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Chapter 5

DECISION-MAKING PROCESS FOR APPLYING NEPA

5.1 DECISION-MAKING PROCESS

5.1.1 Introduction

Where projects involve the Interstate System; Federal funding, approvals or permits; or Federal lands (e.g., Bureau of Land Management, Forest Service), the *National Environmental Policy Act* (NEPA) applies. For these types of projects, determination of the required NEPA documentation will be made by the FHWA Division Office in consultation with the NDOT on a case-by-case basis for individual projects or classes of projects.

5.1.2 Decision-Making Process For Applying NEPA

The determinations in the decision-making process for applying NEPA will be supported by appropriate environmental studies for each alternative under consideration (see [Figure 5.1-A](#)).

The fundamentals of the NEPA decision-making process include:

- development of project purpose and need;
- development of preliminary alternatives;
- evaluation of potential environmental impacts of the alternatives under consideration;
- consideration of appropriate impact mitigation measures (e.g., avoidance minimization, compensation);
- interagency coordination;
- public involvement; and
- documentation and disclosure.

The selection of the appropriate level of NEPA compliance is based on a project's potential for causing significant environmental impacts.

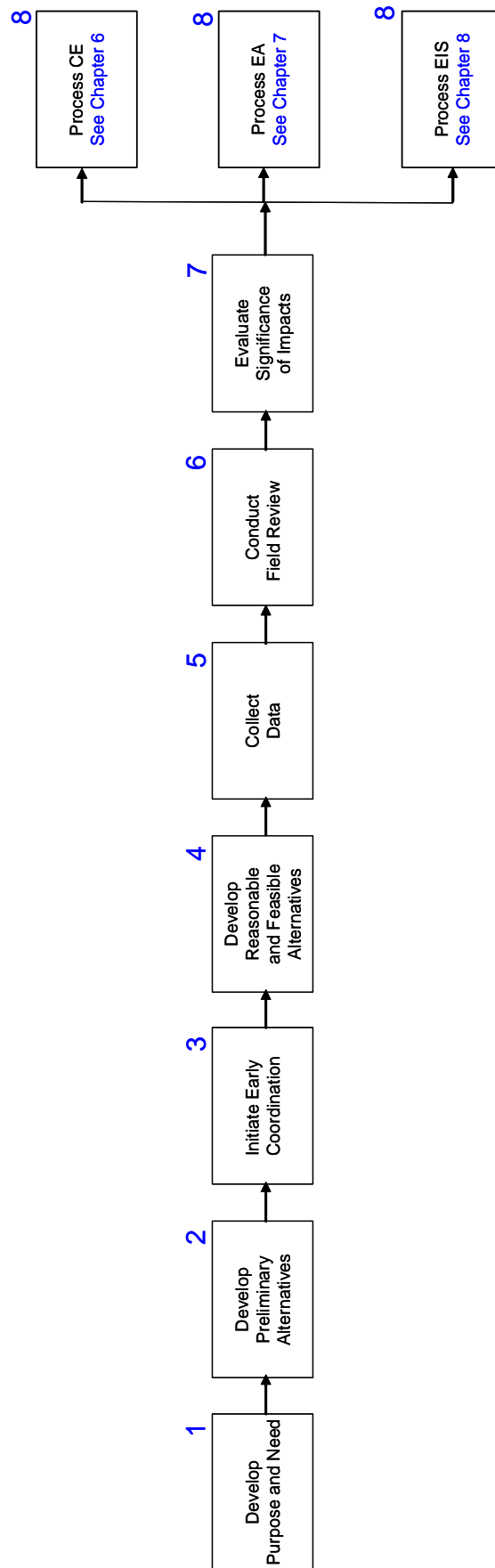


Figure 5.1-A — DECISION-MAKING PROCESS FOR APPLYING NEPA

PROJECT ACTIVITY

Activity Title: Develop Purpose and Need

Activity No.: 1

Activity Description:

The Purpose and Need section in the environmental document will clearly and succinctly discuss why the project is being proposed. It will provide a specific, clear and justifiable explanation of Purpose and Need and will be presented in a format that enables readers to understand technical information (e.g., structural condition, traffic safety, congestion data).

The FHWA guidance provides examples of considerations that may determine or affect a project's purpose and need. The Environmental Services Division will coordinate with the FHWA Division Office, the NDOT Divisions, project stakeholders and the public in defining the purpose and need for each project and will document the determination in the project file.

The Environmental Services Division will notify the FHWA Division Office of the proposed project (e.g., type of work, termini, length, general location) and cooperatively identify regulatory and resource agencies that will be invited to participate as part of the environmental review process. Regulatory and resource agencies and the public will be afforded the opportunity to provide input regarding the project purpose and need (see [Activity 3](#)).

Regulations and Guidance

FHWA Environmental Guidebook

[FHWA Technical Advisory T6640.8A](#)

AASHTO SCOE Synthesis of Data Needs for EA and EIS Documentation – A Blueprint for NEPA Document Content January, 2005

AASHTO Practitioner's Handbook 07 Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

PROJECT ACTIVITY

Activity Title: Develop Preliminary Alternatives

Activity No.: 2

Activity Description:

The appropriate NDOT Divisions will coordinate with the Environmental Services Division to develop each project's design concept, scope and a full range of preliminary alternatives. This will include:

- making a preliminary determination of the project scope of work, including, mode (e.g., highway, provisions for high occupancy vehicles, light rail, commuter rail, combination of modes); termini, approximate length, general alignment and geometrics;
- reviewing available data and records;
- conducting an initial evaluation of right-of-way, utility and environmental impacts;
- developing a rough, preliminary cost estimate;
- determining a proposed schedule;
- developing a set of review plans; and
- affording an opportunity for regulatory and resource agencies and the public to provide input on the full range of alternatives (see [Activity 3](#)).

This is an evolutionary process and the preliminary list will be refined as further evaluations are accomplished. The evaluation of preliminary alternatives will be sensitive to those environmental resources for which the analysis of alternatives for avoidance and minimization of adverse impacts is required (e.g., wetlands, floodplains, Section 4(f) properties, historic sites). See [Activity 4](#) for additional information.

Regulations and Guidance

[23 CFR 771.111\(f\)](#) "Early coordination, public involvement and project development"

[40 CFR 1502.14](#) "Alternatives including the proposed action"

AASHTO Practitioner's Handbook 07 *Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects*

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

PROJECT ACTIVITY

Activity Title: Initiate Early Coordination

Activity No.: 3

Activity Description:

The Project Management Team, including the Environmental Services Division, will initiate early coordination with individuals, organizations and appropriate local, State and Federal agencies that have an interest in the project or have information or expertise concerning potential project issues. The purpose of this coordination will be to assist in the evaluation of reasonable and feasible alternatives and in the gathering of information for evaluating the social, economic and environmental impacts of the proposed project alternatives and possible mitigation measures.

Regulations and Guidance

NDOT Policy for Public Involvement/Public Hearing Procedures
 23 CFR 771.111 "Early coordination, public involvement and project development"
 FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

PROJECT ACTIVITY

Activity Title: Develop Reasonable and Feasible Alternatives

Activity No.: 4

Activity Description:

The Project Management Team (e.g., representatives from Road Design, Bridge Design, Hydraulics, Environmental, Right-of-Way) will identify reasonable and feasible alternatives. The alternatives are identified using the following information:

- project purpose and need,
- general design concept, and
- scope of work.

The Project Management Team, the FHWA Division Office, regulatory and resource agencies and the public will:

- explore and objectively evaluate all reasonable alternatives;
- document in the project file the reasons for eliminating alternatives;
- include consideration of reasonable and feasible alternatives not within the FHWA or the NDOT jurisdiction; and
- include the “no-build” alternative.

Regulations and Guidance

23 CFR 771.111(f) “Early coordination, public involvement and project development”

40 CFR 1502.14 “Alternatives including the proposed action”

AASHTO Practitioner’s Handbook 07 *Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects*

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

PROJECT ACTIVITY

Activity Title: Collect Data

Activity No.: 5

Activity Description:

After reasonable and feasible alternatives have been identified, the Project Management Team will gather and inventory detailed information and data on each alternative. Various types of data (e.g., social, economic, environmental, engineering) typically will be gathered simultaneously. Data collection is a continuous process, and additional information will be collected throughout project development.

The following are examples of potential information sources:

- city, county and State maps;
- Agricultural Stabilization and Conservation Service (ASCS) or NDOT aerial photography;
- US Geological Survey (USGS) quadrangle topographic maps;
- traffic data;
- functional classification maps;
- Federal agency plans (e.g., US Army Corps of Engineers (USACE), US Coast Guard (USCG), US Department of the Interior (USDOI), Department of Housing and Urban Development (HUD), Federal Emergency Management Agency (FEMA));
- special development plans (e.g., conservation, industrial, recreational, resource);
- population growth trends;
- utility maps;
- urban area transportation and regional planning studies;
- road inventory data;
- meetings with local officials;
- meetings with other NDOT Divisions;
- local agency plans and reports (e.g., land use maps);
- soil maps;
- National Wetland Inventory (NWI) maps;
- Natural Resources Conservation Service (NRCS) wetland maps;
- ASCS county soils survey maps;
- floodplain maps;
- listing of Wild and Scenic Rivers;
- data on locations of parks, recreation areas, wildlife/waterfowl refuges and historic sites;
- Nevada Division of Environmental Protection (NDEP) stream water quality data;
- regulatory agency databases; and
- field reconnaissance data for project area.

PROJECT ACTIVITY

Activity Title: Conduct Field Review

Activity No.: 6

Activity Description:

The Environmental Services Division will conduct field investigations of proposed alternatives to confirm or update resource information and to verify or further evaluate the location, nature and limits of resources in the project area and the extent of potential resource involvement.

The Environmental Services Division will document the results of the field reviews, coordinate with appropriate resource agencies for review and comment on the field review data, and make the information available to other members of the Project Management Team.

Regulations and Guidance

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

PROJECT ACTIVITY

Activity Title: Evaluate Significance of Impacts

Activity No.: 7

Activity Description:

The Environmental Services Division, in cooperation with members of the Project Management Team and the FHWA, will make a preliminary evaluation of the significance of the project's impacts for purposes of determining the level of NEPA compliance processing for the action. Regulatory and resource agencies and the public will be afforded opportunity to provide input into the ongoing studies contributing to the analyses of impacts of the project alternatives. The determination of a significant impact is a function of both context and intensity and will vary with the setting of the proposed project and the surrounding area (e.g., residential, industrial, commercial, natural sites). The following applies:

1. Context. This means that the significance of a proposed project will be analyzed in several contexts (e.g., society as a whole (human, national), the affected region, the affected interests, the locality). Both short- and long-term effects are relevant.
2. Intensity. This refers to the severity of an impact. The following will be considered in evaluating intensity:
 - impacts that may be both beneficial and adverse. A significant effect may exist even if the lead agency believes that the effect is beneficial;
 - the degree to which the proposed action affects public health or safety;
 - unique characteristics of the geographic area (e.g., wetlands, ecologically critical areas);
 - the degree to which the effects on the human environment are or are likely to be, highly controversial, highly uncertain or involve unique or unknown risks;
 - the degree to which the project may establish a precedent for future actions with significant effects;
 - whether the project is related to other projects with similar impacts that become cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small components parts;
 - the degree to which the project may adversely affect Districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places (NRHP), or may cause loss or destruction of significant scientific, cultural or historical resources;
 - the degree to which the project may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the *Endangered Species Act of 1973*; and/or
 - whether the project threatens a violation of Federal, State or local law imposed for the protection of the environment.

PROJECT ACTIVITY

Activity Title: Process CE, EA, EIS, As Appropriate

Activity No.: 8

Activity Description:

Based on the results of the evaluation of impacts and the nature and scope of the proposed project, the Environmental Services Division will request concurrence from the FHWA on the proposed level of NEPA compliance processing for the project. The proposed Decision-Making Processing level will be based on the following:

1. Categorical Exclusions. Categorical Exclusions (CEs) are issued for categories of projects that do not individually or cumulatively have a significant effect on the environment and, therefore, do not require the preparation of an EA or EIS. See [Chapter 6](#).
2. Environmental Assessment. An Environmental Assessment (EA) is prepared for projects in which the significance of the impact is not clearly established or the impact is deemed to not be significant. See [Chapter 7](#).
3. Environmental Impact Statement. An Environmental Impact Statement (EIS) is prepared for projects where it is known that the action will have a significant effect on the environment. See [Chapter 8](#).

Note that the results of compliance with other requirements that may be applicable to the project (e.g., Section 106, Section 4(f), Executive Order 11990 on wetlands protection) can influence the ultimate decision on Decision-Making Processing level.

See [Section 2.3 "Preparing an Administrative Record"](#).

Regulations and Guidance

[23 CFR 771.115 "Classes of actions"](#)
[40 CFR 1508.4 "Categorical exclusion"](#)
[40 CFR 1508.9 "Environmental assessment"](#)
[40 CFR 1508.11 "Environmental impact statement"](#)