Environmental Review for Change Orders Process
September, 2018

Introduction:

Scope changes during construction and numerous other reasons can necessitate the need for a Change Order. These changes have the potential to impact the natural, human and/or economic environment. When implementing change orders, it is important to verify that the environmental permits and commitments associated with the project continue to be met with the changes in activity. With a Change Order, it is imperative to review the action to determine if there will be additional environmental impacts that weren’t addressed in the environmental documents, permits or agency commitments. Change Orders can necessitate the need for changes to permits, concurrences from environmental resource agencies or mitigation. This process will ensure that change orders receive the proper environmental review, when needed, and that District Personnel know when to coordinate with the Environmental Section. Continual training of the District staff on environmental issues is a key component to providing an educated assessment of the environmental issues related to the change order activity.

Review Exemptions:

There are numerous types of Change Orders that will not have environmental impacts. NDOT’s Construction Office, with input from the Environmental Section, has established a list of exempted change order types. If the change order activity is consistent with the activities described in the exemptions list included in Attachment A, it shall be documented by the Project Manager as exempt from further environmental review and the Change Order may be processed. At a minimum, the NDOT Project Manager shall document the exempted activity that corresponds with the Change Order request.

NOTE: The NDOT Construction Office and Environmental Section will consider modifications to the exemptions list on an annual basis, or as needed. No modifications to the exemptions list will occur without coordination and approval by the Federal Highway Administration (FHWA).

Environmental Review Process:

Project Level and District Review

The NDOT Construction Project Manager is responsible for initiating the Change Order process. When a Change Order is initiated, it is reviewed against the Contract, Green Sheets and Right of Way commitments to determine the level of environmental review necessary. The Change Order Environmental Review Form (COERF) must be completed and decisions documented in the Change Order prior to processing the Change Order. The Change Order Environmental Review Form has been designed so that if the questions in the first block can be answered “Yes” by the NDOT Project Manager,
processing of the Change Order may proceed without additional review by the District Environmental Coordinator or NDOT’s Environmental Section. The COERF will be filed in OnBase (NDOT’s document management software).

If the Project Manager determines the answer to a question in Block “A” is “No”, or if it is unclear how to answer a question, they will coordinate with the DEC to ensure the proper answer. If any questions are answered “No” in Block “A”, the Project Manager will forward the form to the District Environmental Coordinator for further processing. The District Environmental Coordinator will then review the Change Order and complete Block “B” to determine if it can be processed in the District or if additional input or review is needed from NDOT’s Environmental Section. If no additional review is necessary, the District Environmental Coordinator will complete Block “B”, sign the form and notify the Project Manager that the Change Order can proceed through the remainder of the approval process.

Central Complex and (if necessary) FHWA Review

When the checklist indicates that an Environmental Section review is required, the District Environmental Coordinator will submit the appropriate information to the Roadside Development and Compliance Unit (RDCU). The RDCU staff member will coordinate with the appropriate Environmental Section Professional Qualified Staff (PQS). Once the Change Order is reviewed by the appropriate Environmental staff, the RDCU staff member will sign the review and notify the Project Manager and District Environmental Coordinator that the Change Order can proceed through the remainder of its approval process. On federal aid projects, the RDCU will transmit review material received from the PQS to the NDOT NEPA Specialist responsible for the NEPA document. Assuming that additional Resource Agency consultation is not necessary, NDOT has a goal to complete the review process within five business days. This timeframe is necessary due to review times, staff schedules and the time necessary to coordinate with external parties (when needed).

When change orders for Federal Aid projects that were reviewed under NEPA as an unassigned CE, EA, or EIS, FHWA approval will be required. NDOT will submit the Change Order and the completed COERF to the FHWA Area Engineer, the Program Delivery Team Lead, the Environmental Protection Specialist and the official FHWA mailbox. When FHWA environmental approval is required, FHWA has a goal of reviewing the environmental material within two business days.

When Resource Agency (e.g. US Army Corps of Engineers, US Fish and Wildlife, Nebraska Game and Parks, Nebraska Historical Society) consultation is required, the NDOT Environmental Section (based on existing agreements) will consult with the required agencies to obtain necessary additional permits, amendments and/or agency concurrences. The NDOT Environmental Section, in consultation with FHWA for federal-aid projects, will review information received from the Resource Agencies and determine if additional surveys or other activities are warranted. Consultation with Resource Agencies will require additional time to complete the environmental review. RDCU will provide an estimate of the review time to the Project Manager. Based on the review time needed, the Project Manager will need to determine if the Change Order will continue to move forward.
When all required coordination has been completed, the RDCU staff will sign the COERF and upload the document to OnBase along with any additional documentation provided by the appropriate Resource Agencies and/or by the appropriate NDOT Environmental Section Specialist(s). Examples of this documentation may consist of permit amendments, agency coordination documentation, survey documents, NDOT PQS technical review, as well as any information necessary to document the efforts related to the agency coordination.

RDCU will notify the Project Manager and District Environmental Coordinator that the COERF has been uploaded to OnBase and that the Change Order can proceed through the remainder of the approval process.

**Process Monitoring**

NDOT’s Environmental Section routinely audits construction projects that are permitted under the Construction Stormwater program. As a component of the records review portion of the audit, a spot check of Change Orders will occur to ensure that the procedures are being properly implemented.

- The NDOT Environmental Section will conduct a “Spot Check” QA/QC review within six (6) months of implementation of the process. The NDOT Environmental Section will review approximately 50% of the Change Orders from each District and will develop a “Spot Check” summary report documenting the number of Change Orders reviewed, trends, and potential corrective actions if needed.
- The NDOT Environmental Section will conduct a process audit within one (1) year of the “Spot Check” QA/QC review. The change orders audited are intended to be those received within the construction season, generally March to November. The audit sample size will be determined ensuring it is a statistically valid sample with a 95% confidence level and +/- 10 confidence interval. Projects included in the audit would be sampled across districts, incorporating various project types. This audit shall be completed prior to the following construction season to allow for process modifications and/or corrective actions if needed. A summary report will be provided to NDOT District Construction Engineers documenting the number of Change Orders reviewed, trends, and potential corrective actions, if needed.
- Upon completion of the process audit, NDOT shall establish a future audit frequency based on the findings in the report.

**Staff Training**

Training will continually be provided to the District Environmental Coordinators and construction staff to assist them in making the decisions necessary to evaluate their Change Orders for environmental issues. The training will be conducted in a variety of ways, such as; District Environmental Coordinator meetings, District Environmental Roundtable Meetings, Project Manager’s Conference, as well as additional concept specific meetings and classes. In addition, NDOT’s Environmental Section publishes an Environmental Newsletter that is distributed to our construction personnel and contractors. This newsletter is another means of educating about environmental issues. The training topics are focused on the checklist items and ensuring that staff can make appropriate decisions.
The following table outlines the training opportunities, audiences required to attend and when they typically occur.

<table>
<thead>
<tr>
<th>Training Type</th>
<th>When</th>
<th>Attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction to NEPA and Transportation Decision Making</td>
<td>One Time – NHI Class</td>
<td>DECs</td>
</tr>
<tr>
<td>NDOT CE Training</td>
<td>One Time</td>
<td>DECs</td>
</tr>
<tr>
<td>Wetland Basics</td>
<td>One Time</td>
<td>DECs</td>
</tr>
<tr>
<td>Erosion Control Inspector Training</td>
<td>As Needed</td>
<td>DECs, PMs, Construction Staff, Contractors</td>
</tr>
<tr>
<td>Environmental Coordinator Meetings</td>
<td>3-4 times per year</td>
<td>DECs, Select PMs, Select DCEs</td>
</tr>
<tr>
<td>Environmental Roundtables</td>
<td>Annually, during winter</td>
<td>DECs, DCEs, PMs, Construction Staff</td>
</tr>
<tr>
<td>Project Manager Conference</td>
<td>Annually in March</td>
<td>DECs, DEs, DECs, PMs</td>
</tr>
<tr>
<td>Concept Specific Trainings</td>
<td>To Be Determined</td>
<td>To Be Determined</td>
</tr>
<tr>
<td>Environmental Newsletter</td>
<td>Published Periodically</td>
<td>DEs, DECs, DCEs, PMs, Construction Staff</td>
</tr>
</tbody>
</table>

NDOT Environmental Section will develop a training course for the NDOT Categorical Exclusion (CE) to be required of DECs and recommended for all NDOT construction staff. The CE training course will focus on threshold concepts related to affected resources. Additional required trainings (Concept Specific Trainings) may be designated based on the results of annual (or other designated audit schedule/frequency) process audit results.

Additionally, all District Environmental Coordinators will be provided notice of, and encouraged to participate in NDOT sponsored Environmental Training events. The authority for DEC’s to complete Block B of the COERF without project-specific oversight will be contingent upon their completion of the four core classes listed above and a probationary period of one construction season. The four core classes consist of the following:

- Introduction to NEPA and Transportation Decision Making – NHI
- NDOT CE Training
- Wetland Basics
- Erosion Control Inspector Training

During the probationary period, the RDCU will provide a final review of Block B DEC assessments prior to final approval.

The NDOT Environmental Section will document District Construction staff participation as described above with the following information at a minimum: Title, Date, Location, Agenda or Training Syllabus associated with the training, and participation documentation. Training documentation will be provided to FHWA during the appropriate process audit events or upon request by FHWA.
Implementation

The Environmental Review for Change Orders process was implemented on January 1, 2018. Change Orders considered for all active NDOT construction projects shall include Environmental Review documentation as described in this process agreement. This guidance has been updated as of September 5, 2018 in recognition of the signing of the Memorandum of Understanding between Federal Highway Administration, Nebraska Division and the Nebraska Department of Transportation State Assumption of Responsibility for Categorical Exclusions 23 U.S.C §326.

The following text was added to Block D to reflect the CE MOU:

- The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the Memorandum of Understanding dated September 5, 2018, and executed by FHWA and NDOT.

NDOT will check the box next to this text if the project is not an unassigned CE, EA, or EIS project.
Attachment A

Exemption List

NOTE: The NDOT Construction Office and Environmental Section will consider modifications to the exemptions list on an annual basis, or as needed. No modifications to the exemptions list will occur without coordination and approval by the Federal Highway Administration (FHWA) Assistant Division Administrator or Division Administrator. These items are exempt as long as they do not conflict with commitments contained within the Green Sheet, NEPA documents or permits.

1. Added items to pay for or deduct for various contingency incentives / disincentives already included in the contract (e.g.; pavement smoothness, quality, etc.).

2. Added contingency items to pay for pile cut-off; soil set-up factors.

3. Added items for various miscellaneous deductions (e.g.; low cylinder strengths, lost or damaged warning signs, etc.).

4. Added items to pay for removal of unsuitable material encountered during excavation. Stipulations: The material cannot contain waste or hazardous materials, cannot contain archaeological or paleontological material, cannot include brick streets not designated for removal in the contract, cannot occur in areas designated as “do not disturb” in the contract plans, and cannot include potentially historic material not designated for removal in the contract (e.g.; foundations of old buildings, abandoned stone or brick culverts, etc.). Furthermore, the unsuitable material excavation must be contained entirely within the limits of construction and must be properly disposed of in an area that has already been environmentally cleared.

5. Addition of new On-the-Job Training provisions to existing contracts.

6. Added items to provide for material substitutions or testing having no environmental impact (e.g.; substituting one asphaltic concrete type for another, substituting one erosion control type for another.).

7. Time Extensions, provided they do not conflict with commitments contained within the Green Sheet, NEPA document, or permits.

8. Added items for material taken into stock.

9. Adding winter work provisions, provided they do not conflict with commitments contained within the Green Sheet, NEPA document, or permits.

10. Administrative changes such as establishing new funding sections, moving pay items from one group to another, or correcting administrative errors.

11. Changes issued during the final review process.

12. Change orders issued to address changes due to a plan revision when the environmental review associated with the plan revision has been completed in the design process.
CHANGE ORDER ENVIRONMENTAL REVIEW FORM
(File with Project Records when Change Order is authorized to Proceed)

Project No. ____________________ Control No. ________________ Contract ID __________
Project Name ____________________ Change Order No. ________________
Exempt from Environmental Review? YES ____ NO _____ Exemption Type ____________________
NEPA Class of Action: __________________

BLOCK A
The NDOT Highway Project Manager (HPM) and/or the District Environmental Coordinator (DEC) completes the following block of the checklist:

1. Is the work identified on the Change Order consistent with the Green Sheet Environmental Commitments?  
   Yes_____ No_____ 

2. Is the work identified on the Change Order consistent with the terms of any floodplain, 404 or 401 permit conditions issued for the project?  
   Yes_____ No_____ 

3. Is the work identified on the Change Order consistent with the terms of the Avian Protection Plan?  
   Yes_____ No_____ 

4. Does the work identified on the Change Order occur within the Right of Way (including temporary easements) and meet the Right-of-Way commitments identified in the Contract?  
   Yes_____ No_____ 

5. Does the work identified on the Change Order occur within the limits of disturbance, as defined in the Contract?  
   Yes_____ No_____ 

6. Is the flow of traffic or the function of the road maintained as shown in the contract, either temporarily or permanently? (Changes such as the following would usually result in marking “no”: removing turn lanes, adding or extending turn lanes so the overall length exceeds a mile, re-stripping the roadway to add capacity or turn lanes, removing or altering parking, removing sidewalks or sidewalk work designated in plans, closing or modifying access to another jurisdictions roadway, detouring roadways that were not intended to be detoured in the contract, decreasing ADA accessibility, changing bridges to culverts, etc.)  
   Yes_____ No_____ 

7. Are the contract detours, duration, length and location, maintained as shown in the contract during the work identified on the Change Order?  
   Yes_____ No_____ 

8. Does the work identified on the Change Order follow the commitments identified in the contract regarding impacts to businesses, residential, emergency, or community access points (Changes such as the following would usually result in marking “no”: closing additional access points, closing access points for a greater duration than described, or changing location or method for access)?  
   Yes_____ No_____ 

9. Are areas identified in the contract as wetlands or “Sensitive Areas” being avoided during the work identified on the Change Order?  
   Yes_____ No_____ 

10. If any questions from above questions are answered “No”, provide additional details below:

If all questions in Block A are answered “Yes,” the environmental review is complete, regardless of the NEPA class of action, and the Change Order may be processed. The NDOT HPM signs in Block D. The DEC will also sign Block D if he/she assisted with the review.
If any questions in Block A are answered “No,” the DEC completes Block B (with input from the HPM as needed).
**BLOCK B**

11. For any questions where the response was marked “no” in block A, describe possible impacts to the community, traveling public, natural environment, historic properties, permitting requirements, and any possible economic impacts here:

12. Does the work identified in the Change Order meet the environmental commitments and impacts as disclosed in the NEPA document and Green Sheet? Yes____ No_____

13. If NDOT and/or the contractor will employ mitigation/commitments because of the Change Order impact, document those commitments here:

14. Are “Do Not Disturb” and “Sensitive Areas” as shown on the plans being avoided and protected during the work identified on the Change Order? Yes_____ No____ NA____

15. Are permanent water quality BMPs identified in the contract being maintained in place? Yes___ No____ NA___

16. If the work identified in the Change Order results in the extension, relocation, or realignment of pipes or culverts, is it consistent with the contract environmental commitments? Yes_____ No_____

17. Is the work identified in the change order currently addressed in the project description and/or the T&E activity checklist? Yes____ No____

18. Can the work identified on the change order proceed without additional public involvement, per the Public Involvement Plan for federal-aid projects (e.g. members of the public, business owners, community organizations, local jurisdiction or public agencies having interest or concern related to social, community or economic impacts)? Yes___ No____

19. Will all work associated with the change order occur outside of a public park, recreation area, and wildlife refuge? Yes___ No____

20. If any questions number 14 through 20 above are answered “No”, provide additional details below:

If all questions in Block B above are answered “YES,” the environmental review is complete and the Change Order may be processed, unless the original NEPA class of action was an unassigned CE, EA or EIS; or if the NEPA class of action changes to an unassigned CE, EA or EIS. Ensure any commitments are adhered to and documented. The DEC will sign Block D.

If any questions in Block B are answered “No” or if the NEPA class of action is an unassigned CE, EA or EIS, the Environmental Section completes Block C. When Block B is complete, the DEC signs Block D and sends the form to the Roadside Development and Compliance Unit to complete Block C.
**BLOCK C:**

21. Do the effect determination and required conservation conditions from the Green Sheet and biological evaluation remain unchanged? (mark “No” if an effect determination elevates from a “no effect”, an effect determination elevates to a “may affect”, or if additional required conservation conditions may be necessary)? Yes____ No____

22. Assess whether there are any social or economic impacts from the work identified on the Change Order and describe here (e.g. Section 4(f), Section 6(f), Historic properties, traffic flow, community cohesion, interference with special events, Environmental Justice, parking changes, access changes, hazardous materials, detour changes):

23. Assess whether there are any natural environment impacts from the work identified on the Change Order and describe here (protected species, wetlands, jurisdictional channels, invasive species, etc.):

24. Is additional public outreach required? Yes____ No____ If yes, describe and attach documentation:

25. Is additional outreach required with Agencies with Jurisdiction (e.g. USACE, USFWS) or adjacent tribes, federal land managers, or state land managers? Yes____ No____ If yes, describe and attach documentation:

26. State any new or modified mitigation in response to the change order:

27. Does this change result in new or changed significant impacts? Yes____ No____

28. Does the NEPA Class of Action Remain the same? Yes____ No____

NDOT Environmental Section has reviewed the Change Order and determined that the change must be further re-evaluated using the Categorical Exclusion Re-Evaluation Form.

**BLOCK D:**

NDOT has reviewed the Change Order and determined that the information provided is correct, the original NEPA determination for the project remains valid, any additional commitments identified during this review will be implemented and that the change complies with applicable environmental laws, regulations, and policies.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the Memorandum of Understanding dated September 5, 2018, and executed by FHWA and NDOT.

NDOT HPM Name________________________ Signature:________________________ Date:___________

DEC Name________________________ Signature:________________________ Date:___________

*Env. Section Name________________________ Signature:________________________ Date:___________

**FHWA Name________________________ Signature:________________________ Date:___________

Project Manager authorized to Proceed with Change Order YES ____ NO____

Signature:________________________ Date:___________

*Project Manager is authorized to sign this document in accordance with the NEPA at the completion of black D in unprinted.

**Project Manager is authorized to sign this document in accordance with the NEPA at the completion of black D in unprinted.