

Index-Galena Road - Regulatory Requirements

Federal Implementation/Issuance

National Environmental Policy Act (NEPA) Review

The Index-Galena Milepost 6.4-6.9 project has applied for federal funding from the Federal Highway Administration (FHWA) through its Emergency Relief (ER) program. This is a program from the Highway Trust Fund used for the repair or reconstruction of roadways which have suffered damage as a result of natural disasters or catastrophic failures from an external cause. Federal funding requires the project to comply with the National Environmental Policy Act (NEPA) Emergency repairs are normally classified as NEPA categorical exclusions under 23 CFR 771.117 (c)(9) or 23 CFR 771.117 (d).

Based on preliminary coordination with FHWA and WSDOT, there were plans to prepare documentation for the project equal to the review required for a Documented Categorical Exclusion (DCE), which is a streamlined NEPA review.

However, FHWA in August 2011 determined that a NEPA Environmental Assessment (NEPA EA) should be prepared instead of a DCE. The NEPA EA will provide a more comprehensive review of the project with greater procedural requirements and provide a document for public review and comment.

Due to the location and associated impacts to the Mount Baker-Snoqualmie National Forest, the U.S. Forest Service will be a cooperating agency with FHWA for the NEPA environmental review process. Environmental analysis for the project will also be required to comply with US Forest Service regulations.

Northwest Forest Plan

The Northwest Forest Plan presents a vision for a sustainable future for Federal natural resources [lands managed by the USDA Forest Service and the US Department of the Interior (USDI) Bureau of Land Management (BLM)] and for local timber dependent communities within the range of the northern spotted owl. The Plan encompasses all or portions of 17 National Forests in Washington, Oregon, and California and BLM managed public land in Oregon and California.

Implementation of the Northwest Forest Plan is required for actions on lands managed by the Mount Baker-Snoqualmie National Forest. The *Survey and Management Program* of the Plan requires surveys of biological resources in the project area. U.S. Forest Service approvals are required for roadway construction and realignment of Index-Galena Road onto forest lands outside of the existing roadway easement.

The Index-Galena project must be consistent with all applicable standards and guidelines of the Forest Plan, the 1994 Record of Decision and the 2005 Record of Decision. These three documents provide specific standards and guidelines pertaining to the North Fork Skykomish key watershed, the riparian reserve habitat, the matrix management area, visual quality, the recommended Recreation River, and invasive plant prevention – all of which must be addressed for new road construction.

Clean Water Act Section 404 Permit (Corps Permit)

Under Section 404 of the Clean Water Act (CWA), a US Army Corps of Engineers permit is required for any discharge of dredged or fill material waterward of the ordinary high water mark in waters of the United States, including special aquatic sites such as wetlands (33 U.S.C. §1344). In Washington State, a Section 404 permit is typically applied for with a Joint Aquatic Resources Permits Application (JARPA) and requires drawings that meet Corps specifications and other documentation. Processing for receipt of the Section 404 permit typically requires up to 6 months for a nationwide permit and up to 12 months or more for an individual permit.

For the Index-Galena Road project, the proposed project elements include both placement and removal of fill materials within the ordinary high water mark (OHWM) of the North Fork Skykomish River, and within wetlands located along the proposed alignment. Thus the project will be subject to Section 404 of the Clean Water Act (CWA), and require a Corps permit.

Endangered Species Act Section 7 (and Essential Fish Habitat) Consultation

Section 7 of the Endangered Species Act (ESA) requires federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of designated critical habitat (16 U.S.C.1536 (a)(2)). In addition, when applicable, federal agencies must also evaluate potential impacts to Essential Fish Habitat (EFH) under the Magnusson-Stevens Fishery Conservation and Management Act (as amended by the Sustainable Fisheries Act of 1996, Public Law 104-267). These provisions also apply to local government activities in which federal funding and/or authorization(s) are involved.

To meet ESA requirements, agencies review the likely effects of their projects in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS), as applicable. For actions that have no adverse effect on listed species, a No Effect Letter (NEL) is prepared. For actions that are likely to adversely affect listed species or habitat, a biological assessment (BA) is prepared to analyze these effects. If applicable, a separate evaluation of the expected project effects on EFH is included with the BA. Depending on the particular species, NMFS and USFWS will be responsible for protection of the species in question and will review the BA and EFH assessments.

The type of response from NMFS and USFWS will depend on the level of impacts to listed species. The agencies will specify measures that the county must take to avoid and/or minimize harm to the species. If fish species will not likely be adversely affected as part of the project, an informal consultation is conducted, and the process can last up to six months or longer after submission of a BA. If fish species are likely to be adversely affected as part of the project, a formal consultation is required, and the process could potentially require up to twelve months or longer after submission of a BA. Species lists prepared in analysis of project effects is considered current only for six months, and must be updated after this time period has passed.

A federal nexus will exist for this project due to FHWA funding and the need for a Section 404 permit from the Corps. Compliance with Section 7 of the Endangered Species Act will be required.

National Historic Preservation Act Section 106 Review

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effect of any proposed federal or federally assisted undertaking on any site that is included in or eligible for inclusion in the National Register of Historic Places (16 USC §470(f)).

The Index-Galena Road project has a federal nexus due to its federal funding and location on federal land. Compliance with Section 106 of the NHPA will be required. Since construction of project elements is planned in previously undeveloped areas, the Area of Potential effect (APE) will be identified to determine the potential for project effects on protected cultural resources. Archaeological field surveys will be conducted, a Cultural Resources Assessment will be prepared, and agency/tribal consultation under Section 106 will be required. If it is determined that project activities are likely to adversely affect such resources, a plan for the resolution of adverse effects will be required as part of the Section 106 consultation.

State Implementation/Issuance

Clean Water Act Section 401 Water Quality Certification

Under Section 401 of the CWA, the Washington Department of Ecology (DOE) reviews all projects that require a federal permit or approval, and which might pollute waters of the U.S including wetlands in order to determine and certify whether projects comply (or could comply given additional conditions) with various water quality standards and plans for preventing pollution. In Washington State, a Section 401 Certification is typically applied for using the JARPA. The processing time for certification typically lasts less than three months and occurs after the Corps of Engineers permit is issued.

Section 401 Certification will be required for the Index-Galena project.

Coastal Zone Management Certification

In accordance with the federal Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. 1451-1456), a project that affects coastal resources within any of Washington's fifteen coastal counties - and which requires federal permits or receives federal funding - requires Coastal Zone Management Certification from DOE stating that the project is consistent with Washington's Coastal Zone Management Program (WCZMP) to the "maximum extent practicable." Applicants for CZM Certification prepare a Determination of Consistency Checklist and a Federal Consistency Document (FCD), which are submitted to the CORPS and DOE.

The Index-Galena Road project's Corps Section 404 federal nexus requires compliance with the Coastal Zone Management Act. Given the project's location in direct proximity to water resources, DOE is likely to require certification of compliance if the project requires an individual Water Quality Certification (DOE determines this on a case-by-

case basis). If DOE determines that such certification is necessary, the County will prepare a Coastal Zone Management consistency certification for the project (submitted to DOE) showing it complies with the enforceable policies of Washington's Coastal Zone Management Program (including the Shoreline Management Act, State Environmental Policy Act, CWA, Clean Air Act). Determination of the project's effects on Waters of the US, including wetlands, would be required prior to certification of compliance with the CWA.

Hydraulic Project Approval

The Washington Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) for any project that will use, divert, obstruct, or change the natural flow or bed of fresh waters or marine waters of the State (RCW 77.55.100). An HPA is requested using the JARPA, and the review period for the approval typically can extend 45 days from the submission of all supporting documentation and the completion of necessary SEPA procedures.

Since construction of the Index-Galena Road project would involve in-water work, it would be subject to Hydraulic Project Approval by WDFW.

DNR Aquatic Land Use Authorization

The Washington State Department of Natural Resources is mandated to protect and manage the use of state owned aquatic lands, consistent with Chapter 79.105 RCW. Any activity that takes place on state owned aquatic lands will require an aquatic land use authorization. At this time it is not known whether authorization will be required for the Index-Galena Road project.

NPDES Construction Stormwater General Permit

The Department of Ecology (DOE) requires permit coverage for all soil disturbing activities where one or more acres will be disturbed, and stormwater will be discharged to a receiving water directly (e.g., rivers, wetlands, creeks, unnamed creeks, marine waters, ditches, estuaries), or to storm drains that discharge to a receiving water. If all stormwater is retained on-site and cannot enter surface waters of the state under any condition, a permit is not required.

Preliminary design information indicates that soil-disturbing activities from construction will be greater than one acre, and, therefore, NPDES Construction Stormwater General Permit coverage will be required.

Washington Scenic Rivers System

State scenic rivers legislation (RCW 79.72) establishes that certain rivers, due to their "outstanding natural, scenic, historic, ecological, and recreational values," are preserved in "as natural a condition as practical and that overuse of such rivers... shall be discouraged." However, the program has not been funded by the Legislature since 1993. The Skykomish River (including its tributaries upstream of the Sultan River) is the only designated State Scenic River. At this time, there is no approval associated with this law that requires an application or coordination with the responsible agency.

Local Implementation/Issuance

Critical Area Ordinance Review and Compliance Certification

All development activity conducted by a public agency within Snohomish County is subject to compliance with Snohomish County Critical Areas Regulations (CAR), and applicable more specifically to the proposed Index-Galena project are SCC 30.62 A– Wetlands and Fish & Wildlife Habitat Conservation Areas and SCC 30.62B Geologically Hazardous Areas. In the area affected by the proposed alignments, CAR regulates activities in streams, wetlands, primary association areas for critical species, and the associated buffers, and geologic hazard areas. Generally, a critical area study is required for development activities that occur within a critical area or associated buffer. A habitat management plan and a mitigation plan that mitigates for project impacts will also be required as part of the critical area study.

The combined design elements of the Index-Galena Road project would be expected to affect streams, wetlands, buffers, and primary association areas for critical species. Accordingly, the project would be subject to Snohomish County Critical Area Regulations, and would require an HMP, critical area study, and a CAR compliance certification.

Flood Hazard Permit

SCC 30.65 – Special Flood Hazard Areas and SCC 30.43C – Flood Hazard Permits regulate all development within the designated flood plains of Snohomish County. There are three zones that make up these floodplains: floodway; density fringe; and floodway fringe. These zones allow varying degrees and types of development; and any projects located within the flood plain must examine the potential impacts of proposed activities on floodwater storage and flow. Depending on the proposed activity, a flood hazard permit, variance, or exemption must be granted.

The Index-Galena Road project site is located within the 100-year floodplain of the North Fork Skykomish River, and would be subject to Snohomish County Flood Hazard regulations. Provided that the project would result in no net increase in the volume of fill material within the floodplain (in relation to the pre-existing roadway prism), , the project would be expected to meet the displacement and obstruction thresholds of the flood hazard code and receive a flood hazard permit. However, if the proposed work increases the volume of fill within the floodplain, a detailed hydraulic analysis may be required to support expected effects on flood elevations.

Land Disturbance Activity Permit

Snohomish County requires a land disturbance activity permit be obtained prior to implementing projects that would involve clearing, filling, or excavation activities in sensitive locations, along public right of ways, or in excess of threshold levels established in the County code. Regardless of whether a permit is required, clearing and/or grading must conform to County requirements, and must incorporate best management practices (BMPs) to protect adjacent properties and critical areas from runoff, erosion and sedimentation.

Given the amount of clearing and grading required for the potential project construction, a land disturbance activity permit would be required.

Shoreline Management Act

Pursuant to the Shoreline Management Act of 1971 (RCW 90.58), Snohomish County requires a Shoreline Substantial Development Permit for certain types of development within shoreline environments (SCC 30.44 – Shoreline Management).

The Index-Galena Road project site is located within the 100-year floodplain, and would be subject to Shoreline Management regulations. Given the magnitude of potential

project activities, it is expected that a Shoreline Substantial Development Permit would be required for the project. Compliance with conditions of the Snohomish County Shoreline Management Master Program would also be required.

State Environmental Policy Act (SEPA) Review

Under Washington's State Environmental Policy Act (SEPA), local jurisdictions or state agencies must evaluate the environmental effects of projects proposed in the State, as documented in an environmental checklist, and consider and identify measures to avoid or mitigate adverse effects. A threshold determination (TD) regarding the significance of the project's environmental effects is then made. If the project would not have adverse effects, or if effects could be effectively mitigated, then Determination of Non-Significance (DNS) will be issued. If the project would result in unavoidable adverse effects on the environment, then a Determination of Significance (DS) will be issued. If a DS is issued, an Environmental Impact Statement (EIS) must be prepared for the project.

Under SEPA, it is expected that the Index-Galena Road project would require preparation of an environmental checklist and a TD, and issuance of a DNS or an EIS. An alternative approach to SEPA is to adopt the completed NEPA documentation to satisfy SEPA requirements.

Agencies that have requirements the Index-Galena project must satisfy:

FHWA (Federal Highway Administration)
WSDOT (Washington State Department of Transportation)
USFWS (U.S. Fish and Wildlife Service)
WDFW (Washington State Department of Fish and Wildlife)
USFS (US Forest Service)
Corps (US Army Corp of Engineers)
DOE (Dept. of Ecology)
Snohomish County Planning and Development Services

Acronyms

BA (Biological Assessment): Prepared to analyze the effects of a project on listed species and their habitat when there is a federal nexus, i.e.: a project receives federal funding, is on federal land, or requires federal approval.

BMPs (Best Management Practices): Practices required during construction to protect adjacent properties and critical areas from runoff, erosion and sedimentation.

CAR (Snohomish County Critical Areas Regulations): Requires a critical area study for

development activities that occur within a critical area or associated buffer, and may include a habitat management plan and a mitigation plan.

CFR's (Code of Federal Regulations) Federal legislation that is adopted into law

CWA (Clean Water Act): requires a permit from the Army Corps of Engineers for any discharge of dredged or fill material waterward of the ordinary high water mark in waters of the United States, including special aquatic sites such as wetlands

CZMA (Coastal Zone Management Act): Certification from DOE that requires preparation of a Determination of Consistency Checklist and a Federal Consistency Document (FCD) which are submitted to the Corps and DOE.

DCE (Documented Categorical Exclusion): A streamlined NEPA environmental review that was eliminated for the Index-Galena project. NEPA EA is now required instead

DNS (Determination of Non-significance): A document issued if it has been determined that a project would not have significant environmental impacts. This is associated with the SEPA process.

DS (Determination of Significance): Issued if a proposed project has been determined to have significant environmental impacts. Associated with SEPA

EA (Environmental Assessment): The purpose of the assessment is to ensure that decision makers consider the possible environmental impacts of a project when deciding whether to proceed with a project.

EFH (Essential Fish Habitat): Consultation required when there is a federal nexus, i.e.: a project receives federal funding, is on federal land, or requires federal approval.

EIS (Environmental Impact Statement): A document that is prepared when it has been determined that there is a high probability of significant impacts to the environment

ER (Emergency Relief): a program from the Highway Trust Fund used for the repair or reconstruction of roadways which have suffered damage as a result of natural disasters or catastrophic failures from an external cause.

HPA (Hydraulic Project Approval): Required by the Washington Department of Fish and Wildlife for any project that will use, divert, obstruct, or change the natural flow or bed of fresh waters or marine waters of the State

JARPA (Joint Aquatic Resources Permit Application): Application form that can be used for Corps, DOE and WDFW permitting

LDA (Land Disturbing Activity permit): Required by the County for land disturbance such as grading and clearing

NEPA (National Environmental Policy Act): An environmental review required of projects when there is a federal nexus, i.e.: a project receives federal funding, is on

federal land, or requires federal approval.

NEPA EA (Environmental Assessment): A document that evaluates the environmental impacts of a project to determine if significant environment impacts are likely

NHPA (National Historic Preservation Act): is required for projects when there is a federal nexus, i.e.: a project receives federal funding, is on federal land, or requires federal approval.

NPDES (National Pollutant Discharge Elimination System): Administered by DOE required whenever projects disturb one or more acres of ground, plan must be developed to protect water quality during construction

OHWM (Ordinary High Water Mark): Ordinary highwater mark on all lakes, streams and tidal waters is the mark that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, with respect to vegetation.

RCWs (Revised Codes of Washington): State laws adopted by the State Legislature

SEPA (State Environmental Policy Act): An environmental review required of all local government projects, unless otherwise exempted

TD (Threshold Determination): Part of the SEPA process, which determines the level of effect a project has on the environment and determines if there are or are not significant environmental impacts