

# FHWA and NDOT Environmental Coordination Process for Non- Assigned Projects

September 2023



## 1.0 Overview

This guide delineates the coordination and communication protocols between NDOT and FHWA for NEPA reviews not allocated to NDOT under the CE Assignment MOU. It emphasizes coordination frequency, schedule creation and distribution, NEPA coordination, resource-specific coordination, and FHWA's review timelines.

### 1.1 Risk Based Projects

Annually, as part of the Risk Based Project (RBP) Involvement Program, FHWA will identify specific activities within a list of projects that will be the subject of increased oversight. Per the RBP Involvement Touch-Point Guide, an annual meeting between NDOT Environmental and FHWA Program Delivery Team (PDT) will be held to discuss each RBP, and to outline coordination and submittal expectations specific to each project. This is referred to as the "initial meeting" in the RBP Involvement Touch-Point Guide. The PDT will document this coordination point and will provide a draft to NDOT for review prior to finalization. The minutes from the initial meeting plus this guide and the RBP Involvement Touch-Point Guide collectively outline coordination, communication, documentation, and timing expectations per RBP projects that are not assigned to NDOT under CE Assignment MOU.

## 2.0 Coordination Frequency

### 2.1 CEs

At a minimum for CEs, NDOT will coordinate with FHWA at the time the Probable NEPA Class of Action determination is made and at monthly NDOT-FHWA Environmental Process and Procedure Meetings that immediately follow a Project Coordination Meeting (PCM) 30 and PCM 35. At a minimum, the initial coordination will be verbal (e.g., phone call, stand-alone meeting, monthly environmental coordination meeting), so FHWA can hear an overview of the project and ask initial questions. For certain types of projects, FHWA might require closer coordination, such as PCM attendance.

### 2.2 EA and EIS

At the onset of EAs or EISs, NDOT will hold an initial kickoff meeting with FHWA (and no other agencies), to discuss the scope, schedule, outreach, methodology, and level of effort for conducting the NEPA and environmental analysis. This can be concurrent with an initial RBP meeting, when applicable. Additionally, NDOT will give a verbal monthly update for each project at the monthly NDOT-FHWA Environmental Process and Procedure Meeting. If there has been no progress, a short email stating as such would also suffice. Verbal update conversations should be followed with either meeting minutes or an email summary generated by NDOT to ensure parties share a mutual understanding. FHWA will be invited to all public, tribal, and agency meetings. For certain types of projects, FHWA might require closer coordination, such as PCM attendance. As elaborated in Section 3.0 titled "Schedules", NDOT is tasked to regularly update project milestones. For all EA and EIS projects, these updates must be entered into FHWA's internal tracking system, called the Project and Program Application Information System (PAPAI).

## 3.0 Schedules

### 3.1 CEs

Minimum Schedule. With the Probable Class of NEPA Action or prior to the PCM 20, NDOT will provide the Minimum Schedule which consists of the following anticipated milestone dates:

- public outreach (meetings or mailers)
- Section 106 consultation submitted to FHWA
- Section 4(f) Initial Assessment submitted to FHWA
- ESA/NESCA coordination with FHWA
- 1<sup>st</sup> draft CE submitted to FHWA
- PS&E turn-in

NDOT will inform FHWA if these milestones are anticipated to change through regular updates at the NDOT-FHWA Environmental Process and Procedure Meeting.

### 3.2 EA and EIS

Minimum Schedule. With the Probable Class of NEPA Action, NDOT will provide FHWA the Minimum Schedule which consists of the following anticipated milestone dates (if specific dates are not available, an estimated month and year will suffice):

- environmental consultant NTP
- preliminary schedule submitted to FHWA
- agency scoping meeting date
- request to start EA
- NEPA decision document approved by FHWA

Preliminary Schedule. Within six weeks of NTP provided to the environmental consultant, NDOT will provide FHWA the Preliminary Schedule. Additionally, NDOT will provide FHWA an updated Preliminary Schedule prior to a milestone lapsing. In detail, this schedule will give dates to all pre-NEPA activities and their estimated durations, as well as milestones. This includes, but is not limited to:

- early technical resource reviews.
- submittal and FHWA review of the draft purpose and need, study area, and initial range of alternatives.
- milestones for the period of the schedule covering the NEPA phase. (NDOT and FHWA will work together to identify milestones.)
- delivery of the draft Detailed Schedule (discussed below).

The Preliminary Schedule is replaced by the Detailed Schedule once the Start Request is approved (see 4.1 below).

Detailed Schedule. This schedule will demonstrate a commitment to progress to a decision document within 12 months of the federal decision to start an EA (24 months for EISs). NDOT will develop a draft Detailed Schedule prior to early agency or public coordination and update it once coordination is concluded. The draft Detailed Schedule will then be provided to FHWA with submittal of the Start Request (see 4.1 below), becoming final after Start Request approval. This schedule will provide start and end dates for all NEPA activities and milestones. This includes, but

is not limited to, determination to prepare an EA or EIS, agency coordination and reviews, public involvement efforts, final technical resource determinations, and the submittal review, and approval of the draft EA or EIS and decision document.

## 4.0 NEPA Coordination for EAs

### 4.1 Early Scoping and Start

Probable NEPA Class of Action documentation will be submitted to FHWA prior to the PCM 20. FHWA will respond to the Probable NEPA Class of Action documentation, indicating a probable NEPA class for the purposes of environmental review planning and contracting. FHWA concurring with the NDOT Probable NEPA Class of Action documentation does not signify the federal initiation of the EA (i.e., it does not “start the EA clock”).

NDOT will coordinate with FHWA as the purpose and need is refined from the Probable NEPA Class of Action documentation, and as the initial range of alternatives and study area is developed. NDOT will also coordinate with FHWA as preliminary red flags and resources of concern are identified, and as methodology for critical assessments is developed. Prior to early public or agency outreach, NDOT will obtain FHWA preliminary acceptance of these items.

NDOT will invite FHWA to participate in any early public or agency meetings or outreach. NDOT will solicit agency input on the preliminary purpose and need, range of alternatives, study area developed, initial red flags identified, and the draft Detailed Schedule.

Prior to the start of NEPA, technical resource reviews and agency coordination and consultation may be initiated to obtain an understanding of the range of impacts from the alternatives under consideration and to dispense of items that are not of issue within the project’s study area. The technical resource reviews must be carried forward to a commensurate level for all alternatives under consideration at this stage. Supplemental or new reviews may be required after the initiation of the EA process to maintain the integrity of the decision-making process.

Once the early scoping activities identified above are complete, a preliminary purpose and need is developed, the range of alternatives is identified, agencies have had the opportunity to comment on the draft Detailed Schedule, and NDOT has enough preliminary information and commitment to start the EA process, NDOT will submit an EA Start Request- a formal letter to FHWA requesting approval to officially start the EA. The letter will include justification for the start, and the draft Detailed Schedule will be attached. FHWA will respond via official letter, with either an approval to start the EA, or a declination. If declined, reasons will be provided. The date of the signed FHWA letter is the official start date of the EA.

### 4.2 Public Hearing Coordination

Public hearing materials will be provided to FHWA for review and comment. Based on the first review, FHWA will indicate whether additional reviews by FHWA are warranted. Decisions regarding location, date, and time of the hearing will be coordinated with FHWA. Decisions regarding hearing format will be coordinated with FHWA.

## 5.0 NEPA Coordination for EISs

As soon as the need for an EIS is identified, NDOT and FHWA will meet to develop a specific communication and coordination plan.

## 6.0 Resource Specific Coordination

### Coordination

Coordination of the following resources may be accomplished through the monthly NDOT-FHWA Environmental Process and Procedure Meeting.

### Probable NEPA Class of Action

The Probable NEPA Class of Action documentation will be sent to FHWA for review and concurrence prior to the PCM 20.

### Section 4(f)/6(f)

- Section 4(f) Initial Assessment
  - FHWA will review the 4(f) initial assessment form for acceptance. NDOT can elect to submit the form upon its completion, with the draft Official with Jurisdiction (OWJ) documentation, or with the CE. Any comments FHWA provides to the form need to be addressed prior to OWJ coordination, or prior to FHWA NEPA document approval when OWJ coordination is not required.
- Official with Jurisdiction coordination
  - Coordination (verbal or written) will occur with FHWA prior to outreach to the OWJ, to ensure there is a mutual understanding of use, assessment tool, and mitigation strategies.
  - NDOT may elect to send the actual OWJ letter without prior FHWA review of the letter content, but in doing so, understands the risk that FHWA may require supplemental coordination with the OWJ at the time Section 4(f) documentation is reviewed for approval by FHWA.
- Use/Exception
  - NDOT will send the Section 4(f) use determination to FHWA for review, comment, and signature. NDOT can submit this package prior to the NEPA documentation, or with the NEPA documentation. If submitted with the NEPA documentation, NDOT understands FHWA may have questions on the submittal that may delay the NEPA approval.

### Wild and Scenic Rivers/NRI

If the project will occur within the administrative boundaries of a Wild & Scenic River or the vicinity of an Nationwide Rivers Inventory (NRI) River, NDOT will prepare a proposed path forward, and coordinate with FHWA to determine level of involvement.

## Floodplains

If there is a potential for a rise in base flood elevation greater than 1-foot, a non-functionally dependent use, or a longitudinal encroachment where there is a practicable alternative that could avoid the encroachment that isn't being selected, draft proposal and coordinate with FHWA to determine level of involvement, and also provide a copy of the floodplain review memo. Coordination with FHWA is recommended prior to the submittal of the NEPA document, but if not received prior, FHWA will review the floodplain review memo and coordinate at the time of the NEPA submittal.

## Wetlands and WOUS

- NDOT will inform FHWA of their intent and approach to obtaining an approved Jurisdictional Determination (AJD). The location of water resource features (preferably prior to submittal of the NEPA document), and the approach, status, and location of features will be disclosed in the NEPA document.
  - If NDOT plans to submit an AJD to the USACE, obtain prior FHWA concurrence, since this approach can significantly delay project delivery. If NDOT receives an approved JD from the USACE, NDOT will provide it to FHWA.
- If a non-notifying nationwide permit (NWP) is anticipated for the project, NDOT will provide the rationale for the applicability of the non-notifying permit to FHWA, either prior to or with the request for NEPA approval. Discussions with FHWA can occur during a scheduled PCM or monthly FHWA-NDOT Environmental Process and Procedures meeting. If submitted with the NEPA documentation, NDOT understands FHWA may have questions on the submittal that may delay the NEPA approval.
- When a PCN or IP is submitted to the USACE, copy FHWA on the transmittal and provide the NDOT QC checklist.
- If non-WOUS impacts occur for the project, coordination with NDEE is needed. Prior to engaging NDEE, coordinate with FHWA regarding mitigation strategy (e.g., mitigating onsite, at a bank, captured with another activity/project). FHWA will be invited to all meetings with the USACE and/or the Nebraska Department of Environment and Energy (NDEE).

## Section 408

If a Section 408 authorization is needed, NDOT Environmental or Roadway Hydraulics will coordinate with FHWA to determine FHWA level of involvement. Invite FHWA to all USACE meetings.

## Threatened and Endangered Species

- NDOT shall follow the stipulations of the executed Matrix PA regarding responsible parties (NDOT or FHWA) for unassigned project actions.
- If species concerns will be discussed during a tribal, agency, or public meeting, or if informal consultation will occur, NDOT will provide FHWA the opportunity to review and comment on meeting materials (or email content) prior to the meeting/coordination, and will invite FHWA to participate in the meeting (or will copy FHWA on the email transmittal).
- If there are potential wildlife connectivity opportunities or concerns for an unassigned project, NDOT will coordinate with FHWA, either verbally or through writing

## Section 106

- NDOT shall follow the stipulations of the executed Section 106 PA regarding responsible parties (NDOT or FHWA) for unassigned project actions.
- At the onset of the Section 106 process, NDOT will explain their Section 106 approach, the anticipated Area of Potential Effect (APE), and anticipated effects.
- NDOT will notify FHWA of any controversy involving Section 106 as soon as it is identified.
- If historic properties will be discussed during a tribal, agency, or public meeting, NDOT will provide FHWA the opportunity to review and comment on meeting materials prior to the meeting and will invite FHWA to the meeting.

## Hazardous Materials

If the project occurs within a Superfund site, or if there are suspected or potential hazardous materials within the study area with a medium or high potential for impact, coordinate with FHWA regarding level of effort and provide the hazardous materials reports to FHWA for review prior to finalization.

## Noise

If the project is a TYPE I project:

- Inform FHWA and discuss level of effort for the analysis prior to beginning the work.
- Provide FHWA the draft noise report for review.
- Invite FHWA to the noise public outreach meeting and provide the outreach material to FHWA for review.
- Provide the results of the outreach to FHWA, upon completion of the outreach.

## Air

Coordinate with FHWA regarding MSAT approach, for anything other than a Level 1 assessment.

## Environmental Justice

- For all unassigned projects, provide the study area EJ demographic information to FHWA with the Probable NEPA Class of Action Determination.
- If an EJ memo is prepared, provide a draft for FHWA review. Alternatively, the memo can be provided at the time the NEPA document is submitted for review, but this could delay the NEPA review/approval process.

## Public Involvement

- In review of the Probable NEPA Class of Action documentation, FHWA will indicate whether they agree with the PI information and approach provided, and whether FHWA wants to review PI material before it is released. For EAs, see #5, above, regarding public hearing materials.
- If a project-specific PI plan is developed, it will be provided to FHWA for review/concurrence.
- If FHWA did not request review, but NDOT would prefer review, draft PI materials can be provided to FHWA for review and comment prior to issuance.

- FHWA will be invited to public meeting planning discussions and public meetings, and will be provided copies of final outreach materials that were distributed/presented to the public.
- FHWA may request to review responses to public comments prior to issuance. If FHWA did not request review, but NDOT would prefer review, draft responses to public comments can be provided to FHWA for review and comment prior to issuance.
- Additional project-specific PI expectations will be discussed during the RBSO initial meeting and will be captured in those meeting minutes.

## NEPA external coordination

- FHWA level of involvement with Federal, State, or Tribal outreach will be determined based on the RBSO Touch-Point Guide, the content of this Guide, applicable PAs, and the initial meeting minutes.
- For non-RBSO unassigned projects occurring on federal or tribal land, coordinate with FHWA early in the project (preferably with the Probable NEPA Class of Action determination) to determine the FHWA level of involvement in agency coordination.

## NEPA Approval

- FHWA will review and approve all levels of NEPA.

## NEPA Re-Evaluations for projects not yet let for construction

- NDOT will coordinate with FHWA when NDOT identifies a reevaluation will be prepared for a project.
- FHWA will review and approve all re-evaluations where FHWA is the lead agency under the executed 23 USC 326 MOU, regardless of when the original CE was signed.

## Green Sheets & Environmental Certification

- NDOT will provide the final green sheet to FHWA (or notice of availability in OnBase), as well as any revised/updated green sheets (e.g. if changed after a re-evaluation).
- NDOT will provide the environmental certification form to FHWA (or notice of availability in OnBase).

## Change Orders/Plan Revisions/Contract Addendums

- To avoid delays, NDOT should provide FHWA early-notice of change order, plan revision, and contract addendum reevaluation needs. If NDOT is unsure whether a reevaluation is needed for an unassigned activity, coordinate with FHWA.
- Follow the approved Change Order Environmental Review Process to determine when FHWA needs to approve an environmental review for a change order.
- Until an approved Plan Revision guide is in place, FHWA will review and approve all plan revision reevaluations for unassigned projects.
- FHWA will review and approve all contract addendum environmental reevaluations for all unassigned projects.



- For change orders, plan revisions, and contract addendums that require environmental reevaluation, environmental approval from FHWA is required prior to commencing construction.

For project-specific resource topics not included in this guide, coordinate with FHWA.

## 7.0 FHWA Review Timeframes

For unassigned CEs and technical documents, NDOT will assume FHWA will respond to submittals within four weeks. FHWA's goal is to respond to these submittals, on an annual average, within three weeks. However, for planning purposes assume a four-week response timeframe. If FHWA reviews include internal agency subject-matter experts outside the Division, assume an additional two weeks for the review.

For EAs, if the draft of the DEA or FEA is substantially complete (as determined by FHWA) and is submitted to FHWA by the date indicated in the final approved Detailed Schedule, FHWA will (barring unforeseen circumstances) review and comment on the submittal within 2 weeks. If FHWA review outside the Division is required, an additional week (3 weeks total) for FHWA review/comment will be necessary. If a draft of the DEA or FEA is not submitted by the date indicated in the final Detailed Schedule, then FHWA will (barring unforeseen circumstances) review and comment on the submittal within 5 weeks. If the document is not substantially complete, FHWA may either review within 5 weeks or return the document unreviewed.

For EISs, assume FHWA will respond to submittals within six weeks. FHWA's goal is to respond to these submittals, on an annual average, within four weeks. However, for planning purposes assume a six-week response timeframe.

In rare and unusual circumstances NDOT may request expedited reviews, which FHWA will try to accommodate when reasonable and able. When FHWA agrees to expedited reviews, NDOT will provide critical project delivery dates to FHWA. Then, NDOT and FHWA will jointly develop a mutually acceptable schedule of environmental documentation submittal and response dates for both NDOT and FHWA to follow. If the agreed-to submittal dates are not met, it is understood that response dates also will likely not be met.