


Memorandum

DATE April 26, 2022

TO District Engineers, District Construction Engineers, Assistant District Construction Engineers, Project Managers

FROM James J. Knott, NDOT State Construction Engineer 

THRU

SUBJECT DIRECTIVE CONSTR 22-01
ENVIRONMENTAL REVIEW OF CONTRACT CHANGES

This Directive supersedes Directive CONSTR 18-01, “Environmental Review of Contract Changes”, dated January 12, 2018.

CONSTRUCTION DIRECTIVE

This Directive provides policy for the interpretation of paragraph 1. d. of subsection 104.02 of the 2017 Standard Specifications for Highway Construction as it applies to alteration of plans or character of work. This Directive describes the process to accomplish and document environmental review of contract changes.

Paragraph 1.d. of Subsection 104.02 reads as follows:

“The proposed changes will be reviewed to determine if there will be additional environmental impacts that were not addressed in the environmental documents, permits, agency commitments or the contract. This review shall occur prior to work commencing on the proposed changes.”

It is the policy of NDOT that the attached “Environmental Review for Change Orders Process”, dated March 2022 and hereby incorporated into this Directive, be followed on all projects, except airport projects let by or for the Aeronautics Division. No alterations to the plans or character of work are to be performed prior to an environmental review of the proposed changes.

Every contract change order must include an environmental review statement. See example statements in the guidance below.

If analysis (as described in Attachment ‘A’ of the “Environmental Review for Change Orders Process”) demonstrates that the change order work is exempt from further environmental review, include the following statement in the body of the change order:

“The proposed change(s) described in this change order has been evaluated in the District for consistency with the environmental commitments and compliance with the project contract. The proposed change(s) is exempt from further environmental review.”
(This is statement code ENV_EXEMPT in AASHTOWare.)

“The exemption is (note the applicable exemption type from Attachment A).” This verbiage must be typed into the change order description, there is no statement code in AASHTOWare for the variety of exemptions that might apply.

If, after completing the Change Order Environmental Review Form NDOT194, the proposed change is found to be consistent with the contract environmental commitments and permit conditions, include the following statement in the body of the change order:

“The proposed change(s) described in this change order has been reviewed for consistency with the environmental commitments and compliance with the project contract. The proposed change(s) complies with the contract environmental commitments.” (This is statement code ENV_COMPLY in AASHTOWare.)

If, after completing the Change Order Environmental Review Form NDOT194, the proposed changes require additional environmental commitments, include the following statement in the body of the change order:

“The proposed change(s) described in this change order has been reviewed for consistency with the environmental commitments and for compliance with the project contract. The proposed change(s) requires that additional environmental commitments be implemented. Please see additional commitments on this change order that may apply.” (This is statement code ENV_ADDCOM in AASHTOWare.)

“The additional commitments are: *(insert additional commitments)*.” This verbiage must be typed into the change order description.

If the alteration in the plans or character of work is due to a plan revision, the environmental review will be completed in the Central Complex. The revision transmittal letter to the Highway Project Manager will include a notification saying that the environmental review has been completed and the work on the revision may proceed with any noted commitments. Please include the appropriate statement in the Change Order as recommended in the revision transmittal letter:

“The proposed change(s) described in this change order has been reviewed during development of the plan revision for consistency with the environmental commitments and compliance with the project contract. The proposed change(s) complies with the contract environmental commitments.” (This is statement code ENV_RCOMPLY in AASHTOWare.)

OR, if additional commitments are necessary,

“The proposed change(s) described in this change order has been reviewed during development of the plan revision for consistency with the environmental commitments and for compliance with the project contract. The proposed change(s) requires that additional commitments be implemented. Please see additional commitments on this change order that may apply.” (This is statement code ENV_R_ADD in AASHTOWare.)
“The additional commitments are: *(insert additional commitments)*.” This verbiage must be typed into the change order description.

If the alteration in the plans or character of work proposed in the plan revision must take place prior to completion of the revision, it is the responsibility of the District to complete the Change Order Environmental Review process attached and include the appropriate statement noted above prior to work commencing.

The Change Order Environmental Review Form NDOT194 is to be completed by the Highway Project Manager and reviewed by the District Environmental Coordinator (DEC) with both parties being signatories on the form. If a District does not have a DEC on staff, the Change Order Environmental Review Form NDOT194 shall be reviewed by the Environmental Project Manager responsible for your District until a trained DEC is on staff.

In order to maintain and improve communication and coordination relative to the change order process we are adding the following requirement to those in the Change Order Environmental Review process. Correspondence with the FHWA Transportation Engineer pertaining to coordination/review of change orders or revisions shall be copied to the following:

- FHWA Program Delivery Team Leads
- FHWA mailbox (pjinfne@dot.gov)
- NDOT Environmental Supervisor (Ron Poe)
- NDOT Environmental Project Delivery Manager (Luke Pitts)

CC: Ron Poe
Luke Pitts

NDOT Environmental Review for Change Orders Process
March 2022

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 human, social, economic, and natural 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.

New or additional impacts resulting from the change order activity may necessitate the need for resource agency re-consultation, permit amendment, additional public involvement and or additional mitigation. This process will ensure that change orders receive the proper environmental review, when needed, and that district construction personnel know when to coordinate with the Environmental Section. Continual training of the district construction staff on environmental issues is a key component to providing an educated assessment of the environmental issues related to any change order activity.

Review Exemptions:

There are numerous types of change orders that have been determined to not have environmental impacts. NDOT's Construction Office, with input from the Environmental Section and FHWA, have established a list of exempted change order types. Coordination with FHWA is established through the FHWA Division Program Delivery Team. If the change order activity is consistent with the activities described in the List of Exemptions included in Attachment A, it shall be documented by the NDOT Highway Project Manager (HPM), or State Representative as exempt from further environmental review and the change order may be processed. At a minimum, the determination will be documented by identifying the applicable exemption from Attachment A within the corresponding change order (which is stored in OnBase at **NDOT CNST Construction – NDOT CNST Change Order**).

***NOTE:** The NDOT Construction Office and Environmental Section will consider modifications to the List of Exemptions as needed. No modifications to the List of Exemptions will occur without coordination and acceptance by the FHWA Division Program Delivery Team.*

Environmental Review Process:

The NDOT HPM is responsible for initiating the change order process. When a change order is prepared, the action is reviewed by the district construction staff for compliance with the Contract environmental commitments and the Change Order Environmental Review Form (COERF) is used to document the District's environmental review. This form must be completed, and an Environmental Review Statement must be included in the change order prior to its processing. The Environmental Review Statement on

the change order cross references that the action has been reviewed for environmental impacts and that the review is documented on the COERF.

For unassigned projects that require NDOT Environmental Section review, the NDOT Environmental Section is responsible for obtaining FHWA approval of that review through coordination with the FHWA Program Delivery Team. Once the environmental approval from FHWA is obtained, the change order, which includes the Environmental Review Statement, can be processed. When submitting the change order to FHWA Engineering and Operations (E&O) Team, the COERF will also be provided.

The Change Order Environmental Review Form has been designed so that if all questions are answered “Yes” or Not Applicable (NA) by the NDOT HPM or State Representative and the District Environmental Coordinator (DEC), processing of the change order may proceed without additional review by NDOT’s Environmental Section and the COERF will be filed in OnBase under “NDOT DIST Change Order – Supporting Docs”. For change orders that are classified as exempt from an environmental review, the COERF is not required to be completed. However, within the change order the Construction HPM must note that it is exempt from environmental review and describe the exemption type that is being utilized.

The HPM shall coordinate with the DEC when completing the COERF as these individuals have additional environmental training and can provide guidance in completing the form. Through the District’s review, if any questions are answered “No”, the HPM will forward the form to the NDOT Environmental Project Manager (EPM) assigned to their District for further processing.

The EPM will review the change order that has been submitted to the NDOT Environmental Section, along with the COERF to determine what documentation is necessary to process the change order. For federal aid projects (state or local), the EPM shall review the change order and complete the COERF or complete a NEPA Re-evaluation following NDOT’s NEPA re-evaluation guidance. For state funded projects, the COERF will be completed through coordination with the Environmental Section Professional Qualified Staff (PQS).

Once the change order is reviewed by the appropriate NDOT Environmental Section staff, the EPM will provide all necessary documentation to the HPM and DEC and notify them that the change order can proceed through the remainder of its approval process. Assuming that additional Resource Agency consultation is not necessary, NDOT strives to complete the environmental review process within five business days. If Resource Agency consultation is required, an estimate of time will be provided to the HPM.

An FHWA environmental review is required to approve the change order for projects with NEPA documents that are classified as Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and for those projects determined not to be assigned to NDOT under the CE Assignment Memorandum of Understanding (MOU) with FHWA when an environmental review is required by the NDOT Environmental Section. The EPM will submit the change order, completed COERF and supporting documentation to the FHWA Program Delivery Team Lead, the Environmental Protection Specialist and the official FHWA mailbox. When an FHWA environmental review is required for a change order, FHWA strives to review the environmental material within three business days.

Resource Agency Review:

In the event that additional Resource Agency (e.g. US Army Corps of Engineers, US Fish and Wildlife, Nebraska Game and Parks, History Nebraska) coordination is required, the NDOT Environmental Section or FHWA (based on current agreements) will consult with the required agencies to obtain any necessary permits, amendments and/or agency concurrences. The NDOT Environmental Section, in coordination with FHWA for federal-aid projects when appropriate, will review information received from the Resource Agencies and determine if additional surveys or other activities are warranted. Coordination with Resource Agencies will require additional time to complete the environmental review. The EPM will provide an estimate of the review time to the HPM and DEC.

Documentation and Notification

For Change Orders reviewed by the NDOT Environmental Section, the EPM will prepare a package that includes information related to the change order, COERF or NEPA Re-evaluation (as applicable) and necessary documentation provided by the resource agencies when all required coordination is complete. Examples of documentation that may be included are NEPA Re-evaluation documents, permit amendments, agency coordination documentation, survey documents, and NDOT PQS technical reviews. The change order environmental documentation package is uploaded to OnBase under "NDOT PD NEPA DOCUMENTATION" by the EPM and provided to HPM to upload to "NDOT DIST Change Order – Supporting Docs".

For change orders for projects that are not assignable to NDOT under the CE Assignment MOU and that were not exempt or approved at the District level, the EPM will send the final COERF or NEPA Re-evaluation and associated documentation to FHWA's Program Delivery Team Lead, the Environmental Protection Specialist and the official FHWA mailbox for their review and approval. Upon completion, the EPM will notify the HPM and DEC that the COERF or NEPA Re-evaluation is complete and is filed in OnBase under "NDOT PD NEPA DOCUMENTATION". The naming convention will include "NDOT194 and the Change Order Number".

Process Monitoring

The NDOT Environmental Section will conduct an annual Quality Assurance (QA) review of change orders. The change orders reviewed are intended to be those completed within the Districts during the construction season, generally March to November. A selection of change orders from each District will be reviewed by Environmental Section staff, ensuring it is a statistically valid sample with a 95% confidence level and +/- 10 confidence interval. Projects included in the review will be sampled from various project types. Reviews will be completed prior to the following construction season to allow for process modifications and/or corrective actions if needed. An annual summary report will be provided to FHWA, Construction Division and NDOT District Construction Engineers documenting the number of change orders reviewed, trends, and potential corrective actions, if needed. The QA review will occur in November/December each year and a summary report will be created to document the results. This report will be used to provide feedback during the District Environmental Roundtable events held in January and February each year.

Staff Training

Training will continually be provided to the DEC's 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 DEC 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 the Construction Division, district construction personnel and contractors. This newsletter is another means of educating about environmental issues.

The training topics are focused on items discussed on the COERF. The following table outlines the training opportunities, audiences required to attend and when they typically occur.

Training Type	When	Attendees
Introduction to NEPA and Transportation Decision Making	One Time – NHI Class	DECs
Wetland Basics	One Time	DECs
Erosion Control Inspector Training	As Needed	DECs, HPMs, Construction Staff, Contractors
Environmental Coordinator Meetings	3-4 times per year	DECs, Select HPMs, Select DCEs
Environmental Roundtables	Annually, during winter	DECs, DCEs, HPMs, Construction Staff
Project Manager Conference	Annually in March	DECs, DEs, DCEs, HPMs
Concept Specific Trainings	To Be Determined	To Be Determined
Environmental Newsletter	Published Periodically	DEs, DEC's, DCEs, HPMs, Construction Staff, Contractors

DECs will be provided notice of and encouraged to participate in NDOT sponsored environmental training events. Training provided to the DEC's will cover the background of environmental information discussed on the COERF to give them additional knowledge to assist the HPMs and State Representatives in accurately completing the COERF. Participation in environmental trainings as described above is documented and tracked on the employee's transcript within NDOT's Employee Development Center (EDC) training documentation software. Training activities, rosters and agenda are to be included with the annual QA report described above.

Implementation

The Environmental Section has developed the NDOT 194 form, or Change Order Environmental Review Form (COERF), to document the Environmental Review of change orders. Information on this form is provided at the end of this document. Change orders considered for all active NDOT and local federal-aid construction projects shall include Environmental Review documentation as described in this process agreement.

- Exemptions – For change orders that are determined to be exempt from the Environmental Review Process, the exemption will be documented directly on the change order, by explaining the exemption type that is being utilized.

- For change orders that do not fit an exemption type, The HPM or State Representative and DEC must complete and sign the COERF. When all questions are marked “YES” or “N/A”, the review process is complete. If a question is marked “NO”, the change order is forwarded to the Environmental Section for further review and the completion of an Environmental Re-evaluation.
- When change orders are submitted to the Environmental Section for review, the EPM has responsibility for coordinating the review. Upon completion of the review, the EPM will provide documentation of the review along with any additional documentation to the HPM or State Representative.

Attachment A

Change Order Environmental Form 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), through coordination with the FHWA Program Delivery Team. These items are exempt from further environmental review if they do not conflict with commitments contained within the Contract, NEPA documents or environmental permits.*

- Items to pay for or deduct for various contingency incentives / disincentives already included in the contract (e.g. pavement smoothness, quality).
- Contingency items to pay for pile cut-off, soil set-up factors.
- Items for various miscellaneous deductions (e.g. low cylinder strengths, lost or damaged warning signs).
- 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 "Sensitive Areas" 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.). The area of 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.
- Addition of On-the-Job Training provisions to existing contracts.
- Items to provide for material substitutions, testing or changes in construction methods having no environmental impact (e.g. substituting one asphaltic concrete type for another, substituting one erosion control blanket or silt check type for another, or the use of specialty equipment).
- Time extensions provided they do not conflict with commitments contained within the Contract, NEPA document, or environmental permits.
- Items for material taken into stock.
- Adding winter work provisions, provided they do not conflict with commitments contained within the Contract, NEPA document, or environmental permits.
- Administrative changes such as establishing new funding sections, moving pay items from one group to another, changes to the method of payment or correcting administrative errors.
- Administrative changes issued during the final review process having no environmental impacts.
- Change orders issued to address changes due to a plan revision or addendum when the environmental review associated with the plan revision or addendum has been completed in Plan Revision Environmental Review Process.

NOTE: When the plan revision or addendum exemption is applied, upload the approved plan revision environmental document to the change order supporting document type.

- Transferring responsibility for existing work such as construction staking or construction surveying from the District to the contractor
- Adding pay items for work that is shown in the let plans and was previously covered in original NEPA evaluation, but for which no pay item was provided in the original contract
- Changing the method of measurement for existing items of work

NDOT 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.: _____

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

- Is the work identified on the change order consistent with the Environmental Commitments as described in the Contract? Yes No
- Is the work identified on the change order consistent with the terms of any floodplain or Section 404 permit conditions issued for the project? Yes No N/A
- Would the work identified in the change order that results in the extension, relocation, or realignment of pipes or culverts occur outside of areas identified as wetlands or waters on the E Sheets?
Yes No N/A
- Is the work identified on the change order consistent with the terms of NDOT's Migratory Bird specifications? Yes No
- Does the work identified on the change order occur within the Right of Way (including temporary easements) identified in the Contract? Yes No
- Does the work identified on the change order occur within the Limits of Construction, as defined in the Contract? Yes No
- Will all work associated with the change order occur outside of a public park, recreation area or wildlife refuge? Yes No
- 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-striping 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
- Are the contract detours, duration, length, and location, maintained as shown in the Contract during the work identified on the change order? Yes No N/A
- 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

- Are areas identified in the Contract as wetlands or “Sensitive Areas” being avoided during the work identified on the change order? Yes No N/A
- Are permanent water quality BMPs identified in the contract being maintained in place? Yes No N/A

If all questions are answered “Yes,” the change order complies with NEPA Documentation and Contract Environmental Commitments, and the environmental review is complete. The change order may be processed regardless of the NEPA class of action and regardless of CE assignment status. The NDOT HPM or State Highway Representative then signs the form along with the DEC. If any questions are answered “No,” submit the form to the Environmental PM for further environmental review. The HPM/DEC shall provide additional information below to assist/expedite the Environmental Section reviews.

For any questions where the response was marked “NO”, describe possible impacts to the community, traveling public, natural environment, historic properties, permitting requirements, and any possible economic impacts below:

If the NDOT District and/or the contractor are proposing any mitigation or commitments because of the change order impact, document those commitments below:

Additional Comments:

NDOT has reviewed the change order and determined that the information provided is correct, any additional commitments identified during this review will be implemented and that the change complies with applicable environmental laws, regulations, and policies. The names documented below are those that were involved in the District’s Environmental Review.

NDOT HPM or State Highway Representative Name: _____ Date: _____

NDOT DEC Name: _____ Date: _____

For Environmental Section Use (when any question is answered as “No”):

When required, the Environmental Section Re-evaluation shall be documented utilizing one of the following:

- COERF NEPA Re-Evaluation Memo to file Full NEPA Re-Evaluation Form

The change order and COERF complies with laws, regulations, executive orders, and the original NEPA determination and assessment remain valid.

NDOT EPM Name: _____ Date: _____

For projects that are unassignable under the CE MOU:

FHWA Name: _____ Date: _____