Eco-Logical Webinar Series



Developing Programmatic Agreements and Consultations Step 7 of the Integrated Eco-Logical Framework

Presenters (ESA Consultation)

Cindy Callahan, FHWA WA/OR Divisions

Marc Liverman, NOAA Fisheries West Coast Region

John Raasch, Oregon Department of Transportation

Presenters (Army Corp LOP)

Danny Peake, Kentucky Transportation Cabinet



The National Transportation Systems Center



U.S. Department of Transportation Federal Highway Administration

Integrated Eco-Logical Framework (IEF)

- Process to guide transportation and resource specialists in the integration of transportation and ecological decisionmaking.
- Helps identify potential impacts to environmental resources very early in the planning process.

Steps of the IEF (and the Eco-Logical approach)

- 1. Build and strengthen collaborative partnerships
- 2. Integrate natural environment plans
- 3. Create a Regional Ecosystem Framework (REF)
- 4. Assess effects on conservation objectives
- 5. Establish and prioritize ecological actions
- 6. Develop crediting strategy

7. Develop programmatic consultation, biological opinion, or permit

- 8. Implement agreements, adaptive management, and deliver projects
- 9. Update REF

Partner Share Data Analyze Effects

Identify key sites and actions

Document Implement Evaluate

The Oregon Federal Aid Highway Programmatic Endangered Species Act Consultation



Cindy Callahan, Environmental Specialist/Biologist Federal Highway Administration, Washington/Oregon Divisions



Marc Liverman, Willamette Branch Chief NOAA Fisheries West Coast Region



John Raasch, Environmental Resources Unit Manager Oregon Department of Transportation

Presentation Topics

- Oregon ESA Consultation Challenges
- Past Consultation Approaches
- FAHP Consultation Components
- FAHP Results
- Questions?



Oregon ESA Consultation Challenges

Numerous Listed Species/Critical Habitats

> NMFS: 17 species, 16 critical habitats

USFWS: 19 species, 11 critical habitats



Oregon ESA Consultation Challenges (cont.)





Oregon ESA Consultation Challenges (cont.)

Individual Formal Consultations

- Costly (BAs range \$15,000.00 to \$100,000+)
- Time Consuming
 - 4 to 6 months to prepare BA
 - At least 200 days in consultation
 - Redundant effects analysis for similar actions
- Terms and Conditions Variability
 - Unpredictable Requirements
 - Constructability Issues

Past Consultation Approaches



Standard Local Operating Procedures for Endangered Species (SLOPES IV)

- 2008 US Army Corps of Engineers Programmatic
- Only for Corps Nexus Projects (otherwise individual consultation)
 - Roads, Culverts, Bridges, Utility Lines
 - Does Not Cover Stormwater Effect-Only Projects
- FHWA was not Co-action agency

Past Consultation Approaches (cont.)



Standard Local Operating Procedures for Endangered Species (SLOPES IV)

- Maintain or Improve Environmental Baseline
- Project Notification Form
- Variance Process
- No Online Dashboard

Federal Aid Highway Programmatic (FAHP)

Approach

- 1 BA for NOAA and USFWS, Statewide
- Largely Based on SLOPES IV
- Any Project with FHWA Funds
- Either 5-year (USFWS) or Indefinite Lifespan (NMFS)
- Address all types of activities with very specific exclusions (EIS projects, new stream crossings, etc.)

FAHP (cont.)

Goals

- Facilitate Efficient ESA Compliance
- Provide Predictability to Project Teams
- Avoid and Minimize Adverse Impacts to Species/CH
- Make Contribution Towards Species Recovery (section 7(a) 1 responsibility)
- Reduce Agencies' Workload

FAHP (cont.)

Reporting

- Electronic Project Notification Form
- Monitoring Forms
- Database Accessible to FHWA and Services
- Electronic Dashboard by Project



FAHP (cont.)

Timeline

- BA Development late 2010-October 2011
- Consultation Initiated October 2011
- Signed Biological Opinion (NMFS) Received November 2012
- Program Rollout Spring/Summer 2013

FAHP Results

Two pathway process, NMFS review, or NMFS notification only (FHWA review)

Over 52 projects have utilized FAHP

Increased conservation outcomes

95% Federal Aid program covered

50% reduction in BA prep time/cost

85% reduction in review time (200 to 12 [FHWA] to 45 [NMFS] days)

NMFS liaison staffing reduced from 3 FTE's to 1

Kentucky's Letter of Permission Process



Danny R. Peake Ecology and Permitting Section KYTC

Kentucky's Letter Of Permission Process

•KYTC began meeting in 2005 with the USACE, the PN was issued in 2007 and we have been using the LOP for the past 6 years.

•It was developed to permit MOST KYTC projects that would have been previously permitted with an Individual Permit using a new streamlined process.

•For example: projects that have impacts to streams that exceed 500' of loss or wetland impacts exceeding 0.5 acre of loss.



Public Notice Public Not LOP No. 2 Please ad U.S. Army ATTN: Dr

US Army Corps of Engineers Louisville, Huntington, Nashville and Memphis Districts

	Curieties Date
Date Issued.	Expiration Date.
3 00.07	I NOV U/
d inquiries to:	
ouisville District	
CELRL-OP-FS	
	Phone: (502)315-6687
	Date Issued: 3 Oct 07 d Inquiries to: ouisville District CELRL-OP-FS

NOTICE ANNOUNCING ISSUANCE OF A LETTER OF PERMISSION

This notice announces that on October 3, 2007, the Louisville, Nashville, Huntington and Memphis Districts U.S. Army Corps of Engineers (the Districts) issued a Letter of Permission (LOP), in accordance with Title 33 CFR 325.5 (b)(2), published in the Federal Register, Volume 51, No. 219, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). The LOP also supports the initiative directed by Section 1309 of the Transportation Equity Act for the 21*t Century (TEA-21) to streamline the review process for transportation projects.

COVERAGE AREA: All "waters of the United States" (U.S.) in the Commonwealth of Kentucky.

P.O. Box 5

Louisville.

CATEGORIES OF ACTIVITY COVERED BY THE LOP:

The LOP authorizes all activities performed on any public road by state and local governments and/or their agents. These activities include temporary and permanent work, structures, and discharges of dredged or fill material commonly associated with linear transportation projects that impact "waters of the U.S." Some examples include:

1. New roadway alignments;

2. Roadway realignments;

3. Construction of roadway embankments and bridge abutments;

4. Installation of additional traffic lanes to existing roadways;

5. Upgrading and/or maintenance of bridges and other stream-crossing facilities;

6. Construction of staging areas, borrow and disposal sites;

7. Stream bank stabilization;

8. Stream relocation;

9. Dredging, debris removal and excavation associated with the above activities:

10. General maintenance activities associated with linear transportation facilities; and

11. Project-specific mitigation activities.

TERMS OF THE AGREEMENT

<u>KYTC MUST</u>: AGREE TO PROVIDE MORE INFORMATION THAN WHAT IS REQUIRED FOR A TYPICAL INDIVIDUAL PERMIT

USACE MUST: AGREE TO PROCESS THE APPLICATION USING A STRICT TIMELINE OF 120 DAYS

<u>GOALS</u>: STREAMLINE THE PERMITTING PROCESS, ELIMINATE JOINT IP/NWP, ADDRESS CUMULATIVE IMPACTS, ENHANCE AGENCY COORDINATION



What challenges existed before the programmatic agreement, and how did implementing the programmatic help improve the transportation project development process?:

•Time.

• Pre-LOP, Individual permits took 18 to 36 months - some even longer - to be issued (total time from submittal to issue date)



Eggner's Ferry Bridge accident, Kentucky Lake, 2012

After LOP: 4 to 9 months (total time from pre-application to issue date)



Artist rendering of new Eggner's Ferry bridge How have relationships between transportation and resource partners evolved during the development of the programmatic and its implementation?:



What is the process for a transportation project receiving a permit under this programmatic?:

- a. Application Preparation
- b. Pre-Application Submittal
- c. Site Visit (all Agencies are invited)
- d. Complete Application Submittal
- e. Agency coordination/agency solicitation for comments
- f. KYTC address agency comments
- g. Permit issued



a. Application Preparation

b. Pre-Application Submittal

•Impacts may not exceed 7 cumulative acres

- No impacts to water supply sources allowed;
- •Controversial projects shall not be permitted by the LOP
- •Not able to use if project "may affect" a listed species, critical habitat or historic resource



Louisville Bridges project – example of a controversial project c. Site Visit; Agencies invited:

•USACE

•KDOW

•SHPO

•EPA

•KDFWR

•USFWS



d. Complete Application Submittal (**The USACOE has 120 days to process**)

Items required for a complete application:

- •Cover letter
- •Permit application form
- •Project Vicinity Map, alignment map, impact station maps
- •Summary of Section 404/401 Impacts
- •Impact Summary Table
- Photos
- •Rapid Protocol Bio-assessment Sheets
- •Preliminary Jurisdictional Form
- •LOP Assessment of Environmental, Social and Other Factors
- •LOP Checklist
- •Alternatives Analysis, project description, purpose and need statement and mitigation plan
- •Sec 7 and 106 Clearance
- •WQC
- Roadway plans
- •Waste site plans

e. Agency coordination/agency solicitation for comments (21 day PCN)

f. KYTC address agency comments

g. Permit issuance

22 MAR 112 ARTS 403 5



DEPARTMENT OF THE ARMY U.S. ARMY ENGINEER DISTRICT, LOUISVILLE CORPS OF ENGINEERS P.O. BOX 59 LOUISVILLE KY 40201-0059 FAX: (502) 315-6677 http://www.lkl.usea.amv.nil/

March 20, 2012

Operations Division Regulatory Branch (South) ID No. LRL-2009-1284-jct

Mr. David Waldner, Director Kentucky Transportation Cabinet, DEA 200 Mero Street, 5th Floor Frankfort, KY 40622

Dear Mr. Waldner:

This is in response to your request for authorization to place 135 linear feet of rip-rap along each bank of Lander's Creek to protect a newly constructed bridge and to create a 4-foot flat bottom ditch that would impact an additional 223 linear feet of an unnamed tributary to Lander's Creek. The information supplied by you was reviewed to determine whether a Department of the Army (DA) permit will be required under the provisions of Section 404 of the Clean Water Act.

Your project is considered a discharge of backfill or bedding material for a road crossing. The project is authorized under the provisions of 33 CFR 330 A Nationwide Permit (NWP) No. 14, <u>Linear</u> <u>Transportation Projects</u>, as published in the Federal Register February 21, 2012. Under the provisions of this authorization you must comply with the enclosed Terms and General Conditions for Nationwide Permit No. 14 and the following Special Conditions:

1.) The permittee shall adhere to the plans and conditions included in the 13 January 2012 permit application.

2.) The permittee shall provide receipt of payment from the Kentucky Department of Fish and Wildlife Resources Stream and Wetland Mitigation Trust Fund for the purchase of mitigation credits, in the amount of \$85,476.00. The Corps must receive receipt of payment from KDFWR prior to the discharge of fill into "waters of the United States.

You must also comply with the enclosed Water Quality Certification (WQC) Conditions for Nationwide Permit No. 14 dated March 19, 2012, issued by the Kentucky Division of Water (KDOW). Once you obtain your certification, or if no application was required, you may proceed with the project without further contact or verification from us.

This decision is valid for 2 years from the date of this letter. The enclosed Compliance Certification should be signed and returned when the project is completed. If your project is not completed within this 2-year period or if your project is modified, you must contact us for another permit determination. Note that we also perform periodic



Can you provide examples of specific projects that have benefitted from the implementation of the programmatic?:

Not really, since every project that has been permitted using the LOP process has benefited due to the quickness of the process. It has been especially beneficial for projects that "surprisingly" pop up with quick letting dates



What insights have you gained from your experience implementing this programmatic or from evaluation that would be useful to share with peer transportation agencies and their partners?:

•Side benefits such as re-examining our application process

- •Relationship building w/in agency and interagency,
- •This agreement <u>was</u> worth the risk of time used in implementation

•KYTC as an agency is more aware of the needs of what the USACE PMs need in order to issue a permit which allows us to submit a better application – which should allow for quicker application review





Danny.Peake@ky.gov

Environmental factors

Threatened of endangered species **Economics Aesthetics** Special aquatic sites **Historic properties** Fish and wildlife values Flood hazards Flood plain values Land use classification Navigation Shore erosion Recreation Existing and potential water supplies Water quality Energy needs Safety Food and fiber production Mineral needs Consideration of property ownership

LOP Transportation Pro	ojects Complete .		
Project Name: 5-395 KY 44	Corps I. D.		Corps PM:
Applicant: KYTC	Agent:		KTC Item No. 5-395
Application Information		Complete	ed
	N/A	Yes	No
D.A. Application w/signature		submitted	
Alt. Analysis		submitted	
Maps		submitted	
Agency Coordination			
Site Visit			
Approved JD		submitted	
Section 106 Concurrence		10/31/11 4/13/12	
Section 7 Concurrence		5/31/12	Indiana bat pending approval of MOA
Wetland Data Sheets	X		
Stream Functional		6/15/11	
Assessment/RBP Sneets		8/23/12	
Final Mitigation Plan		submitted	
Cumulative Impacts Table		submitted	
Other		submitted	
Other.	<u>^</u>		
	1		
Public Interest/Environmental	Effects	Ad	dressed
Public Interest/Environmental	Effects N/A	Ado	dressed No
Public Interest/Environmental Economics	Effects N/A	Ad Yes 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics	Effects N/A	Ado Yes 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality Energy Needs	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality Energy Needs Safety	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality Energy Needs Safety Ecod and Eiber Production	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality Energy Needs Safety Food and Fiber Production Mineral Needs	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality Energy Needs Safety Food and Fiber Production Mineral Needs Consideration of Property	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	I No
Public Interest/Environmental Economics Aesthetics Special Aquatic Sites Fish and Wildlife Values Flood Hazards Land Use Classification Navigation Shore Erosion/Accretion Patterns Recreation Existing and Potential Water Supplies, Conservation Water Quality Energy Needs Safety Food and Fiber Production Mineral Needs Consideration of Property Ownership	Effects N/A	Add Yes 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012 8/27/2012	dressed No