Environmental Handbook

Reevaluations

This handbook outlines the federal and state requirements for completing a reevaluation of a National Environmental Policy Act (NEPA) or state environmental decision in accordance with 23 CFR 771.129 and 43 TAC 2.85 for state or Federal Highway Administration (FHWA) projects.
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1.0 Introduction

This handbook outlines the project sponsor and department delegate responsibilities and federal and state requirements for completing a reevaluation of a National Environmental Policy Act (NEPA) or state environmental decision in accordance with 23 CFR 771.129 and 43 TAC 2.85. The Texas Department of Transportation (TxDOT) reevaluation process is used to satisfy those requirements. The purpose of the reevaluation is to determine if a project’s original environmental decision remains valid.

2.0 Overview

The project sponsor and department delegate must reevaluate a project to determine whether or not an environmental decision remains valid under circumstances listed in 43 TAC 2.85 and 23 CFR 771.129 and explained in Section 3.0, including after approval of the record of decision (ROD), finding of no significant impact (FONSI), or categorical exclusion (CE) determination, and for some draft and final environmental impact statements (EISs). The reevaluation must address the full limits of the original NEPA and state environmental approval.

The TxDOT reevaluation process is used to conduct any required consultation, determine if the environmental decision remains valid and record the outcome. There are two types of reevaluations, a “consultation reevaluation,” which may be recorded in TxDOT’s Environmental Compliance Oversight System (“ECOS”) or by way of a memorandum (memo) appended to the project file, and a “documented reevaluation,” which is prepared using the Documented Reevaluation Checklist (DRC).

For any project changes that could affect the continued validity of the environmental decision, a consultation reevaluation is required, unless the project sponsor determines otherwise and elects to proceed directly to a documented reevaluation. See Section 5 for a detailed description of the process for preparing a documented reevaluation.

The decision to prepare a DRC for a given project change must be based on project-specific facts and circumstances as described by 23 CFR 771.129(a),(b) and 43 TAC 2.85(b)(1),(2). If any additional environmental work (studies, surveys, or public involvement) is required as a result of a project change, a DRC must be completed. Ultimately, the decision should be based on the following:

- The extent to which new or different impacts are unknown or uncertain due to a project change or the passage of time since the environmental decision was made
- The degree to which those new or different impacts could affect the validity of the environmental decision.

Consultative reevaluations are conducted between the project sponsor and the Environmental Affairs Division (ENV) when there is a question regarding the appropriateness to prepare a DRC. When ENV determines that the project changes do not warrant preparation of a DRC, the project sponsor may be directed to record the outcome of the consultation reevaluation by way of a memo and append it to the project file. See Section 4 for a detailed description of the process for completing a consultative reevaluation.

3.0 Applicable Projects

Any Federal Highway Administration (FHWA) or state project approved under a CE determination, FONSI, or ROD under FHWA’s rule implementing the National Environmental Policy Act (NEPA) (23 CFR
or 43 TAC 2 is subject to a reevaluation under the circumstances indicated below. Projects approved by another lead agency must be reevaluated according to the other lead agency’s procedures, if any. The reevaluation process also cannot be used if the project purpose and need changes. The purpose and need for a proposed project may not be changed once a project decision has been made without a new or amended environmental decision. Also, the reevaluation process may not be used for a change from state to federal funding.

When reevaluating a CE Determination, the project sponsor must consider if any proposed changes to the project would result in the project no longer meeting the specific (c)-List or (d)-List CE criterion. If the project would no longer meet the original (c)-List or (d)-List criterion, the project cannot be reevaluated and must be reclassified. The original NEPA decision is no longer valid and the CE Determination must be re-opened. The approval date recorded in ECOS must also be removed and a new date entered once the project is approved under the new classification.

For example, if a project received a CE Determination under the c(22) criterion, but a change to the project required a minor amount of additional right-of-way (ROW), the project would no longer meet the criterion for a c(22). The project could not be reevaluated and must be reclassified under a different CE criterion or Environmental Assessment, as appropriate, with a new environmental decision required.

### 3.1 Circumstances that Require a Documented Reevaluation Checklist (DRC)

As explained above, a documented reevaluation must be prepared using the DRC whenever determined to be appropriate by ENV following a consultation reevaluation. Additionally, the following two circumstances always require a documented reevaluation to be prepared using the DRC.

#### 3.1.1 Draft Environmental Impact Statement (DEIS)

23 CFR 771.129(a) and 43 TAC 2.85(b)(1) state that the project sponsor shall prepare a written or documented reevaluation for a Draft Environmental Impact Statements (DEIS) when an acceptable (i.e. administratively complete) Final Environmental Impact Statement (FEIS)/Record of Decision is not submitted to the department delegate within three years from the date of the DEIS circulation. The purpose of the reevaluation is to determine if a supplement to the DEIS, a new DEIS and/or any additional supporting documentation are required. A supplemental DEIS is required when a new significant impact is identified.

#### 3.1.2 Final Environmental Impact Statement (FEIS)

A written or documented reevaluation of a FEIS is required when approvals are needed for major steps – such as 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 FEIS, FEIS supplement, or the last major approval or grant (23 CFR 771.129(b) and 43 TAC 2.85(b)(2)).

### 3.2 Circumstances that Require a Consultation Reevaluation and May Also Require a Documented Reevaluation Checklist (DRC)

The following are examples of circumstances that always require at least a consultation reevaluation. The types of changes listed below include changes that may occur during construction.
3.2.1 Project Design Changes
Changes occurred in the proposed project design between the environmental decision and subsequent approvals, including approval of change orders.

Examples of such changes include:
- Any change to the project limits
- Changes that result in additional ROW or change in ROW configuration
- Changes that result in additional temporary or permanent easements or change in easement configuration
- Changes in requirements for displacements
- Adverse changes in access to real property

3.2.2 Affected Environment Changes
Changes have occurred in the affected environment during the period between the environmental decision and project construction.

Examples of such changes include:
- Substantial changes to the projected average daily traffic
- Substantial changes to land use or habitat since the original project approval
- Substantial changes in population since the original project approval

3.2.3 Construction has not begun within three years of the environmental decision or there has been a three-year suspension of all construction activities
If construction has not begun within three years of a CE determination, FONSI, or ROD, or if there has been a three-year suspension in all construction activities, then a consultation reevaluation must be conducted prior to commencing or re-commencing of construction.

3.3 Circumstances that Do Not Require a Consultation Reevaluation or a Documented Reevaluation Checklist (DRC)
Absent the circumstances described by 23 CFR 771.129(a) & (b) and 43 TAC 2.85(b), neither type of reevaluation is necessary if the following circumstances apply:
- No changes in the proposed project design or scope have occurred between the environmental decision and subsequent approvals, including approval of change orders
- No changes have occurred in the affected environment during the period between the environmental decision and the end of project construction
- Construction has begun within three years of the environmental clearance and construction activities have not been suspended for more than three consecutive years

4.0 Consultation Reevaluation Process
Consultation reevaluations for all projects approved under a CE determination, FONSI, or ROD must be coordinated with ENV. The project sponsor consults with ENV via email and phone to discuss the project changes. ENV determines whether or not a DRC is warranted.
**Reevaluations**

**Step One** – Project sponsor sends the Consultation Reevaluation Memorandum via email to ENV to initiate the consultation. The template for the Consultation Reevaluation Memorandum is available in the NEPA and Project Development Toolkit and includes fields for the following information in order to initiate the discussion:


- CSJ
- project limits
- type of clearance
- when the project was originally cleared
- brief description of the project
- the length of the project
- description of the proposed changes
- amount of additional ROW or easements
- indicate if there are any relocations or displacements
- identify any general environmental issues or concerns
- identify any issues related to Section 106 or Section 4(f)
- identify any issues related to the Endangered Species Act
- identify any issues related to native American tribal consultation

**Step Two** - A phone call may be conducted with ENV and the project sponsor to discuss the project in detail.

**Step Three** – If it is determined that a DRC is not needed, ENV will sign the Consultation Reevaluation Memorandum indicating that “the original environmental decision remains valid” and email it to the District to upload to the project file. Please reference the Detailed Steps in Texas ECOS for Reevaluations for instructions on documenting consultation reevaluations in ECOS.

If it is determined that a documented reevaluation is required, proceed to prepare the Documented Reevaluation Checklist as described in Section 5.0.

**5.0 Documented Reevaluation Process**

For TxDOT-sponsored CE projects, the documented reevaluation process is internal to the district. For local government-sponsored CE projects, the district is the department delegate. For environmental assessments (EAs) and environmental impact statements (EISs), ENV is the department delegate.

The department delegate determines the outcome based on the content of the DRC, supporting documentation, and project specific information. Much of the substance of the consultation process is embedded in the programming of the DRC. Refer to the TxDOT Guidance for Preparing Reevaluation Documentation for additional details.

**Step One** – The project sponsor identifies any relevant changes that occurred after the environmental decision and completes Sections I-IV of the DRC. The DRC is automated, so, if no further evaluation is required after completing Sections I-IV, then Sections V-XII are hidden. If the DRC form indicates that
Sections V-XII must also be completed, then complete Sections V-XII. Sign and submit the complete form to the department delegate.

**Step Two** — Once received, the department delegate completes the administrative completeness review. Administrative completeness is met for a DRC if the checklist is completely filled out. Once the department delegate determines that the DRC is administratively complete, they either begin the technical review or designate a reviewer for the DRC.

The department delegate determines which of the outcomes listed in Section 5.1 is appropriate, signs the form, and returns it to the project sponsor.

**Step Three** — The project sponsor uploads the form and any supporting documentation to the ECOS. If the project sponsor is a local government, the project sponsor submits the DRC and any supporting documentation to the district and the district uploads the documentation to the ECOS. Please reference the ECOS Detailed Steps for completing the required documentation for documented reevaluations in ECOS.

### 5.1 Documented Reevaluation Process Outcomes

The reevaluation process will have one of four possible outcomes determined by the department delegate and based on the content of the DRC, supporting documentation, and project specifics.

- Based on Sections I-IV of the DRC, the original decision is still valid; no further evaluation is required.
- Based on the reevaluation in Sections V-XII of the DRC, the original environmental decision is valid.
- Based on the reevaluation in Sections V-XII of the DRC, the original environmental decision does not remain valid, the project must be reclassified, and a new environmental decision must be obtained. For example, the department delegate could determine that the project needs an EA rather than a CE.
- Based on the reevaluation in Sections V-XII of the DRC, the original environmental decision does not remain valid, and additional work is necessary prior to proceeding. For example, the department delegate could determine that an EIS needs a supplemental EIS.

### 5.2 Responsible Parties

#### 5.2.1 Project Sponsor

The project sponsor is responsible for the following:

- Completing the DRC;
- Completing any additional studies, coordination, or public involvement required as a result of a design change or change in project setting;
- Submitting the DRC to the department delegate for review;
- Providing any additional documentation as requested by the department delegate; and
- Including all documentation in the project file.

#### 5.2.2 Department Delegate

The department delegate is responsible for the following:
• Completing the administrative completeness review.
• Determining if all required documentation associated with completing the DRC has been included (i.e. technical reports; coordination; public involvement);
• Determining if all required, additional coordination and/or public involvement has been completed;
• Recording a decision using the DRC; and
• Providing a copy of the signed determination to the project sponsor.

6.0 Special Circumstances When a Reevaluation is Not Necessary

There are some instances when completing a reevaluation is not necessary. This may include when it is already known that a project must be reclassified or if the magnitude of the change is large. In these cases, it is not necessary to complete a reevaluation to document this determination. The project sponsor may proceed to reclassify the project, or in the case of an EIS, prepare a supplemental document and complete a new approval. If a project is reclassified, the original NEPA decision is no longer valid and must be removed from the project record. The approval date recorded in ECOS must also be removed and a new date entered once the project is approved under the new classification.

7.0 Reevaluation versus a New Environmental Clearance

Sometimes it is not obvious whether a proposed action is part of a previously cleared project and therefore should be covered with a reevaluation, or if it is really its own new project, for which a new environmental clearance should be issued. Below is a non-exhaustive list of eight situations involving a new design change or some other change concerning the project that, absent some mitigating consideration, would normally require issuance of a new CE, EA, or EIS as opposed to a reevaluation.

1. The entire original project has already been built.
   It does not make sense to “reevaluate” a CE, EA, or EIS once the project has been completely constructed. NEPA review is intended to be “pre-decisional.” Once a project has been constructed, any associated environmental impacts have already occurred, and it is too late to “reevaluate” whether the conclusion of the CE, EA, or EIS remains accurate. Further work on the facility will require its own CE, EA, or EIS.

2. The entire original project has not yet been built, but it has been substantially completed.
   Again, a primary purpose of NEPA review is to consider the potential environmental consequences before undertaking an action. If a project has been built-out to the point that most of its environmental consequences have already occurred and are, at this point, irreversible, then it does not make sense to “reevaluate” the original review in light of a new project change, as there is little chance that TxDOT will change its mind and choose not to complete the project.
   Whether so much of the project has been built to preclude clearance of a change with a reevaluation is, to some degree, a matter of professional judgment. However, there are some clear-cut guidelines. For example, if the project is 90% completed, then there is probably little value in “reevaluating” the original NEPA review. On the other hand, if the project is only 10% completed, then a reevaluation may be appropriate to review a proposed design change.
3. The entire original project has not yet been substantially completed, but the change affects a part of the project that is completely finished.

This is a variation on the situation described immediately above. If, for example, the first two miles of a 10-mile widening project are completely constructed, and then a re-design of an intersection somewhere on the completed two-mile section is proposed, then that intersection re-design shall be considered a new project for purposes of environmental review.

4. More than 10 years have passed since the original CE, EA, or EIS.

Over time, the environmental studies in a CE, EA, or EIS may become stale, incomplete, or irrelevant due to the passage of time, intervening events, turnover in the local population, and other factors. While there is no exact expiration date for a CE, EA, or EIS, it is a good rule of thumb that after 10 years have passed since the original CE, EA, or EIS, any new project changes shall be cleared with their own, new environmental clearance, rather than “reevaluating” the 10-year-old CE, EA, or EIS.

5. The proposed action would fundamentally change the nature of the project or the number of individuals or businesses impacted.

Again, this is largely a matter of degree and professional judgment, but there are some obvious examples. If the original project was to add a left-turn lane with less than one acre of new ROW, and prior to construction it is proposed that the project also add a divided median at that intersection, then a reevaluation might be appropriate. But if the proposed project change was to add a new travel lane for a couple of miles in addition to the left turn lane at the intersection, this would require its own environmental clearance, not a reevaluation.

Similarly, if the original project was a 1-mile widening project, and it is later proposed to be lengthened into a 10-mile widening project, then a new environmental clearance shall be issued, as the 9-mile extension would potentially impact such a greater number of individuals and businesses as compared to the original project.

6. The cumulative effect of multiple design changes have fundamentally changed the nature of the project.

Sometimes there are multiple design changes, each of which are relatively minor, but which, collectively, sufficiently transform the project so as to require a new environmental clearance. This is the “death by a thousand cuts” situation. For example, a project that starts out being one mile long cannot be transformed into a ten-mile long project with nine reevaluations, each of which only extends the length of the project one mile. Somewhere along the line, it must be recognized that the extension of the original project is really its own new project.

7. There is substantial public interest in the proposed change and its potential environmental impacts.

There could be a situation in which a proposed change to a project, in and of itself, is of such substantial public interest that it warrants its own environmental clearance. For example, if it is determined that the change, on its own, would require a public hearing, then it usually makes sense to evaluate the change in its own CE, EA, or EIS.

8. The purpose and need for the proposed action is different than the purpose and need of the project originally evaluated in the CE, EA, or EIS.

This could come up when the proposed action is a new feature that stands alone and serves its own purpose.
8.0 Glossary

Categorical Exclusion (CE) – Documentation prepared for a project that involves actions that would result in no significant environmental impacts. Specifically, these actions do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, or historic resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on traffic patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impact.

Department Delegate – The district, division, or other operational unit of TxDOT, designated by the executive director, that has the authority to review and approve on TxDOT’s behalf work conducted under 23 CFR 771 or 43 TAC 2, including an environmental review document.

Determination of Categorical Exclusion (CE) – Also referred to as a CE determination, this is a documented determination that a proposed project meets the requirements of a specific type of CE listed in 23 CFR 771.117(c) or (d).

Environmental Assessment (EA) – The document prepared for a project when the significance of environmental impacts is not clearly exhibited. The EA may result in either a FONSI or escalation to an EIS project class.

Environmental Decision – This is either a determination of CE, a FONSI, or a ROD.

Environmental Impact Statement (EIS) – Document prepared for a project when significant impacts are evident or identified in an EA. The environmental decision for an EIS is issued as a ROD.

Project File – The project file is a compilation of correspondence, notices, background reports, and environmental review documents that provide a record of the environmental review, public involvement, and decision-making processes related to the project. The official project file is uploaded and recorded in ECOS.

Project Sponsor – As defined in 43 TAC 2.7, the project sponsor accepts the responsibility for preparing the environmental review document or CE documentation and performing any related tasks outlined in the project scope. A TxDOT district, division, or office or a municipality, county, group of adjoining counties, regional mobility authority, local government corporation, or transportation corporation may be a project sponsor. Private entities and other types of local government entities may not serve as project sponsors.

Reevaluation – An evaluation to establish whether or not an environmental decision remains valid or whether or not additional work is needed.

Texas Environmental Compliance Oversight System (ECOS) – This is TxDOT’s electronic system for managing the environmental process. ECOS is TxDOT’s file of record for environmental compliance under state and federal laws.

TxDOT Reevaluation Process – This process satisfies the requirements of 43 TAC 2.85 and 23 CFR 771.129 for conducting, if required, a reevaluation.
### 9.0 Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CE</td>
<td>Categorical Exclusion</td>
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<td>CFR</td>
<td>Code of Federal Regulations</td>
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<td>DRC</td>
<td>Documented Reevaluation Checklist</td>
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<td>EA</td>
<td>Environmental Assessment</td>
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<td>Draft Environmental Impact Statement</td>
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<td>ECOS</td>
<td>Environmental Compliance Oversight System</td>
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<td>Final Environmental Impact Statement</td>
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<td>FHWA</td>
<td>Federal Highway Administration</td>
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<td>FONSI</td>
<td>Finding of No Significant Impact</td>
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<td>National Environmental Policy Act</td>
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<td>ROD</td>
<td>Record of Decision</td>
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<td>Texas Administrative Code</td>
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Appendix A: Revision History

The following table shows the revision history for this handbook.

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<thead>
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<th>Effective Date Month, Year</th>
<th>Reason for and Description of Change</th>
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<td>Version 4 was released</td>
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<td>the need for a consultation reevaluation if construction has not begun within five years of the CE, ROD, or FONSI</td>
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