**

### **1) Purpose of a NEPA re-evaluation**

The Oregon Department of Transportation (ODOT), in partnership with the Federal Highway Administration (FHWA), prepares environmental documentation for each transportation project that receives federal-aid funding or federal approval from FHWA as required by the National Environmental Policy Act (NEPA). NEPA documents for these projects fall into three categories: Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS). FHWA makes NEPA decisions by approving CEs, by issuing Findings of No Significant Impact (FONSI) for EAs, or by issuing Records of Decision (RODs) for EISs.

FHWA must also assure that the NEPA documentation for the proposed action (CE, EA/FONSI, EIS/ROD) is still valid, if major steps to advance the project have not occurred within three years or if project designs, environmental impacts, or environmental regulations or policies have changed, since the last major FHWA approval. It is not uncommon, especially for larger, complex projects, for changes to the proposed project, including new circumstances, new information (environmental, traffic, design standards, etc.), final design or scope modifications, new or revised environmental laws, regulations, and/or policies to have occurred since the CE, EA/FONSI, or EIS/ROD was approved by FHWA. This could result in a change in the environmental classification of a project and could require a new or supplemental NEPA document or decision. To ensure that the original NEPA document or decision is still valid and to document any changes in environmental impacts that were not disclosed in the original NEPA document, a re-evaluation of the original document or decision is required. The re-evaluation provides FHWA with the evidence that documents the determination of whether or not preparation of a new or supplemental NEPA document is necessary to advance the project to the next stage.<sup>1, 2</sup>

### **2) Re-evaluations and the National Environmental Policy Act (NEPA)**

Re-evaluations are not explicitly required under NEPA (42 USC 4321) or Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). They are, however, required by the FHWA/FTA regulations, (23 CFR 771.129) and have been upheld in court as an appropriate mechanism for determining whether or not a new or supplemental NEPA document is necessary.<sup>1, 2</sup>

### **3) Regulations (Timing and Validity Period)**

As stated above, the requirements for re-evaluations are contained in the FHWA/FTA NEPA implementing regulations at 23 CFR 771.129. The regulations read as follows:

- (a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration (FHWA) if an acceptable final EIS is not submitted to the administration within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.*
- (b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g. authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.*
- (c) After approval of the ROD, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE*

*designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.*<sup>2</sup>

#### **4) ODOT and FHWA Coordination**

Changes to the project design or boundaries; new or revised environmental laws, regulations or policies; and/or the amount of time (3 years or more) that has passed since completion of the NEPA documentation should be discussed with FHWA. Because re-evaluations are prepared at FHWA's direction, ODOT's Region environmental staff shall coordinate with the FHWA Division Office Operations Engineer to determine the need for a re-evaluation, appropriate level of documentation, and agreement on the degree of public involvement. The ODOT Statewide NEPA Program Coordinator should be included in this discussion for statewide process consistency. It is the responsibility of the Region environmental staff to document the discussion and agreements for the file. It is also the responsibility of the Region to re-engage the Operations Engineer if the project design changes to assure that a re-evaluation is still needed and the prior decisions are still valid.<sup>1, 2, 3, 4</sup>

#### **5) What should be included in the re-evaluation?**

When ODOT and FHWA have determined that a re-evaluation is necessary, the documentation of a re-evaluation can be as simple as an e-mail between ODOT and FHWA, a phone conversation with, a note to the file, or as comprehensive as a multi-page document. For the simplest and least environmentally intrusive projects, re-evaluations should succinctly verify that the scope of the project remains essentially the same, address any changes to the project and resulting impacts to natural, cultural, or social resources and when conditions support such, conclude that the original NEPA document remains valid. For more complex or controversial projects, additional analysis may be required to support and document a conclusion when conditions support such, that there are or there are not any new significant impacts and that the NEPA document or decision remains valid or is no longer valid for the requested action or next phase of project development.

In the case where the conclusion is that the NEPA document or decision is no longer valid, FHWA and ODOT should immediately coordinate on the appropriate next steps.<sup>3, 4</sup>

#### **General Written Re-evaluation Outline**

##### **a) Project Name and Information**

- Include at the beginning of the document or on the title page the following: Project Name, NEPA document type being re-evaluated, Highway, County, Key Number, and Federal-Aid Number.

##### **b) Purpose/Introduction**

- Include specific statements that outline the need for the re-evaluation.
- Reference the NEPA document or decision being re-evaluated.

##### **c) Original Project Description**

- Include description of identified preferred alternative that is included in the original NEPA document.
- When re-evaluating a DEIS or EA, that includes a range of alternatives, but does not identify a preferred alternative, include description of alternative(s) that are included in the original NEPA document.

##### **d) Current or Changed Project Description**

- Include description of project scope changes that have occurred, which are different from the preferred alternative description in the original NEPA document, or different from the range of alternatives in a DEIS or EA, that does not identify a preferred alternative.

**e) Changes to Regulations, Laws, or Policies – Resources impacted by the changes**

- Include description of resources and how they were affected by the regulation, law, or policy changes. Provide a reference to the date of the change. *Note: This could also include changes to the analysis and/or methods used since the original NEPA document or decision was made.*
- Include potential negative and beneficial effects to the resource.

**f) Changes to Environmental Effects – Resources impacted by the changes**

- Provide a summary of resources that are not affected by the project scope changes. Briefly describe why the change in project scope does not impact these resources.
- Include description of resources and how they would be affected by the project scope changes.
- Include potential negative and beneficial effects to the resource.

**g) Public Involvement/Agency Coordination**

- Include a brief description of any public involvement or agency coordination conducted due to the project changes.

**h) Conclusion**

- For written re-evaluations, the document should contain a concise conclusion similar to the following sample statement:

*“ODOT has concluded that the (enter NEPA document or decision – CE Closeout/FONSI/ROD and date) is still valid for the current project and that no additional NEPA documentation outside of this re-evaluation is necessary. With the submission of this document, ODOT requests FHWA approval of this re-evaluation. FHWA signature of this document indicates that a supplemental NEPA document is not necessary and that any additional environmental documentation and consideration is included within and/or is incorporated by reference in this re-evaluation.*

**i) Appendix – Figures, Maps, and Design Drawings**

- Add figures, maps, and design drawings that clearly show the changes made between the original NEPA document and the current re-evaluation document.

*Note: A re-evaluation only needs to evaluate or analyze those resources affected by project changes or law, regulation, or rule changes, and a statement that the NEPA document or decision is still valid or not.*

**6) Supplemental Documentation**

When the re-evaluation is complete and it has been determined that the NEPA document or decision is no longer valid, supplemental or new NEPA documentation will likely be required. Examples that may lead toward a conclusion of “no longer valid” in the re-evaluation, include identifying significant new or increased adverse environmental impacts or changes that have occurred to the project that were not addressed in the original document. Supplemental documentation may be a revised CE, a new CE, a new EA/FONSI, a supplemental DEIS, a new DEIS, or adding new or additional information to an existing FEIS/ROD. Further coordination between the ODOT Region environmental staff, ODOT Statewide NEPA Program Coordinator, and FHWA Division Office Operations Engineer will need to occur and will be important to determine the type of supplemental NEPA document required.<sup>3,4</sup>

## 7) References/Links

- 1 FHWA Environmental Quarterly Volume 5, Issue 2 – FAQs about NEPA Re-evaluations Part 1 of 2  
<http://www.fhwa.dot.gov/resourcecenter/teams/environment/vol5iss2.cfm>
- 2 FHWA 23 CFR 771.129 (Re-evaluations)  
<http://www.fhwa.dot.gov/legregs/directives/fapg/cfr0771.htm>
- 3 FHWA Environmental Quarterly Volume 5, Issue 3 – FAQs about NEPA Re-evaluations Part 2 of 2  
<http://www.fhwa.dot.gov/resourcecenter/teams/environment/vol5iss3.cfm>
- 4 FHWA 23 CFR 771.130 (Supplemental EISs)  
<http://www.fhwa.dot.gov/legregs/directives/fapg/cfr0771.htm>

### **Other Related References/Links**

- 5 AASHTO Reevaluations of NEPA Documents – NCHRP Project 25-25, Task 28 (March 2008)  
[http://onlinepubs.trb.org/onlinepubs/archive/notesdocs/25-25\(28\)\\_FR.pdf](http://onlinepubs.trb.org/onlinepubs/archive/notesdocs/25-25(28)_FR.pdf)
- 6 FHWA NEPA and Transportation Decision-making – Project Development & Documentation Overview (August 1992)  
<http://environment.fhwa.dot.gov/projdev/tdmpdo.asp>
- 7 FHWA Technical Advisory T6640.8A – Guidance for Preparing and Processing Environmental and Section 4(f) Documents (October 1987)  
<http://environment.fhwa.dot.gov/projdev/impTA6640.asp#reev>

### **Example Re-evaluations/Links**

For examples of written re-evaluations previously approved, contact the Statewide NEPA Program Coordinator at **503.986.3252**.