Environmental
Services
Procedures
Guide

NEVADA DEPARTMENT OF TRANSPORTATION
Environmental Services Division

User Handbook

April 2018
PREFACE

The *NDOT Environmental Services Procedures Guide* has been developed to provide uniform environmental practices for Department and consultant personnel preparing contract plans for Department projects.

The *Guide* presents much of the information normally required for an environmental study; however, it is impossible to address every situation encountered during the project development process. Therefore, the project design team must exercise good judgment on individual projects and, frequently they must be innovative in their approach to environmental design.

This manual is updated periodically to address changes in the requirements for NDOT project environmental compliance. However, it is the responsibility of NDOT and consultant staff to be up to date with any applicable environmental laws, regulations, policy, or guidance that may be applicable at the time any environmental document is prepared and NOT to rely on this manual as the definitive source of guidance for compliance and documentation requirements.
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Chapter 1
ORGANIZATION

1.1 OVERVIEW

1. Preconstruction Responsibilities.
   - complying with the National Environmental Policy Act (NEPA) process, including preparing and processing Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS);
   - completing environmental studies, documentation and coordination for permits and clearances;
   - determining mitigation measures for environmental impacts from NDOT projects and ensuring they are included in project Construction Contract Documents; and
   - arranging, advertising and conducting public involvement activities in accordance with NDOT policies and Federal-aid project requirements for projects processed under NEPA.

2. Construction and Maintenance Responsibilities.
   - responding to public complaints (e.g., traffic noise, dust);
   - providing oversight on mitigation measures and environmental commitments during construction;
   - obtaining permits and clearances for materials sites; and
   - ensuring environmental compliance regarding NDOT maintenance activities.

3. Water Quality
   -Handled by NDOT’s Stormwater Division (including Section 404 permits, Section 401 permits, and general stormwater permits). See NDOT Stormwater Program for more information.

1.2 ENVIRONMENTAL SERVICES DIVISION ORGANIZATION CHART

The Environmental Services Division is part of the Engineering Office and includes three Sections, as follows:

- Cultural Resources Section
- Environmental Studies Section, and
- Environmental Engineering Section.

Figure 1-A presents the organization of the Environmental Services Division.
Figure 1-A — ENVIRONMENTAL SERVICES DIVISION ORGANIZATION
1.3 ENVIRONMENTAL SERVICES DIVISION RESPONSIBILITIES

1.3.1 Environmental Services Division Chief

The Chief of the Environmental Services Division is responsible for the leadership and management of the three Sections in the Division. The Environmental Services Division Chief also has the following functional responsibilities:

- serves as the primary contact with the FHWA, the regulatory and resource agencies, the NDOT Divisions, the public, local agencies and other public entities on environmental matters;
- in consultation with the FHWA, makes the decision on level of environmental documentation required;
- reviews, approves and signs environmental documents for the NDOT;
- reviews and approves public involvement/information plans, meeting advertisements, meeting documentation and handouts, and response to comments;
- makes decisions on when to use consultants to assist with the environmental program;
- schedules, prioritizes, assigns and manages the environmental program for the NDOT; and
- represents the NDOT on committees for environmental issues.

1.3.2 Cultural Resources Section

The Cultural Resources Section is responsible for ensuring that NDOT projects comply with Federal and State requirements regarding protection of cultural resources (i.e., significant historic, architectural, archaeological and paleontological resources) and consultation and coordination with Native American Tribes (see Chapter 15), including:

- Section 106 of the National Historic Preservation Act (see Chapter 7);
- Section 4(f) (see Chapter 8); and
- Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments (see Chapter 15).

Shared responsibilities of the Section include the following:

- ensuring Section 106 compliance for projects, material sites, right-of-way and maintenance activities (e.g., slope flattening) and Section 4(f) compliance for projects involving use of land from a significant historic site;
- conducting field surveys and performing field work;
- writing and submitting cultural resource reports and survey reports;
- coordinating with Federal agencies as necessary regarding Section 106 compliance (e.g., US Army Corps of Engineers);
- providing oversight and monitoring during construction;
• attending internal and external meetings (e.g., for NDOT projects and with outside entities/project proponents requiring an FHWA permit);
• serving as a liaison with the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officers (THPO);
• for actions on Bureau of Land Management (BLM) and US Forest Service (USFS) land, submitting a cultural resources report to BLM and/or USFS and consulting with the SHPO;
• for actions not on BLM or USFS land, preparing letters to FHWA explaining legal issues involved with SHPO coordination;
• participating in project public involvement activities and attending internal and external meetings (e.g., on NDOT projects and with outside entities/project proponents requiring FHWA permits); and
• reviewing project construction plans and special provisions, as needed.

1.3.2.1 Chief Archeologist
The Chief Archeologist oversees the operations of the Section, directs and manages the compliance program for Section 106 (and Section 4(f) for projects involving use of land from a significant historic site) and writes, reviews and approves NEPA documentation content on cultural resources issues. In addition, the Chief Archeologist is responsible for the overall cultural resources project management including task assignment and staff coordination, monitoring Federal and State regulations for future changes and review and approval of project plans and special provisions, as needed. For more information on the project development process, see Chapter 2.

1.3.2.2 Cultural Resources Specialists
In addition to the shared responsibilities listed in Section 1.3.2, the Cultural Resources Specialists have the following additional position-specific responsibilities:

• managing projects;
• writing, reviewing and approving NEPA document content on cultural resource issues;
• coordinating requests for determination of eligibility for the National Register of Historic Places (NRHP);
• participating in the preparation of Memoranda of Agreement (MOA) for the Section 106 process;
• cultural resources compliance for materials sites;
• managing consultant agreements and related work products;
• architectural and historical issues; and
• Native American consultation and coordination.
1.3.3 **Environmental Studies Section**

The Environmental Studies Section is responsible for ensuring NDOT projects comply with Federal and State requirements applicable to the natural and human environment regarding:

- NEPA;
- Endangered Species Act (Section 7 and Section 10) compliance (see Chapter 10);
- migratory birds (see Chapter 15);
- State protected plants and animals;
- invasive species and noxious weeds (see Chapter 15);
- NEPA compliance and permits/clearances for materials sites (see Chapter 11);
- farmland protection (see Chapter 15);
- socio-economic issues and Environmental Justice (see Chapters 9 and 16);
- use of land from properties subject to Section 4(f) (see Chapter 8);
- conversion of land acquired or improved with funding under Section 6(f) of the Land and Water Conservation Fund Act (LWCF) (see Chapter 15);
- assessment and documentation of indirect and cumulative impacts;

1.3.3.1 **Environmental Services Manager**

The Environmental Services Manager is responsible for the management of the Section, including project administration, coordinating the preparation EAs and EISs, review and approval of environmental documents, oversight of the public involvement program and monitoring State and Federal transportation and environmental regulations for changes affecting NDOT projects (see Chapter 2).

1.3.3.2 **Environmental Scientists (Biology)**

In addition to the shared tasks listed in Section 1.3.3, the Environmental Scientists for Biology have the following position-specific responsibilities:

- conducting plant animal and noxious weed surveys and Section 7 and 10 Endangered Species Act consultations;
- responding to tortoise issues and conducting tortoise training;
- obtaining incidental take permits (e.g. for “taking” protected plants and animals);
- representing NDOT on statewide or regional boards;
- serving as the liaison with the BLM, USFS, and other federal land managing agencies regarding biological issues;
- coordination regarding protected and sensitive plant and animal species;
- coordinating and oversight for implementation of mitigation measures and environmental commitments;
- preparing environmental content for inclusion in NEPA documents (see Chapter 3, Chapter 4 and Chapter 5);
- reviewing CE, EA and EIS documents (see Chapter 3, Chapter 4 and Chapter 5);
• preparing or reviewing consultant estimates (man-hours);
• monitoring the Washoe and Carson City Wetlands;
• working with the Maintenance Division on compliance issues;
• serving as a liaison with noxious weed groups; reviewing project construction plans and special provisions; and
• managing consultant agreements and related work products.

1.3.3.3 Environmental Scientist (Social, Economics, NEPA)

In addition to the shared tasks listed in Section 1.3.3, the Environmental Scientist for Social, Economics and NEPA is responsible for the following:

• writing, compiling NEPA documents and coordinating the NEPA process;
• conducting socio-economic analyses and preparing NEPA documentation on socio-economic issues;
• ensuring compliance with requirements of Executive Order 12898 on Environmental Justice and other FHWA Environmental Justice policies and guidance;
• reviewing and commenting on environmental documents (i.e. EA and EIS);
• coordinating Division’s reviews and responses to Local Planning Agency (LPA) projects;
• coordinating public involvement plans and participating in public involvement meetings and hearings;
• serving on Technical Advisory Committees to provide expertise on socio-economic and NEPA issues;
• preparing Section 4(f) documentation and evaluations;
• reviewing project plans and special provisions; and
• coordinating the NDOT material site environmental clearance process.

1.3.4 Environmental Engineering Section

The Environmental Engineering Section is responsible for ensuring that NDOT projects comply with Federal and State requirements regarding:

• NEPA;
• Stewardship and Oversight Certification;
• Right-of-way disposal;
• Occupancy & Encroachment Permits;
• air quality (see Chapter 12);
• traffic noise (see Chapter 13);
• hazardous materials (see Chapter 14); and
• naturally occurring asbestos and erionite (NOA/E) (see Chapter 17).
1.3.4.1 Environmental Engineering Manager

The Environmental Engineering Manager administers the Section; has Divisional signatory authority; composes, reviews and approves environmental documentation; coordinates the preparation and issuance of CEs required by NEPA; ensures NEPA compliance through certification allowing funding; coordinates the Divisional review and approval of occupancy and encroachment permits; coordinates Divisional review and NEPA compliance for right-of-way disposals; composes policy and interagency agreements for the Section, Division, and Department; and monitors Federal and State laws and regulations on air quality, traffic noise, hazardous materials, and NOA/E, for changes affecting NDOT projects, operations, and properties.

1.3.4.2 Hazardous Materials Engineers

The Hazardous Materials Engineers are responsible for four main functions:

- conducting project-related activities,
- resolving emergency-related issues,
- providing district support, and
- performing NEPA-related activities.

The specific responsibilities of the Hazardous Materials Engineers include:

- ensuring compliance for regulatory aspects of hazardous materials;
- assisting in ensuring compliance with Occupational Safety and Health Administration (OSHA) requirements for worker protection;
- providing support/monitoring and notifying the proper agencies regarding highway spills;
- writing and reviewing hazardous materials sections for NEPA documents;
- performing asbestos surveys of structures and arranging asbestos abatement;
- protecting NDOT from liability associated with contamination/contaminated properties;
- supporting District operations involving hazardous materials;
- assisting with project investigations for hazardous materials;
- inspecting NDOT maintenance facilities and monitoring contamination from equipment wash pads;
- providing support to Districts for their Underground Injection Control Permit Program;
- managing consultant agreements and related work products;
- participating in ongoing training activities; and
- reviewing construction plans and writing/reviewing specifications and special provisions.

1.3.4.3 Naturally Occurring Asbestos and Erionite Engineer

Specific responsibilities of the NOA/E Engineer include:

- producing and maintaining GIS database for NOA/E within Nevada relative to NDOT;
• preparing and reviewing plans and reports;
• conducting and overseeing sampling; and,
• addressing internal and external inquiries.

1.3.4.4 Air Quality Engineer

Specific responsibilities of the Air Quality Engineer include:

• managing activities for modeling emissions levels for conformity with air quality standards using the state-of-the-art and approved computer programs;
• ensuring projects meet air quality regulation requirements;
• tracking changes in air quality regulations, technology and research;
• writing and reviewing air quality technical reports and sections for NEPA documents;
• representing NDOT with State and local environmental agencies regarding air quality issues;
• responding to complaints concerning project construction and maintenance;
• participating in conformity determinations and ensuring projects are part of a conforming plan;
• participating in ongoing training activities; and
• reviewing construction plans and special provisions.

1.3.4.5 Traffic Noise Engineer

Specific responsibilities of the Traffic Noise Engineer include:

• responding to traffic noise complaints;
• performing project traffic noise computer modeling;
• determining sizing and location of noise abatement barriers;
• conducting post-construction traffic noise monitoring to determine the effectiveness of noise abatement measures;
• preparing traffic noise analyses, technical reports, and sections for NEPA documents;
• providing traffic noise expertise at project public involvement meetings and workshops;
• keeping abreast of traffic noise training, technology, noise wall materials, noise research information, etc.; and
• reviewing construction plans and special provisions, as necessary.
# Chapter 2

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PROJECT DEVELOPMENT

2.1 PROJECT DEVELOPMENT PROCESS

ACTIVITY NO. 1: PLANNING

During the Planning phase, decisions are made affecting project purpose and need, general scope, transportation mode, location and cost. The Environmental Services Division will coordinate with the Planning Division and the Project Management Team (PMT) to assure the planning efforts and related coordination and public involvement are documented for NEPA compliance. This may include the following:

- Identifying planning level analyses that may be carried forward with little or no modification into NEPA;
- Identifying significant environmental issues and concerns;
- Identifying and involving regulatory and resources agencies in the planning process and begin identifying potential mitigation options;
- Participating in planning-stage public involvement and agency coordination;
- Ensuring planning-phase efforts are documented for incorporation into the NEPA process including the development of project purpose and need, and potential alternatives.

Guidance

FHWA Planning and Environment Linkages

ACTIVITY NO. 2: IDENTIFICATION OF APPROPRIATE LEVEL OF NEPA COMPLIANCE

Where projects involve Federal funding, approvals or permits; or Federal lands (e.g., Bureau of Land Management, Forest Service), NEPA applies. The selection of the appropriate level of NEPA compliance is based on a project’s potential for causing significant environmental impacts.

For projects where FHWA is the lead Federal agency, determination of the required NEPA documentation will be made by the FHWA Division Office in consultation with NDOT on a case-by-case basis for individual projects or classes of projects. If a different agency is the lead Federal agency for the project, different procedures may apply, based on NEPA regulations of that agency (e.g., BLM) and Council on Environmental Quality (CEQ) regulations 40 CFR 1506.3.
ACTIVITY NO. 1: PLANNING

During the Preliminary Engineering phase, reasonable and feasible alternatives are evaluated and refined. The Environmental Services Division will identify and consider environmental issues for project decision-making and compliance with environmental requirements. This will include:

- determining the environmental impacts and the appropriate level of NEPA compliance (See Chapters 3, 4, and 5);
- conducting further analyses and coordination to identify and evaluate specific environmental issues (see the appropriate Chapters 7 through 16) and ensuring that information regarding these issues is coordinated with the PMT for consideration in the evaluation and refinement of project alternatives, and measures for avoiding, minimizing and mitigating environmental impacts;
- preparing and processing documentation for compliance with NEPA (see Chapters 3 through 5) and applicable laws and regulations (see the appropriate Chapters 7 through 16);
- participating in public involvement activities to address project issues (see Chapter 6); and
- ensuring that environmental commitments and permit obligations are provided to the PMT for inclusion in the project Construction Contract Documents (see Section 2.4);

Upon completion of Preliminary Engineering, the following are complete:

- project scope and limits are set;
- right-of-way for the project is identified, including all permanent and temporary areas required for construction and operation and maintenance of the project facility as well as staging areas, material sources, and access roads;
- NEPA process is complete including FHWA approval; and
- coordination with local agencies (i.e., counties, cities, regulatory etc.).

ACTIVITY NO. 3: PRELIMINARY ENGINEERING

During the Preliminary Engineering phase, Construction Contract Documents (e.g., plans, specifications, estimates (PS&E)) are prepared for the selected project alternative. The Environmental Services Division will coordinate with the PMT to optimize impact avoidance, minimization and mitigation measures for specific resource issues and to ensure that environmental commitments and permit obligations are included in the Construction Contract Documents (see Section 2.4). The Environmental Services Division will obtain permits and clearances and conduct any necessary NEPA reevaluations for the selected alternative during the Final Design phase. Examples include:

- Endangered Species Act, Section 7 “Biological Opinion” or append existing Programmatic Biological Opinion;
- Section 106, mitigation plan approval;
- material site(s) environmental clearance;

ACTIVITY NO. 4: FINAL DESIGN
• approval of noise abatement measures and designs;
• Section 6(f), land conversion approval;
• approval of protective measures for migratory birds and their nesting locations;
• USFWS approval of incidental take permits for federally protected species and Nevada Department of Wildlife (NDOW) approval of for Nevada protected species; and
• approval of measures for mitigating air quality impacts.

During the Construction phase, the Environmental Services Division will coordinate with the Construction Division to monitor construction operations and ensure compliance with environmental commitments and permit obligations (see Section 2.4). In addition, the Environmental Services Division will respond to environmental issues arising during construction and will ensure compliance with applicable requirements.

During the Maintenance phase, the Environmental Services Division will coordinate with the Maintenance Division and individual Districts as needed to ensure adherence to applicable continuing environmental commitments (e.g., establishment of mitigation sites) and permit obligations. In addition, the Environmental Services Division will coordinate with the Maintenance Division and individual Districts to address environmental issues arising after project construction is completed. Examples include:

• material site environmental clearance (see Chapter 11);
• noise complaints (see Chapter 13);
• hazardous materials spills or leaking underground storage tanks (see Chapter 14);
• noxious weeds/invasive species (see Chapter 15); and
• air quality complaints (e.g., dust) (see Chapter 12).

2.2 RECORDS AND FILES

2.2.1 Project Files

A file is maintained for each project. Project files include the information necessary for preparing an Administrative Record. See Section 2.3 for information on Preparing an Administrative Record.

The files will provide a history of the project and information on engineering studies and environmental analyses. The project file includes:

• NDOT project programming information;
• planning, preliminary engineering and final design information;
• NEPA documents and associated information on environmental analyses and coordination (see Section 2.3.2 and Section 2.3.3);
• project agreements (e.g., utilities, railroads, local governments, consultants);
• FHWA correspondence;
• internal Department memoranda;
• correspondence with resource agencies, organizations, individuals, governments, etc., outside of NDOT;
• permits; and
• other pertinent information related to the project.

Once a project is advertised for construction, information related to the Environmental Services Division’s monitoring and environmental compliance responsibilities is included in the files. Section 2.4 “Environmental Commitments/Permit Obligations” discusses these responsibilities in more detail.

2.2.2 Consultant File

For agreements administered by the Environmental Services Division, the division maintains Consultant Files that include consultant agreements and billings.

2.3 PREPARING AN ADMINISTRATIVE RECORD

2.3.1 General

1. Contents. The Administrative Record will contain documents and materials considered by NDOT and FHWA in making its decision. If there are questions about which documents to include in the Administrative Record for a given project, consult with NDOT and FHWA legal counsel.

2. Administrative Record Completeness. If the court concludes that NDOT showed bad faith in compiling the record, the court can allow for sworn testimony from individual NDOT personnel.

3. Supplementing the Record. Any party to litigation may request the court’s permission to supplement the record with additional documents (e.g., expert testimony).

2.3.2 Using the NEPA Process to Build a Strong Administrative Record

The Administrative Record for a NEPA study will include the NEPA documents as well as the following:

• technical reports;
• meeting minutes/summaries;
• telephone memoranda;
• correspondence with agencies and stakeholders
• file memos; and
• comments and responses (including social media).
2.3.3 **Environmental Issue Areas**

Additional items of information will be included in the Administrative Record by Environmental Services Division staff, as applicable:

1. **NEPA Documentation.**
   - information from data gathering and field reviews;
   - compliance documentation and associated correspondence prepared pursuant to environmental laws and Executive Orders;
   - information on mitigation commitments;
   - any prepared participation plans or coordination plans used to guide interaction with participating and cooperating agencies, other agencies, stakeholders, and the public; and/or
   - permits and approvals obtained.

2. **Section 106.**
   - information, consultation history and preliminary plans that formed the basis for development and justification of the Area of Potential Effect (APE);
   - background research, reports, maps, photographs, etc.;
   - project contract documents used as the basis for review of the project effect determination as well as engineering information used to arrive at the final project effect determination; and
   - pertinent correspondence and letters of concurrence
   - other information pertinent to the Section 106 clearance process.

3. **Section 4(f).**
   - documentation on the applicability or non-applicability of Section 4(f) to properties used by a project;
   - information on the coordination efforts with officials having jurisdiction over or administering the property (relative to significance of the property, primary use of the property, mitigation measures, etc.);
   - information on the location and design alternatives that would avoid the use altogether or minimize the use and harm to the 4(f) property;
   - documentation of the analysis of impacts for avoidance and Section 4(f) use alternatives; and
   - information on measures to minimize harm (e.g., design variations, landscaping, other mitigation).

4. **Socio-Economic.**
   - information on socio-economic impact issues obtained at the project kickoff meeting and through other meetings, public involvement and coordination;
   - information on the definition of the area affected by the project for purposes of the socio-economic impact analysis;
   - results of data collection and research on socio-economic issues;
• information on the assessment of socio-economic impacts, including disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
• information on avoidance, minimization and mitigation measures analyzed for socio-economic impacts and incorporated into the project;
• documentation on the analysis of socio-economic impacts (e.g., Environmental Justice); and
• documentation of actions by the Environmental Services Division to monitor construction and ensure implementation of mitigation commitments.

5. Wetlands/Waters of the US and Water Quality. Assessments related to wetlands/waters of the US and water quality are the responsibility of NDOT’s Stormwater Division. See NDOT Stormwater Program for more information.

6. Threatened and Endangered Species.
• field study results;
• documentation on affected species/habitat;
• biological assessments;
• results of informal consultation and formal consultation with the FHWA and the US Fish and Wildlife Service (USFWS);
• biological opinions; and
• follow-up reports during and after construction.

7. Material Sites.
• information obtained through data collection (e.g., site location description, maps, legal description, pit sketch, deeds/grants, entry permits, information on environmental conditions of the site);
• completed Material Site Field Checklist;
• reports of site field survey results;
• NEPA document;
• land management agency impact decision record (if required);
• FHWA NEPA approval documentation; and
• environmental clearance memorandum, including permits, documentation of consultations with regulatory agencies, evidence of fee payment and description of mitigation.

8. Air Quality.
• site observations;
• site photographs;
• locations of identified concerns;
• correspondence;
• records of communications;
• regulatory file information reviewed;
• aerial photographs;
• maps, field logbooks and field data;
• specialty contractor or subcontractor contracts;
• data files;
• hardcopy printouts of MOVES 2010b, CAL3Q and CAL3QHCR, AERMOD input and output files;
• technical documents on air quality modeling, including design and traffic data;
• digital versions of model printout files; and
• reports, plans and designs.

• a description of traffic noise sensitive areas contiguous to the project;
• a comparison of the predicted noise levels (in decibels) with the ambient noise levels and the noise abatement criteria for each sensitive area;
• reasonable and feasible noise abatement measures considered; and
• traffic noise impacts for which no solution is reasonably available and the reasons why.

• date of complaint;
• name, address, and assessor’s parcel number of complainant/location of complaint;
• documentation of the on-site visit with complainant;
• copy of response letter to complainant;
• copy of the report of the noise monitoring for the complaint investigation; and
• documentation of whether the complaint was satisfactorily resolved and, if so, how.

• site observations;
• site photographs;
• locations of identified concerns;
• correspondence;
• records of communications;
• regulatory file information reviewed;
• aerial photographs;
• maps, field logbooks and field data;
• remediation plan documents;
• specialty contractor or subcontractor contracts;
• chain-of-custody records;
• analytical laboratory data;
• quality assurance and quality control reports;
• computer files; and
• reports, plans and designs.

12. Farmland Impacts.
• efforts made to identify and consider the adverse effects of the project on farmland;
the alternatives and mitigation measures considered to lessen the adverse impacts on farmland;
• documentation that, to the extent practicable, the project is compatible with State, local government and private programs and policies to protect farmland; and
• a copy of Form AD-1006 showing the selected alignment.

13. Conversion of Section 6(f) Land.
• results of coordinating with the Nevada Department of Conservation and Natural Resources to identify properties acquired or developed with LWCF monies; and
• results of evaluation and coordination to confirm that replacement property meets requirements in 36 Code of Federal Regulations (CFR) Part 59.

• documentation of the results of field surveys of corridors/alignments for proposed projects to identify noxious weeds/invasive species;
• results of coordination with Noxious Weed groups;
• information on prevention or control measures; and
• project-specific noxious weed management plans.

15. Wild and Scenic Rivers. Include documentation of the results of coordination with the administering agency for the affected river segment and the measures to avoid or minimize adverse effects. (Note that Nevada currently has no rivers that have been designated as Wild and Scenic Rivers.)

• results of field surveys to identify migratory bird nesting locations;
• documentation of coordination with USFWS, Nevada field office; and
• information on measures to ensure construction operations will not result in killing of migratory birds.

17. Impacts to Federally Protected and Nevada Protected Species.
• results of field surveys for protected species;
• Biological Assessments and Opinions; and
• state issued approvals.

18. Native American Consultation/Coordination.
• documentation of identified affected tribal lands and interests; and
• documentation of the results of consultation/coordination with the affected Tribes.

2.4 ENVIRONMENTAL COMMITMENTS/PERMIT OBLIGATIONS

The term “environmental commitment” includes actions that (1) avoid, minimize and/or mitigate environmental impacts of a project and (2) are required to be implemented as a condition of project approval, or have been committed to by NDOT or FHWA as part of the project development process.
As part of the project development process, NDOT may make specific commitments to avoid, minimize and/or mitigate environmental impacts. The Environmental Services Division ensures that commitments made during the environmental review process (i.e., preliminary engineering) are implemented during final design, construction and maintenance.

Environmental commitments will be documented in the project EA and Finding of No Significant Impacts (FONSI) or EIS and Record of Decision (ROD). For all projects, Environmental Services Division staff will ensure applicable environmental commitments are included in the construction contract documents. At the end of construction, FHWA may request documentation from NDOT ensuring that mitigation measures identified in the NEPA documents were implemented.
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Chapter 3
CATEGORICAL EXCLUSIONS

3.1 CATEGORICAL EXCLUSION COMPLIANCE PROCEDURES

Categories of Federally funded, approved or permitted NDOT projects that do not individually or cumulatively have a significant environmental effect are Categorical Exclusions (CEs) and are excluded from the requirement to prepare an EA or EIS. They are projects that do not:

- induce significant impacts to planned growth or land use for the area;
- require the relocation of significant numbers of people;
- have a significant impact on any natural, cultural, recreational, historic or other resource;
- involve significant air, noise or water quality impacts;
- have significant impacts on travel patterns; or
- individually or cumulatively, have any significant environmental impacts.

NDOT’s CE compliance process is outlined in Figure 3A. If FHWA is not the lead Federal agency for the project, different procedures may apply, based on the NEPA requirements of that agency (e.g., BLM).

3.2 PROGRAMMATIC CATEGORICAL EXCLUSIONS

The CE Programmatic Agreement (PA) between NDOT and FHWA establishes procedures required for projects proposed by NDOT as a CE defined in 23 CFR Part 771.117 – Categorical Exclusions. NDOT may process and approve such projects as a Programmatic Categorical Exclusion (PCE) per the procedures of the current CE PA, generally undertaken as follows.

1. Review project information, regulatory definitions, and current version of the CE PA.
2. If a project qualifies, a PCE will be prepared. Necessary documentation will be electronically stored in the project administrative record.
3. The prepared PCE will be provided to the Environmental Services Division Chief (or designee) for signature and electronically stored in the administrative record.

Regulations and Guidance

23 CFR Part 771.117 – FHWA Categorical Exclusions
FHWA and NDOT Programmatic Agreement for Categorical Exclusions – February 15, 2017

3.3 FHWA-APPROVED CATEGORICAL EXCLUSIONS

For a CE that cannot be approved as a PCE under the CE PA, the Environmental Services Division will submit a CE to the FHWA for approval as an FHWA-Approved CE (FACE), generally undertaken as follows.
1. Review project information, regulatory definitions, and the CE PA.
2. Per the CE PA and FACE Checklist, assess and document those identified areas that exceed established thresholds.
3. Prepare and provide the FACE to the Environmental Services Division Chief (or designee) for signature and then submit to the FHWA for review, approval, and signature, per the CE PA approval process.

Relevant information and documentation will be included with the FACE for those impact areas that exceed thresholds established by the CE PA requiring preparation of a FACE. The executed FACE and documentation will be electronically filed in the administrative record by project number.

3.4 ACTIVITIES

Figure 3-A — CE COMPLIANCE PROCESS

ACTIVITY NO. 1: INITIATE CE PROCESS

The Environmental Services Division will initiate the CE process by compiling the pertinent information from the data gathering and field review activities that provided the basis for the determination of impacts for the project. The information will be organized by environmental areas involved with the project and will be reviewed for completeness and compliance with 23 CFR 771.117 and the CE PA.

ACTIVITY NO. 2: OBTAIN SECTION DETERMINATIONS

The Environmental Services Division will coordinate the environmental information for the project with each of the Sections in the Division (i.e., Cultural Resources, Environmental Studies, Environmental Engineering) and other NDOT Divisions (e.g., Stormwater), as needed. The Sections will review the pertinent information for its area of responsibility, as needed, and will initiate appropriate action to prepare and process compliance documentation, as necessary. These reviews will evaluate the project for unusual circumstances to ensure the CE classification is valid.

If the additional environmental studies raise questions as to whether the project may involve a significant impact, the Environmental Services Division will confer with the FHWA to determine if preparation of an EA (see Chapter 4) or EIS (see Chapter 5) is appropriate.
Regulations and Guidance

23 CFR 771.117(b) “Categorical exclusions” (Unusual circumstances)

<table>
<thead>
<tr>
<th>ACTIVITY NO. 3:</th>
<th>PREPARE CE DOCUMENTATION</th>
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If the project meets the requirements of the CE PA, the Environmental Services Division will prepare a PCE and checklist (Figure 3-B) or a FACE and checklist (Figure 3-C).

<table>
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<tr>
<th>ACTIVITY NO. 4:</th>
<th>SECURE CE APPROVAL</th>
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NDOT’s Environmental Services Chief (or designee) provides the approval of a PCE and the signature of the FHWA Division Administrator (or designee) provides the approval of a FACE, thereby completing the NEPA process. Compliance with other environmental requirements applicable to the project, other than construction-stage permitting, will have been accomplished by the time of CE approval.

See Section 2.4 “Preparing an Administrative Record”.

### 3.4 RE-EVALUATIONS

After approval of the CE, NDOT shall assess if there are any changes to the project or changes in the project area that would warrant a re-evaluation or issuance of a new CE. If needed, the project will be reevaluated, and, per the CE PA, NDOT will consult with FHWA.

If a change to the project or project area indicates the CE designation may no longer be valid, FHWA will be consulted. These consultations will be documented, per 23 CFR 771.129 “Re-evaluations”.
Figure 3-B — PCE CHECKLIST
### FHWA Approved Categorical Exclusion (FACE) Checklist

<table>
<thead>
<tr>
<th>FEDERAL PROJECT #:</th>
<th>STATE PROJECT #:</th>
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</table>

**ROUTE:**

**TERMINI:**

**PLANS OR MAP INCLUDED:**  
☑️ YES  ☐ NO

**PROJECT DESCRIPTION:**

---

### I. THRESHOLD QUESTION

1. **Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?**
   - □ YES  ☐ NO

   **If YES FHWA shall be consulted. The project may not qualify as a Categorical Exclusion and environmental studies may be needed to determine the proper classification.**

   **If NO, continue to section II.**

### II. PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)

2. **Is the project an action listed in 23 CFR 771.117 (c) or (d)?**
   - □ YES  ☐ NO

   **C List Action(s) #**

   **D List Action(s) #**

   **This project has been reviewed and qualifies as a PCE, but it exceeds one or more of the following thresholds outlined under Section IV(A)(1)(b) of the Programmatic Agreement (PA) between the Federal Highway Administration (FHWA) and Nevada Department of Transportation (NDOT) necessitating issuing a Categorical Exclusion requiring FHWA approval. The associated administrative record for the referenced exceedence(s) is (are) attached documenting the outcome and supporting this action as a Categorical Exclusion.**

### III. CE PA THRESHOLD CRITERIA Section IV(A)(1)(b):

1. **Involves acquisitions of more than a minor amount of right-of-way. Acquisition of right-of-way shall be examined in the context and intensity of the project and setting.**
   - □ YES  ☐ NO

   It may be that amount right-of-way that may produce an adverse effect or other non-desirable result in comparison to the project.

2. **Involves acquisitions that result in any residential or non-residential displacements.**
   - □ YES  ☐ NO

3. **Results in capacity expansion of a roadway by addition of through lanes.**
   - □ YES  ☐ NO

4. **Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions as defined in the CE PA.**
   - □ YES  ☐ NO

5. **Involves changes in access control that adversely affect traffic patterns as defined in the CE PA.**
   - □ YES  ☐ NO

6. **Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act.**
   - □ YES  ☐ NO

---

**Figure 3-C — FACE CHECKLIST**
<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>YES</th>
<th>NO</th>
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<tr>
<td>vii.</td>
<td>Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with an FHWA determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges.</td>
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<td>viii.</td>
<td>Requires the acquisition of lands under the protection of Section 6(f) as described in the CE PA.</td>
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<td>ix.</td>
<td>Requires a U.S. Army Corps of Engineers Section 404 permit other than a Nationwide Permit or a General Permit.</td>
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<tr>
<td>x.</td>
<td>Requires a U.S. Coast Guard bridge permit.</td>
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<td>xi.</td>
<td>Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR §650 Subpart A.</td>
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<td>xii.</td>
<td>Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture.</td>
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<td>xiii.</td>
<td>Is defined as a “Type I project” per 23 CFR 772.5.</td>
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<td>xiv.</td>
<td>May adversely affect federally listed or candidate species, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act.</td>
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<td>xv.</td>
<td>Involves properties with recognized environmental conditions (REC), previous land uses with potential for such, or potential for such to remain in the right-of-way.</td>
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<td>xvi.</td>
<td>Has an adverse effect on minority and/or low-income populations.</td>
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<td>xvii.</td>
<td>Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project [23 U.S.C. 108(d)].</td>
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<td>xviii.</td>
<td>Does not conform to the State Implementation Plan (SIP) which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas.</td>
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<td>xix.</td>
<td>Is not included in or is inconsistent with the statewide transportation improvement program (STIP), and in applicable urbanized areas, the transportation improvement program (TIP).</td>
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**Figure 3-C — FACE CHECKLIST (continued)**
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Chapter 4
ENVIRONMENTAL ASSESSMENTS

4.1 ENVIRONMENTAL ASSESSMENT COMPLIANCE PROCEDURES

When the significance of impacts of a transportation project is uncertain, or when preliminary research and surveys reveal no significant impacts will occur as a result of the project, an Environmental Assessment (EA) is prepared (see Figure 4-A). Preparation of an EA will result in one of the following:

1. **Finding of No Significant Impact.** If processing of the EA results in the determination that the project does not involve significant impacts, a “Finding of No Significant Impact” (FONSI) will be prepared as the National Environmental Policy Act (NEPA) decision document for the project.

2. **Finding that Significant Impacts Will Occur.** If, during the EA process, it is determined that the project will have significant impacts, the Environmental Services Division will coordinate the finding with the FHWA and will initiate the preparation of an Environmental Impact Statement (EIS) (see Chapter 5).

An EA is intended to be a concise public document that serves to:

- provide sufficient evidence and analysis for determining whether to prepare an EIS or issue a FONSI,
- comply with NEPA when no EIS is necessary, and
- facilitate the preparation of an EIS, if required.

If the FHWA is not the lead Federal agency for the project, different procedures apply, based on the NEPA requirements of that agency (e.g., BLM).

The fundamentals of the NEPA process include:

- development of project purpose and need;
- development of 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

Using a Section 6002 process to verify that documentation is meeting the requirements of SAFETEA-LU is optional for an EA.
1. Initiate EA Process
2. Initiate Early Coordination
3. Initiate Formal Public and Agency Scoping
4. Scoping/Informational Public Meeting
5. Develop Purpose & Need
6. Develop and Evaluate Reasonable Alternatives
7. Prepare Technical Reports/Memos
8. Evaluate Impacts for Significance
9. Prepare & Review Administrative Draft EA
10. FHWA Review of Administrative Draft EA
11. Approval of EA for Public Review
12. Location/Design Hearing
13. Revision of Approved EA
14. Request for a FONSI
15. FHWA Issues FONSI
16. Monitor Final Design & Construction

Figure 4-A — EA COMPLIANCE PROCESS
After receiving concurrence from the FHWA in the decision to prepare an EA for a project, the Environmental Services Division will initiate the EA process (Figure 4-A) by compiling the pertinent information from the data gathering and field review activities that provided the basis for the preliminary determination of impacts. The information will be organized by environmental impact issue areas and will be reviewed for completeness.

The information will address the following potential impact areas, as applicable:

- access
- safety
- socio-economic considerations,
- environmental justice,
- air quality,
- traffic noise,
- hazardous materials/waste,
- floodplain and hydrologic assessment,
- water quality,
- biological resources,
- cultural resources,
- public parks, recreation areas, Section 4(f),
- cumulative and secondary impact issues,
- Native American concerns, and
- land use
- visual resources.

The Environmental Services Division will coordinate with the Project Management Team (PMT), regulatory and resource agencies and the public in evaluating and refining preliminary project alternatives based on consideration of the data gathering and field review information, and the following:

- the Purpose and Need Statement for the project,
- community and agency concerns,
- logical termini and independent utility,
- cost constraints,
- alternate modes of transportation, and
- the no-build alternative.

At this time Consultant Services may be secured by the Project Management Division, Design Division, or Environmental Services Division to facilitate development of project design, to conduct environmental studies as needed, and prepare the EA document. NDOT retains oversight over these activities and any reports, technical memos or other required documentation will be reviewed and approved by NDOT. The scope of services will determine which of the following Activities NDOT or the Consultant will perform.
The PMT, including the Environmental Services Division and Consultant, 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 further develop the purpose and need for the project, assist in the preliminary development of reasonable and feasible alternatives, and begin gathering information for evaluating the social, economic and environmental impacts of the proposed project alternatives and possible mitigation measures.

The PMT will prepare Cooperating and Participating Agency letters, if needed.

Regulations and Guidance


ACTIVITY NO. 3: INITIATE FORMAL PUBLIC AND AGENCY SCOPING

An Intent-to-Study Letter will be prepared and forwarded to the appropriate Native American Tribes, Federal and State agencies (including regulatory and resource agencies), local governments, Community Advisory Boards, public organizations, recognized special interest groups, adjacent property owners (in accordance with NDOT Public Involvement Policy) and known concerned/affected citizens that may have an interest in the proposed project. The Intent-to-Study Letter describes the preliminary concept of the project, provides details about the public information/scoping meeting(s), and solicits the submittal of comments.

A Transportation Notice will also be prepared to accompany the Intent-to-Study letter. A location map or sketch of the project area may also accompany the Intent-to-Study letter.

The Intent-to-Study Letter and Transportation Notice will include the following:

- project location,
- project description,
- list of potential impacts,
- comment period closing date,
- name and address of point of contact at NDOT, and
- the date and location of the information/scoping meeting.
Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the Intent-to-Study letter and Transportation Notice are needed.

See Figure 4-B for a Sample of an Intent-to-Study Letter and Figure 4-C for a Sample Transportation Notice.

The Environmental Services Division maintains an Intent-to-Study contact list that will form the basis of the distribution of the Intent-to-Study letter. This list must be updated, changed and augmented accordingly for each project.

The Transportation Notice will provide the basis for newspaper advertisements and web advertising for the information/scoping meeting(s). Advertising shall be at a minimum in accordance with NDOT’s Public Involvement Policy. Additional targeted advertising and noticing, tailored to each project, may be required.

Development of public noticing and advertising will be coordinated with the Environmental Services Division, NDOT Public Hearings Officer, and NDOT Public Information Office. For further information on NDOT’s public involvement procedures, see Chapter 6.

The EA process will actively involve Federal, State and local partners in the transportation and environmental communities in an open, cooperative and collaborative process, beginning at the earliest stages and continuing through project development and construction. The following agencies typically are included in project coordination activities:

- Federal Highway Administration
- US Environmental Protection Agency
- Bureau of Land Management
- Bureau of Reclamation
- US Forest Service
- National Park Service
- Bureau of Indian Affairs
- US Geological Survey
- US Army Corps of Engineers
- US Fish and Wildlife Service
- US Department of Energy
- US Department of Health and Human Services
- USDA, Natural Resources Conservation Service
- Nevada Department of Administration, State Clearinghouse
- air quality districts
- cities and counties
- Native American Tribes
- Metropolitan Planning Organizations
- Regional Transportation Commissions
STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1203 S. Stewart Street
Carson City, Nevada 89712

September 1, 2016

To Whom It May Concern:

The Nevada Department of Transportation (NDOT), in cooperation with the Federal Highway Administration (FHWA), is proposing to improve traffic operations at the Interstate 515 (I-515) interchange with Charleston Boulevard and along I-515 between Eastern Avenue and Charleston Boulevard. The proposed project will add auxiliary lanes on I-515 between the Eastern Avenue and Charleston Boulevard interchanges, reconstruct the Charleston Boulevard interchange, and widen Charleston Boulevard east of the I-515 interchange. The proposed project will increase safety and improve traffic operations for both current and future traffic needs.

In compliance with the National Environmental Policy Act of 1969 (NEPA), NDOT is initiating the preparation of an Environmental Assessment (EA) to evaluate and document the proposed project’s potential impacts. This letter is to inform you of the current study and to solicit your input to assist the project team in further identifying the purpose and need for the project, addressing your concerns about potential impacts, and to inform the project team about potential mitigation measures to consider. Resources addressed include, but are not limited to:

- Access
- Air Quality
- Archeology
- Environmental Justice
- Geology
- Hazardous Materials
- Historic Properties
- Land Use
- Traffic Noise
- Public Parks and Recreation Areas
- Safety
- Socioeconomic Considerations
- Visual Resources
- Water Quality and Hydrology
- Wildlife

A public information meeting will be held on Thursday September 22, 2016, from 4 p.m. to 7 p.m. at the East Las Vegas Community Center, 250 N Eastern Avenue, Las Vegas, NV 89101, to provide information about the project and receive comments from public agencies and groups who have a responsibility for resources in the study area. Also invited are individuals who may be affected by the proposed project or who have an interest in the project. Please see the Transportation Notice (other side) for additional information about the meeting location and format.

Comments or questions regarding the proposed project may be submitted to Richard Splawinski, PE, Project Manager, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712, RSplawinski@dot.state.nv.us. Comments or questions may also be e-mailed to info@dot.state.nv.us; please include the project name in the subject line. We appreciate receiving any comments you may have about this project by October 7, 2016.

Sincerely,

Rick Splawinski, PE, NDOT Project Manager

Figure 4-B — SAMPLE INTENT-TO-STUDY LETTER
TRANSPORTATION NOTICE
PUBLIC INFORMATION MEETING
FOR
I-515/CHARLESTON BOULEVARD
INTERCHANGE IMPROVEMENTS

PURPOSE OF MEETING: The Nevada Department of Transportation (NDOT), in cooperation with the Federal Highway Administration (FHWA), invites you to attend a public information meeting to solicit input for the I-515/Charleston Boulevard Interchange project in Las Vegas. Proposed improvements include auxiliary lanes on I-515 between the Eastern Avenue and Charleston Boulevard interchanges, reconstructing the Charleston Boulevard interchange, and widening Charleston Boulevard east of the I-515 interchange.

In compliance with the National Environmental Policy Act of 1969 (NEPA), NDOT is initiating the preparation of an Environmental Assessment (EA) to evaluate and document the proposed project’s potential environmental impacts.

PROJECT BENEFITS: The purpose of the proposed improvements is to increase safety and improve traffic operations for both current and future traffic needs.

WHEN AND WHERE: Thursday, September 22, 2016, 4 – 7 p.m., PRESENTATION AT 5:30 p.m., East Las Vegas Community Center, Ballroom, Las Vegas, NV. 250 N Eastern Avenue, Las Vegas.

WHERE YOU COME IN: Members of the public are encouraged to attend at their convenience any time during the meeting hours of 4 to 7 p.m. Project representatives will be on hand to discuss and answer your questions. There will be a brief project presentation at 5:30 p.m., followed by a short question and answer period from the audience. Before and after the presentation, the meeting will be conducted as an open-house format to provide an opportunity to view displays and individually discuss the interchange with project representatives. At the meeting, your comments may be submitted for public record in writing or verbally to a court reporter, who will be available throughout the meeting. In addition to any comments received at the meeting, written or email comments will be accepted through Friday, October 7, 2016. Please email your comments to: info@dot.state.nv.us with a reference to this project in the subject line. You may also mail your comments using the contact information below.

IF RIGHT-OF-WAY IS NEEDED: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will govern the acquisition of right-of-way that may be necessary for this project. More detailed information regarding right-of-way can be obtained from the NDOT’s Right of Way Division, 1253 S. Stewart St., Carson City, NV 89712, or by calling (775) 888-7480.

CONTACT: Website: www.nevadadot.com
Mail: Rick Splawinski, PE, Project Manager, 1263 South Stewart Street, Carson City, NV 89712.
email: RSplawinski@dot.state.nv.us.

SPECIAL ACCOMMODATION REQUESTS: Reasonable efforts will be made to assist and accommodate persons with disabilities desiring to attend the meeting. Requests for auxiliary aids or services to assist individuals with disabilities or limited English proficiency should be made with as much advance notice as possible to Julie Maxey, NDOT Public Hearings Officer at 775-888-7171 or email at jmaxey@dot.state.nv.us.

Figure 4-C — SAMPLE INFORMATION MEETING TRANSPORTATION NOTICE
The Environmental Services Division, in cooperation with the FHWA Division Office and other NDOT Divisions, will hold an Information/Scoping Meeting to inform the public of the project and elicit their input. Information presented at the meeting will include items such as:

- project location,
- project description,
- purpose and need for the project,
- preliminary concepts or alternatives, and
- tentative project schedule

The meeting will be an open-house style meeting and include display boards, a formal presentation, and a short question and answer period following the formal presentation. Additionally, a handout packet will be prepared for each person in attendance. The handout will include a welcome letter, a copy of the presentation, copies of each display board, and a comment form.

Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the meeting handout or presentation is needed and if a translator should attend the meeting.

See Figure 4-D for an example of a Scoping Meeting welcome letter. See Chapter 6 for additional information on NDOT public involvement procedures.

The complexity of the project or the resources in the project area may require additional scoping or information meetings.

Regulations and Guidance

NDOT Public Involvement Website
September 22, 2016

Welcome:

Thank you for attending this informational meeting regarding the Nevada Department of Transportation’s (NDOT) I-515/Charleston Boulevard Interchange Improvements project. Proposed improvements include adding auxiliary lanes on I-515 between the Eastern Avenue and Charleston Boulevard interchanges, reconstructing the Charleston Boulevard interchange, and widening Charleston Boulevard east of the interchange. The project is expected to increase safety and improve operations for both current and future traffic needs.

This meeting will be open-house format from 4 to 7 p.m. Project representatives will give a brief presentation beginning at 5:30 p.m., followed by a question and answer period from the audience. The presentation and public comment period will be recorded by a hired court reporter.

As you enter the room, you will notice displays describing the project. Project representatives will be located at the displays. Please take this opportunity to ask questions and discuss the project with them.

During this meeting, as well as any public meetings conducted by NDOT, we are seeking your input. At today’s meeting there are several ways you may give us your comments for the public record:

First: During the open-house meeting, you may make an oral statement to the court reporter, who will be available throughout the entire meeting.

Second: You may fill out the comment form attached to this handout and deposit it in the comment box or give the completed form to one of the project representatives.

Third: The public meeting record will remain open for two weeks following this meeting. If you would prefer to write a letter or mail your completed comment form and any exhibits, these will become part of the public transcript for this meeting if mailed to NDOT, Richard Splawinski, NDOT Project Manager, 1263 South Stewart Street, Carson City, NV 89712, and received by 5 p.m., Friday, October 7, 2016.

Fourth: You may e-mail your comments to info@dot.state.nv.us. Please reference this project in the subject line. E-mail comments will also be accepted until 5 p.m., Friday, October 7, 2016.

Thank you for attending this informational meeting and for giving us your comments.

Sincerely,

Richard Splawinski, PE, NDOT Project Manager

Figure 4-D — SAMPLE WELCOME LETTER
ACTIVITY NO. 5: DEVELOP PURPOSE AND NEED

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, 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 4).

Development of the Purpose and Need may incorporate directly or by reference feasibility studies, corridor studies or other planning studies meeting the Planning and Environmental Linkages (PEL) requirements set forth by FHWA.

Regulations and Guidance

* FHWA Environmental Guidebook
* FHWA Technical Advisory T6640.8A – October 1987
* 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 – August 2016
* FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006
* Environment and Planning Linkage Processes Legal Guide—February 2005
* Appendix A to Part 450 -- Linking the Transportation Planning and NEPA Processes
* Moving Ahead for Progress in the 21st Century Act (MAP-21)

ACTIVITY NO. 6: DEVELOP AND EVALUATE REASONABLE ALTERNATIVES

The appropriate NDOT Divisions and project consultants 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 4).

This preliminary list will be refined further to reduce the number of alternatives to those that avoid and minimize adverse impacts as required (e.g., wetlands, floodplains, Section 4(f) properties, historic sites) and best satisfy the project purpose and need.

The determination of the reasonable alternatives is an evolutionary process that includes the following steps:

• perform a rough evaluation of the potential impacts of each of the preliminary alternatives,
• incorporate input from agencies and the public;
• estimate the overall reasonableness and feasibleness of each alternative;
• ensure that each reasonable alternative was developed to best address the project purpose and need;
• identify the reasonable alternatives, including the “no-build” alternative to be studied in detail in the EA; and
• document in the project file the reason or reasons why an alternative has been eliminated.

Development of alternatives may build off feasibility studies, corridor studies, or other planning studies meeting the PEL requirements set forth by FHWA.

At least one Build Alternative and the “No-build” alternative will be addressed in the EA. Reasonable alternatives that were dismissed will be documented in the EA, with an explanation of the reasons why they were eliminated.

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 – August 2016
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006
Environment and Planning Linkage Processes Legal Guide – February 2005
Appendix A to Part 450 -- Linking the Transportation Planning and NEPA Processes Moving Ahead for Progress in the 21st Century Act (MAP-21)
For each reasonable alternative selected for study in the EA, the Environmental Services Division, in cooperation with the PMT, will conduct in-depth analyses to more clearly define potential environmental and other impacts of each alternative. This effort will involve gathering detailed information and data for each alternative. Various types of data (e.g., social, economic, environmental, engineering) typically will be gathered simultaneously.

The Environmental Services Division or its Consultants 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 or its Consultants 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 PMT. Environmental Services Division shall review any reports, technical memos or other required documentation prepared by Consultants.

The technical analyses may include any or all of the following:

- capacity analysis (include safety and Critical Crash Rate calculations);
- intersection design studies;
- interchange type and design studies;
- Section 106 compliance issues;
- Section 4(f) compliance issues;
- socio-economic and Environmental Justice impacts;
- wetlands/Waters of the US involvement/impacts (conducted in coordination with NDOT Stormwater Division);
- stormwater management (conducted in coordination with NDOT Stormwater Division);
- floodplain and hydrology assessment;
- threatened or endangered species impacts (Section 7 - Biological Assessment & Opinion);
- Native American issues;
- Migratory Bird Treaty Act compliance issues;
- invasive species/noxious weeds issues;
- material sites;
- air quality impacts;
- noise impacts;
- hazardous materials/waste involvement;
- staging areas;
- utility corridors;
- construction easements; and
- other issues, as applicable (e.g., Section 6(f), impaired waters/TMDLs, Wild and Scenic Rivers, temporary work in waterways discharge permit, farmland protection).

Technical Reports and/or preliminary compliance documentation to provide details on the specific environmental issues and impacts involved shall be prepared. The Technical Reports and/or preliminary compliance documentation will address requirements for resource avoidance and
impact minimization and mitigation. The Environmental Services Division will coordinate the Technical Reports and compliance documentation with appropriate regulatory and resource agencies and will document the results of the coordination so they may be summarized in the EA.

For detailed information on the environmental studies that may be required, see Chapters 7-16 of this Manual.

Technical Report Submittals:

- All Technical Reports must be submitted and approved by NDOT prior to inclusion in any environmental document.
- Traffic Noise and Air Quality Technical Reports must use data which has been approved by NDOT Traffic Information and Operations Divisions.
- Biological Assessment must be provided for review by NDOT Environmental Scientist prior to finalization.
- Biological Assessments will be submitted directly from NDOT to FHWA.
- FHWA will submit Biological Assessments directly to USFWS for Biological Opinion.

Regulations and Guidance

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006

ACTIVITY NO. 8: EVALUATE IMPACTS FOR SIGNIFICANCE

The Environmental Services Division, in cooperation with members of the PMT and the FHWA, will monitor the individual resource assessments prepared in Activity 7 to determine if the project might have a significant impact under NEPA. 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, and 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.

Regulations and Guidance

40 CFR 1508.27

ACTIVITY NO. 9: PREPARE AND REVIEW ADMINISTRATIVE DRAFT EA

The following will be used to prepare an Administrative Draft EA (and draft Section 4(f) evaluation, if applicable):

• preliminary engineering information,
• the environmental Technical Reports and preliminary compliance documentation, and
• the results of coordination with regulatory and resource agencies and the public.

The Administrative Draft EA will include the following components:

• cover;
• title/approval page;
• table of contents;
• glossary of acronyms and abbreviations;
• summary of mitigation measures, including responsible parties;
• description of proposed project, including project location map and typical section;
• description of project purpose and need;
• description of alternatives eliminated and why;
• description of alternatives, including an indication of the preferred alternative, as appropriate;
• description of environmental impacts including indirect and cumulative impacts, and mitigation for all studied alternatives;
• Section 4(f) Evaluation, if applicable;
• results of agency coordination and public involvement; and
• appendices.
The Environmental Services Division will review the Administrative Draft EA and distribute it to the following NDOT Divisions for review and comment: Stormwater, Traffic Operations, Traffic Information, Roadway Design, Right-of-Way, Transportation and Multimodal Planning, Construction, and the District Engineer. Necessary changes to respond to comments received as a result of the internal NDOT review will be incorporated into the EA.

**Regulations and Guidance**

*FHWA Environmental Guidebook*
*FHWA Technical Advisory T6640.8A – October 1987*
*AASHTO SCOE Synthesis of Data Needs for EA and EIS Documentation -- A Blueprint for NEPA Document Content—January 2005*

**ACTIVITY NO. 10: FHWA REVIEW OF ADMINISTRATIVE DRAFT EA**

The revised Administrative Draft EA will be submitted to the FHWA Division Office for review and comment (this review may occur concurrently with NDOT’s Administrative Draft review if agreed to in advance by FHWA).

Review of the Draft EA by NEPA Cooperating Agencies will occur concurrently with FHWA’s review.

Necessary changes to respond to comments received as a result of the Administrative Draft EA review will be incorporated into the EA.

**ACTIVITY NO. 11: APPROVAL OF EA FOR PUBLIC REVIEW**

The Chief of the Environmental Services Division, FHWA Project Engineer and the Division Office Environmental Program Manager will approve and sign the EA for public review. Once approved, a Transportation Notice will be prepared noticing the availability of the EA for public review and the date of the Location/Design Hearing (see Figure 4-E). The Transportation Notice will announce the Location/Design Hearing and where and how the EA may be obtained and reviewed.

Hard copies of the EA will be made available for public inspection at NDOT headquarters, at the appropriate NDOT District Office, the FHWA Division Office, and at public libraries in the vicinity of the project.

At a minimum the EA will be available for review and downloading on the internet via NDOT’s website. The Transportation Notice will be forwarded via email or US Postal Service to the Intent-to-Study List recipients and any additional parties who have since indicated their desire to be informed of the project. Requests for electronic (CD) or hard copies of the EA will be accommodated within reason.
The Nevada Department of Transportation (NDOT), in cooperation with the Federal Highway Administration and the Bureau of Land Management, has prepared an Environmental Assessment (EA) addressing the potential environmental impacts for proposed improvements to USA Parkway (SR 439).

The proposed project is located between I-80 and US 50 and may include minor improvements to the existing 6 miles of USA Parkway and would construct 12.5 miles of new road connecting to US 50 at Opal Avenue in Silver Springs, Nevada. The project is proposed to improve local and regional access and mobility between I-80 and US 50, as well as provide transportation infrastructure to support existing and future planned land uses and economic development in Storey and Lyon counties.

The EA is available on NDOT’s website at [www.nevadadot.com/Meetings](http://www.nevadadot.com/Meetings). Copies are also available by request from NDOT, Environmental Services Division, 1263 S. Stewart Street, Carson City, Nevada 89712, or by calling (775) 888-7013. Copies can be viewed at the Fernley Branch Library, 575 Silver Lace Boulevard, the Silver Stage Branch Library, 3905 Highway 50 West, Silver Springs, and the Dayton Valley Branch Library, 321 Dayton Valley Road.

**Wednesday, November 5, 2014**

4 – 7 p.m.

**Presentation at 5:30 p.m.**

Silver Stage High School
3755 W. Spruce Avenue
Silver Springs, NV 89429

The hearing will be an open house format from 4 to 7 p.m., with a formal presentation at 5:30 p.m. followed by a short question and answer period.

Comments accepted until 5 p.m. Friday, November 21, 2014.

You can submit comments in person at the hearing or email your comments to info@dot.state.nv.us with a reference to this project in the subject line. Comments can also be mailed to Pedro Rodriguez, NDOT Project Manager, Nevada Department of Transportation, 1263 S. Stewart Street, Carson City, Nevada 89712. Requests for general information about the project can also be made to Pedro Rodriguez at (775) 888-7321, by e-mail to prodriguez@dot.state.nv.us.

IF RIGHT-OF-WAY IS NEEDED: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will govern the acquisition of right-of-way that may be necessary for this project. More detailed information regarding right-of-way can be obtained from the NDOT’s Right-of-Way Division, 1263 S. Stewart Street, Carson City, Nevada 89712, or by calling (775) 888-7480.

NOTE: Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Requests for auxiliary aids or services to assist individuals with disabilities or limited English proficiency should be made with as much advance notice as possible to Julie Maxey, Nevada Department of Transportation, Public Hearings Officer, at (775) 888-7171.
The EA must be available for review for a period of 30 days. Comments on the EA can be submitted in written or electronic media to NDOT or the FHWA within 30 days of the availability of the EA unless the FHWA determines, for good cause, that a different period is warranted. The EA will be available for a minimum of 15 days prior to and after the Location/Design Hearing.

The Transportation Notice will provide the basis for newspaper advertisements and web advertising for Location/Design Hearing. Advertising shall be at a minimum in accordance with NDOT’s Public Involvement Policy. Additional targeted advertising and noticing, tailored to each project, may be required.

Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the Transportation Notice is needed.

Development of public noticing and advertising will be coordinated with the Environmental Services Division, NDOT Public Hearings Officer, and NDOT Public Information Office. For further information on NDOT’s public involvement procedures, see Chapter 6.

**Regulations and Guidance**

23 CFR 771.119 “Environmental assessments”

**ACTIVITY NO. 12: LOCATION/DESIGN HEARING**

The Environmental Services Division, in cooperation with the NDOT Public Hearings Officer and the FHWA Division Office, will hold a Location/Design Hearing. A Location/Design Hearing is to be held for all FHWA/NDOT projects requiring an EA, except for EAs prepared for the acquisition or expansion of a material source or other projects as approved by FHWA. FHWA, NDOT and the cooperating land managing agency will determine on a case-by-case basis if a Location/Design Hearing is warranted for a material site EA.

Information presented at the meeting will include items such as:

- project location,
- project description,
- purpose and need for the project,
- summary environmental impacts and mitigation measures, and
- project schedule.

The meeting will be an open-house style meeting and include display boards, a formal presentation, and a short question and answer period following the formal presentation. Additionally, a handout packet will be prepared for each person in attendance. The handout will include a welcome letter, a copy of the presentation, the purpose and need for the project, a summary of environmental impacts and mitigation measures, copies of each display board, and a comment form.
Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the meeting handout or presentation is needed and if a translator should attend the meeting.

See Chapter 6 for descriptions of public hearing types and other aspects of NDOT’s public involvement procedures.

**Regulations and Guidance**

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

NDOT Public Involvement Website

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If an EA requires substantive changes based on comments received from public review and the Location/Design Hearing a revised EA will be drafted. The revised EA will be sent to cooperating agencies and the FHWA for review.

The Chief of the Environmental Services Division, FHWA Project Engineer and the Division Office Environmental Program Manager will approve and sign the revised EA for public review. Once approved, a Transportation Notice will be prepared noticing the availability of the revised EA for public review.

Hard copies of the EA will be made available for public inspection at NDOT headquarters, at the appropriate NDOT District Office, the FHWA Division Office, and at public libraries in the vicinity of the project.

The document will be available for review and downloading on the internet via NDOT’s web page. The Transportation Notice will be forwarded via email or US Postal Service to affected units of Federal, State and local government, the public and to the Nevada Department of Administration, State Clearinghouse. Requests for electronic (CD) or hard copies of the EA will be accommodated.

Comments on the revised EA can be submitted in written or electronic media to NDOT or the FHWA within 30 days of the availability of the EA unless the FHWA determines, for good cause, that a different period is warranted. The Notice of Availability of the revised EA in local newspapers will announce where and how the EA may be obtained or reviewed. The EA must be available for review for a period of 30 days.

Consultation between NDOT Environmental Services Division and the FHWA will determine if another public hearing is needed.

Non-substantive changes to the EA can be addressed in an errata sheet. This errata sheet should be sent to all recipients of the Location/Design Hearing notice and any other entities or individuals who were forwarded electronic or hard copies of the EA.
If needed, an errata sheet can be prepared to address any non-substantive errors or omissions from the EA that should be corrected. The errata sheet should be included in all copies of the EA, placed as the first page following the cover page.

Regulations and Guidance

23 CFR 771.119 “Environmental assessments”

ACTIVITY NO. 14: REQUEST FOR A FONSI

If NDOT determines the recommended preferred alternative has no significant impacts, the Environmental Services Division will prepare a request for a FONSI. The request will be sent by the Environmental Services Division to the FHWA Project Engineer along with a draft FONSI, a copy of the EA, and the Location/Design Hearing transcript. The draft FONSI will provide responses to all substantive comments received from the Location Design Hearing and public review.

Regulations and Guidance

23 CFR 771.119 “Environmental assessments”
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006

ACTIVITY NO. 15: FHWA ISSUES FONSI

If the FHWA concurs with NDOT’s determination that the project will have no significant impacts, it will finalize the draft FONSI and provide approval signatures. FHWA will forward NDOT the approved FONSI.

After the FHWA has issued the FONSI, the Environmental Services Division will prepare a Notice of Availability of the FONSI. The Notice of Availability will be forwarded to the affected units of Federal, State and local government as appropriate and posted on NDOT’s website. See Figure 4-F for a sample Notice of FONSI Availability. The FONSI will be available from NDOT and the FHWA Division Office upon request. See Section 2.3, “Preparing an Administrative Record”.

Regulations and Guidance

23 CFR 771.121 “Findings of no significant impact”
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006
TRANSPORTATION NOTICE
NOTICE OF AVAILABILITY
FINDING OF NO SIGNIFICANT IMPACT (FONSI)

The Federal Highway Administration (FHWA) approved a Finding of No Significant Impact (FONSI) on January 13, 2015 in regards to the Environmental Assessment (EA) approved on October 8, 2014 for the USA Parkway State Route (SR) 439 project in Storey and Lyon Counties, Nevada.

The FONSI and EA are available to the public at:

http://www.nevadadot.com/Projects_and_Programs/Road_Projects/USA_Parkway_-_I-80_to_U_S__50.aspx

The FONSI and EA are also available for viewing at the following locations:

Nevada Department of Transportation
Environmental Services Division
1263 South Stewart Street
Carson City, NV 89712
(775) 888-7013

Nevada Department of Transportation
District II Offices
310 Galletti Way
Sparks, NV 89431
(775) 834-8300

Information regarding the FONSI and EA may be obtained by contacting Steve Cooke, P.E., Chief, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712, scooke@dot.state.nv.us, (775) 888-7013.

Figure 4-F — SAMPLE NOTICE OF FONSI AVAILABILITY
Representatives of the Environmental Services Division will review contract plans and special provisions and will attend preconstruction conferences for projects to ensure permit obligations, environmental commitments and environmental mitigation measures are adequately addressed.

See Section 2.4 for additional information on environmental commitments/permit obligations.

During the construction phase of the project, the Environmental Services Division in coordination with the Resident Engineer will monitor construction activities to ensure the contractor complies with the Construction Contract Documents, especially those concerning permit obligations, environmental commitments, and environmental mitigation measures.

Regulations and Guidance

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006
AASHTO Practitioner’s Handbook 04 Tracking Compliance with Environmental Commitments and Use of Environmental Monitors – November 2006

4.2 RE-EVALUATIONS

After approval of the FONSI, NDOT shall consult with FHWA prior to requesting any major approvals or grants to establish whether the approved EA and FONSI remain valid.

These consultations will be documented when determined necessary by FHWA and in a format agreed to by FHWA. The regulations and guidance cited below describe the triggers (e.g., timeframes) for re-evaluating NEPA documents and approvals:

- 23 CFR 771.129 “Re-evaluations”
- FHWA Environmental Guidebook
- FHWA Technical Advisory T6640.8A – October 1987
# Chapter 5

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Chapter 5
ENVIRONMENTAL IMPACT STATEMENTS

5.1 ENVIRONMENTAL IMPACT STATEMENTS (EIS)

An Environmental Impact Statement (EIS) is prepared when it is determined a project will likely cause significant impacts to the environment. An EIS will provide a discussion of significant environmental impacts and inform decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. See 40 CFR 1502 "Environmental Impact Statements" for detailed guidance on the principles to be followed in preparing EIS documents.

5.2 ENVIRONMENTAL IMPACT STATEMENT COMPLIANCE PROCEDURES

This Section describes the procedures for preparing and processing an EIS for projects where the FHWA is the lead Federal agency (see Figure 5-A). If a different agency is the lead Federal agency for the project, different procedures may apply, based on the National Environmental Policy Act (NEPA) regulations of that agency (e.g., Bureau of Land Management) and CEQ regulations 40 CFR 1506.3.

The fundamentals of the NEPA process include:

- development of project purpose and need;
- development of 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

To verify that documentation is meeting the requirements of SAFETEA-LU, a Section 6002 Environmental Review Process is followed to ensure compliance.
Figure 5-A – EIS COMPLIANCE PROCESS

1. Initiate EIS Process
2. Initiate Early Coordination
3. Publish Notice of Intent
4. Initiate Formal Public and Agency Scoping
5. Scoping/Informational Public Meetings
6. Develop Purpose and Need
7. Determine Reasonable Alternatives
8. Evaluate Reasonable Alternatives
9. Prepare Technical Reports
10. Prepare & Review Administrative DEIS
11. FHWA Review of Administrative DEIS
12. FHWA Legal Sufficiency Review (DEIS)
13. Sign DEIS & Circulate for Review
14. Location/Design Hearing
15. Evaluate & Respond to Substantive Comments
16. Prepare/Review Administrative Draft FEIS or FEIS/ROD
17. FHWA Review of Administrative Draft FEIS or FEIS/ROD
18. FHWA Legal Sufficiency Review (Draft FEIS or FEIS/ROD)
19. Prepare/Process FEIS or FEIS/ROD for Approval
20. Circulate FEIS or FEIS/ROD
21. Request Record of Decision (ROD)
22. Statute of Limitations (SOL) Notice
23. Monitor Final Design & Construction
ACTIVITY NO. 1: INITIATE EIS PROCESS

After notifying the FHWA of the decision to prepare an EIS for a project, the Environmental Services Division will compile the pertinent information from the data gathering and field review activities that provided the basis for the preliminary determination of impacts. The information will be organized by environmental impact issue areas and will be reviewed for completeness. The information will address the following potential impact areas, but not limited to as applicable:

- access
- safety
- socio-economic considerations,
- environmental justice,
- air quality,
- traffic noise,
- hazardous materials/waste,
- floodplain and hydrologic assessment,
- water quality,
- biological resources (i.e. endangered species, wetlands, migrating birds),
- cultural resources,
- public parks, recreation areas, Section 4(f),
- cumulative and secondary impact issues,
- visual resources
- Native American Concerns, and
- land use.

Cooperating and Participating Agency letters will be prepared, if needed.

The Environmental Services Division will coordinate with the Project Management Team (PMT), participating and cooperating agencies and the public to evaluate and refine preliminary project alternatives based on the data gathered, the field review and the following:

- the Purpose and Need Statement for the project,
- public and participating and cooperating agency concerns,
- logical termini and independent utility,
- cost constraints,
- alternate modes of transportation, and
- the no-build alternative.

A draft Notice of Intent under 40 CFR 1501.7 and 1508.22, sent to the Division or Regional Administrator by NDOT, may serve as the initiation notice under Section 6002 so long as the information required by Section 6002 is contained in the draft Notice of Intent.

At this time, Consultant Services may be secured by the Project Management Division, Design Division, or Environmental Services Division to facilitate development of project design, to
conduct environmental studies as needed, and prepare the EIS document. NDOT retains oversight over these activities and any reports, technical memos or other required documentation will be reviewed and approved by NDOT. The scope of services will determine which of the following Activities NDOT or the Consultant will perform.

**Regulations and Guidance**

**NEPA Documentation** – [Environmental Impact Statement](#)  
[FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance](#)  
[AASHTO Practitioner’s Handbook 07 *Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects* – August 2016](#)

**ACTIVITY NO. 2:** INITIATE EARLY COORDINATION

The PMT, including the Environmental Services Division and Consultant, 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 Public Involvement Website](#)  
[23 CFR 771.111 “Early coordination, public involvement and project development”](#)  
[FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006](#)

**ACTIVITY NO. 3:** PUBLISH NOTICE OF INTENT

A draft Notice of Intent (NOI) will be prepared and submitted to the FHWA Division Office. Appendix B of [FHWA Technical Advisory T6640.8A](#) provides detailed guidance for preparing an NOI and the content for each of its sections. The publication [FHWA Environmental Guidebook](#) provides additional information.

The FHWA Division Office will submit the NOI for publication in the *Federal Register*.

The NOI will include the following five sections:

- Agency,
- Action,
- Summary,
- For Further Information Contact, and
- Supplementary Information.
ACTIVITY NO. 4: INITIATE FORMAL PUBLIC AND AGENCY SCOPING

An Intent-to-Study Letter will be prepared and forwarded to the appropriate Native American Tribes, Federal and State agencies (including regulatory and resource agencies), local governments, Community Advisory Boards, public organizations, recognized special interest groups, adjacent property owners (in accordance with NDOT Public Involvement Policy) and known concerned/affected citizens that may have an interest in the proposed project. The Intent-to-Study Letter describes the preliminary concept of the project, provides details about the public information/scoping meeting(s), and solicits the submittal of comments (see Figure 4-B in Chapter 4).

A Transportation Notice will also be prepared to accompany the Intent-to-Study letter (see Figure 4-C in Chapter 4). A location map or sketch of the project area may also accompany the Intent-to-Study letter.

The Intent-to-Study Letter and Transportation Notice will include the following:

- reference to the NOI,
- project location,
- project description,
- list of potential impacts,
- comment period closing date,
- name and address of point of contact at NDOT, and
- the date and location of the information/scoping meeting(s).

Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the Intent-to-Study letter and Transportation Notice are needed.

The Environmental Services Division maintains an Intent-to-Study contact list that will form the basis of the distribution of the Intent-to-Study letter. This list must be updated, changed and augmented accordingly for each project.

The Transportation Notice will provide the basis for newspaper advertisements and web advertising for the initial scoping meeting(s). Advertising shall be at a minimum in accordance with NDOT’s Public Involvement Policy. Additional targeted advertising and noticing, tailored to each project, may be required.
Development of public noticing and advertising will be coordinated with the Environmental Services Division, NDOT Public Hearings Officer, and NDOT Public Information Office. For further information on NDOT’s public involvement procedures, see Chapter 6.

The EIS process will actively involve Federal, State and local partners in the transportation and environmental communities in an open, cooperative and collaborative process, beginning at the earliest stages and continuing through project development and construction. The following agencies typically are included in project coordination activities:

- Federal Highway Administration
- US Environmental Protection Agency
- Bureau of Land Management
- Bureau of Reclamation
- US Forest Service
- National Park Service
- Bureau of Indian Affairs
- US Geological Survey
- US Army Corps of Engineers
- US Fish and Wildlife Service
- US Department of Energy
- US Department of Health and Human Services
- USDA, Natural Resources Conservation Service
- Nevada Department of Administration, State Clearinghouse
- air quality districts
- cities and counties
- Native American Tribes
- Metropolitan Planning Organizations
- Regional Transportation Commissions

Regulations and Guidance

40 CFR 1501.7 “Scoping”
23 CFR 771.123 “Draft environmental impact statements”
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

**ACTIVITY NO. 5: SCOPING/INFORMATIONAL PUBLIC MEETINGS**

The Environmental Services Division, in cooperation with the FHWA Division Office and other NDOT Divisions, will hold an Information/Scoping Meeting to inform the public of the project and elicit their input. Information presented at the meeting will include items such as:

- project location,
- project description,
- purpose and need for the project,
• preliminary concepts or alternatives,
• tentative project schedule

The meeting will be an open-house style meeting and include display boards, a formal presentation, and a short question and answer period following the formal presentation. Additionally, a handout packet will be prepared for each person in attendance. The handout will include a welcome letter, a copy of the presentation, copies of each display board, and a comment form.

Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the meeting handout or presentation is needed and if a translator should attend the meeting.

See Chapter 6 for additional information on NDOT public involvement procedures.

The number and locations of information/scoping meetings will be determined by the complexity of the project and the resources present within the project area and may be ongoing through the preparation of the Draft EIS.

**Regulations and Guidance**

23 CFR 771.111 “Early coordination, public involvement and project development”
NDOT Public Involvement Website

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<th>ACTIVITY NO. 6:</th>
<th>DEVELOP PURPOSE AND NEED</th>
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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, 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 5).
Development of the Purpose and Need may incorporate directly or by reference feasibility studies, corridor studies or other planning studies meeting the Planning and Environmental Linkages (PEL) requirements set forth by FHWA.

Regulations and Guidance

FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A – October 1987
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 – August 2016
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance – November 2006
Environment and Planning Linkage Processes Legal Guide—February 2005
Appendix A to Part 450 -- Linking the Transportation Planning and NEPA Processes
Moving Ahead for Progress in the 21st Century Act (MAP-21)

ACTIVITY NO. 7: DETERMINE REASONABLE ALTERNATIVES

The appropriate NDOT Divisions and project consultants 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 5).

This 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).

After the PMT, including the Environmental Services Division, has completed the evaluation and refinement of preliminary alternatives, giving appropriate consideration to input from participating and cooperating agencies and the public, they will reduce the number of alternatives to those preliminarily determined to be reasonable and feasible and representative of the spectrum of alternatives that best satisfy the project purpose and need. This process should be documented in a separate Alternatives Development technical report.
The process for determining the reasonable alternatives is as follows:

- perform a rough evaluation of the potential impacts of each of the preliminary alternatives,
- incorporate input from participating and cooperating agencies and the public,
- estimate the overall reasonableness and feasibleness of each alternative,
- ensure that each reasonable alternative was developed to best satisfy the project purpose and need,
- identify the reasonable alternatives, including the “no-build” alternative, and
- document in the project file the reason or reasons why an alternative has been eliminated.

Development of alternatives may build off feasibility studies, corridor studies, or other planning studies meeting the PEL requirements set forth by FHWA.

Regulations and Guidance

FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance
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 – August 2016

ACTIVITY NO. 8: EVALUATE REASONABLE ALTERNATIVES

The Environmental Services Division will work with the project designers and members of the PMT, as well as participating and cooperating agencies and the public, in conducting an evaluation of the reasonable alternatives. The evaluation will consider:

- the results of the project scoping process,
- input from participating and cooperating agencies and the public, and
- the information from the data gathering and field review activities.

This evaluation will focus on defining the issues involved with each alternative to provide a clear basis for selecting the alternatives that will be advanced for study in the EIS.

The evaluation will include environmental, social, economic, right-of-way and engineering analyses of each reasonable and feasible alternative. The level of design effort for each alternative will allow the PMT to apply evaluation criteria to select alternatives.

Based on the results of the evaluation of the reasonable alternatives, the PMT will select the alternatives that will be studied in detail in the EIS. At least one build alternative and the No-build alternative will be addressed in the EIS. Reasonable and feasible alternatives that were dismissed will be documented in the EIS, with an explanation of the reasons they were
eliminated. This process should be documented in the Alternatives Development technical report.

Regulations and Guidance

40 CFR 1502.14 "Alternatives Including the Proposed Action"
FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A
FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

ACTIVITY NO. 9: PREPARE TECHNICAL REPORTS

For each reasonable alternative selected for detailed study in the EIS, the Environmental Services Division, in cooperation with the PMT and with input from participating and cooperating agencies, will conduct in-depth studies to clearly define potential impacts of each alternative. This effort will involve gathering detailed information and data for each alternative. Various types of data (e.g., social, economic, environmental, engineering) typically will be gathered simultaneously.

The Environmental Services Division or its Consultants 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 or its Consultants 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. Environmental Services Division shall review any reports, technical memos or other required documentation prepared by Consultants.

The technical analyses may include any or all of the following:

- capacity analysis (traffic, safety and Critical Crash Rate calculations);
- intersection design studies;
- interchange type and design studies;
- Section 106 compliance issues;
- Section 4(f) compliance issues;
- socio-economic and Environmental Justice impacts;
- wetlands/Waters of the US involvement/impacts (conducted in coordination with NDOT Stormwater Division);
- stormwater management (conducted in coordination with NDOT Stormwater Division);
- floodplain and hydrology assessment;
- threatened or endangered species impacts (Section 7 - Biological Assessment & Opinion);
- Native American issues;
• Migratory Bird Treaty Act compliance issues;
• invasive species/noxious weeds issues;
• material sites;
• air quality impacts;
• noise impacts;
• hazardous materials/waste involvement;
• staging areas;
• utility corridors;
• construction easements; and
• other issues, as applicable (e.g., Section 6(f), impaired waters/TMDLs, Wild and Scenic Rivers, temporary work in waterways discharge permit, farmland protection).

Technical Reports and/or preliminary compliance documentation to provide details on the specific environmental issues and impacts involved will be prepared. The Technical Reports and/or preliminary compliance documentation will address requirements for resource avoidance and impact minimization and mitigation. The Environmental Services Division will coordinate the Technical Reports and compliance documentation with regulatory and resource agencies and will document the results of the coordination so they may be summarized in the EIS.

For detailed information on the environmental studies that may be required, see Chapters 7-16 of this Manual.

Technical Report Submittals:

• All Technical Reports must be submitted and approved by NDOT prior to inclusion in any environmental document.
• Traffic Noise and Air Quality Technical Reports must use data which has been approved by NDOT Traffic Information and Operations Divisions.
• Biological Assessment must be provided for review by NDOT Environmental Scientist prior to finalization.
• Biological Assessments will be submitted directly from NDOT to FHWA.
• FHWA will submit Biological Assessments directly to USFW for Biological Opinion.

Regulations and Guidance

40 CFR 1502 "Environmental Impact Statements"
23 CFR 771.123(c-d) "Draft environmental impact statements"
FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A – October 1987
AASHTO SCOE Synthesis of Data Needs for EA and EIS Documentation -- A Blueprint for NEPA Document Content—January 2005
FHWA "Improving the Quality of Environmental Documents" – July 2006
ACTIVITY NO. 10: PREPARE & REVIEW ADMINISTRATIVE DEIS

The following will be used to prepare the Administrative Draft EIS (DEIS) (and draft Section 4(f) evaluation, if applicable):

- a preliminary engineering information for the reasonable and feasible alternatives;
- Technical Reports and preliminary compliance documentation; and
- the results of the scoping process, including coordination with participating and cooperating agencies and the public.

The Administrative DEIS will include the following components:

- cover;
- title/approval page;
- table of contents;
- executive summary;
- discussion of project purpose and need;
- description of alternatives, including screening methods and results, reasons to eliminate alternatives and a description of alternatives carried forward;
- description of environmental resources, impacts, including indirect and cumulative impacts, and mitigation for all reasonable alternatives;
- public comments and agency coordination;
- Section 4(f) evaluation if applicable;
- Environmental Justice;
- comparison and selection of alternatives, including a description of the preferred alternative and the reasons for its selection as the preferred;
- list of preparers;
- references;
- distribution list;
- index; and
- appendices.

The Environmental Services Division will review the Administrative DEIS and distribute it to the following NDOT Divisions for review and comment: Stormwater, Traffic Operations, Traffic Information, Roadway Design, Right-of-Way, Transportation and Multimodal Planning, Construction, and the District Engineer. Necessary changes to respond to comments received as a result of the internal NDOT review will be incorporated into the DEIS.

Regulations and Guidance

40 CFR 1502 "Environmental Impact Statements"
23 CFR 771.123(c-d) "Draft environmental impact statements"
FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A – October, 1987
AASHTO SCOE Synthesis of Data Needs for EA and EIS Documentation -- A Blueprint for NEPA Document Content—January 2005
FHWA "Improving the Quality of Environmental Documents" – July 2006
ACTIVITY NO. 11: FHWA REVIEW OF ADMINISTRATIVE DEIS

The revised Administrative DEIS will be submitted to the FHWA Division Office for review and comment (this review may occur concurrently with NDOT’s Administrative Draft review if agreed to in advance by FHWA).

Review of the DEIS by NEPA Cooperating Agencies will occur concurrently with FHWA’s review.

Necessary changes to respond to comments received as a result of the Administrative DEIS review will be incorporated into the revised Administrative DEIS.

ACTIVITY NO. 12: FHWA LEGAL SUFFICIENCY REVIEW (DEIS)

The revised Administrative DEIS will be submitted to the FHWA Division Office with a request for legal sufficiency review in accordance with 23 CFR 771.125(b).

The FHWA Division Office will coordinate the Administrative DEIS Legal Sufficiency Review. The FHWA Division Office will provide the Environmental Services Division with comments provided by the FHWA Legal Counsel, if any.

It is advisable to get FHWA Legal Counsel involved as early as possible prior to this point if the project is controversial or if the PMT recommends deviations to the standard approach, methods or documentation.

ACTIVITY NO. 13: SIGN DEIS AND CIRCULATE FOR REVIEW

The NDOT Director, the FHWA Division Administrator, and any Cooperating Agency signatories will sign the DEIS. The following describes the processing of the DEIS by the FHWA and the US Environmental Protection Agency (EPA):

1. The DEIS will be circulated for comment and hard copies made available for public inspection at NDOT headquarters, the appropriate NDOT District office, the FHWA Division office, and any other locations agreed to by FHWA and NDOT, and an electronic copy will be made available on the NDOT website.
2. Concurrently, a Transportation Notice will be prepared noticing the availability of the DEIS for public review and the date of the Location/Design Hearing (also referred to as a Public Hearing, see Figure 5-B).
3. Concurrently, the FHWA Division Office will submit the DEIS to the FHWA Headquarters and the FHWA Resource Center.
TRANSPORTATION NOTICE
Pyramid Way and McCarran Boulevard Intersection Improvement Project
PUBLIC HEARING

PURPOSE OF MEETING: The Regional Transportation Commission of Washoe County (RTC), in cooperation with the Nevada Department of Transportation (NDOT) and the Federal Highway Administration (FHWA), has prepared a Draft Environmental Impact Statement (DEIS) addressing the potential impacts of the Pyramid Way and McCarran Boulevard Intersection Improvement Project. Proposed improvements include widening Pyramid Way to three lanes in each direction (north-south) from a reconfigured Queen Way to Tyler Way. McCarran Boulevard would remain two lanes in each direction (east-west) but with additional turning lanes.

The DEIS can be accessed through NDOT’s website at: http://www.nevadadot.com/Public_Involvement/Meetings/Meetings, Hearsings_and_Notices.aspx or RTC’s website at: http://www.rtcwashoe.com/section-hot-topics. Copies are also available by request from NDOT Headquarters, Environmental Services Division, Room 104, 1263 S. Stewart St., Carson City, NV 89712; telephone: 775-868-7013. Hard copies are available for review at the Spanish Springs Library, 7100A Pyramid Lake Highway, Sparks, NV, the Sparks Library at 1125 12th Street, Sparks, NV; RTC Offices at 1105 Terminal Way, Suite 108, Reno, NV; and NDOT District II offices, 310 Galletti Way, Sparks, NV.

WHEN AND WHERE: The public hearing will be held on Tuesday, March 19, 2013 from 4:00 pm to 7:00 pm at John Ascuaga’s Nugget, Ponderosa B Conference Room, 1100 Nugget Avenue, Sparks, Nevada 89431.

WHY: The purpose of the hearing is to present the Preferred Alternative and obtain public input on the Draft Environmental Impact Statement. After consideration of your input, FHWA will issue a single Final Environmental Impact Statement and Record of Decision document pursuant to Pub. L. 112-141, 126 Stat. 405, Section 1319(b) unless FHWA determines statutory criteria or practicability considerations preclude issuance of the combined document pursuant to section 1319.

WHERE YOU COME IN: You are invited to attend the hearing at your convenience anytime during the meeting hours. Project representatives will be available to discuss the project and answer questions from 4:00 pm to 7:00 pm. There will be a brief presentation about the project at 5:30 pm, followed by a short public question and answer period. The meeting will be an open house format from 4:00 pm to 5:30 pm, returning to the open format following the presentation. This will allow you to talk to project representatives individually. You will have an opportunity to submit your comments in writing on a comment sheet provided at the hearing or in person to a court reporter who will be available throughout the meeting. In addition to any comments received at the hearing, written comments also will be accepted until 5:00 pm, Monday, April 15, 2013.

Your comments may be submitted for the public record in writing at the hearing or verbally to a court reporter available throughout the hearing. In addition to any comments received at the hearing, written or email comments will be accepted through 5 p.m. April 15, 2013. Please email your comments to info@dot.state.nv.us with a reference to this project in the subject line. You may mail your comments to Steve Cooke, Environmental Services Chief, NDOT, 1263 S. Stewart St., Carson City, NV 89712.

IF RIGHT-OF-WAY IS NEEDED: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will govern the acquisition of any right-of-way necessary for this project. More detailed information on right-of-way acquisition and relocation assistance can be obtained by calling or visiting the Nevada Department of Transportation, Right-of-Way Office, 1263 South Stewart Street, Room 320, Carson City (775) 868-7460.

REQUESTS FOR ASSISTANCE: Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Requests for auxiliary aids or services to assist individuals with disabilities or limited English proficiency should be made with as much advance notice as possible to Julie Maxey, NDOT, Public Hearings Officer, at (775) 868-7171. jmaxey@dot.state.nv.us Spanish language translators will be present at the hearing.

RTC RIDE routes that serve John Ascuaga’s Nugget are 2, 11, 21, 25, and 26. Contact the RTC ACCESS Customer Service telephone number at (775) 348-0477 for information about paratransit transportation services.

Figure 5-B — SAMPLE DEIS AVAILABILITY TRANSPORTATION NOTICE
4. The FHWA Division Office will submit the DEIS to the EPA electronically using the EPA Central Data Exchange (CDX) for filing.
5. The EPA will publish the Notice of Availability for the DEIS in the Federal Register. The Notice will be published on Friday of the week following that in which the EPA received the DEIS. Note that the minimum time period of availability for comment is calculated based on the date of publication in the Federal Register.
6. Upon request, the FHWA Division Office will provide interested parties with information or status reports on the DEIS and other elements of the NEPA process.
7. Comment period at least 45 days, 60 days maximum (from date of Federal Register Notice)

At a minimum the DEIS will be available for electronic review and downloading on the internet via NDOT’s website. The Transportation Notice will be forwarded via email or US Postal Service to the Intent-to-Study List recipients and any additional parties who have since indicated their desire to be informed of the project. Requests for electronic (CD) or hard copies of the DEIS will be accommodated within reason.

The Transportation Notice will provide the basis for newspaper advertisements and web advertising for Location/Design Hearing. Advertising shall be at a minimum in accordance NDOT’s Public Involvement Policy. Additional targeted advertising and noticing, tailored to each project, may be required.

Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the Transportation Notice is needed.

Development of public noticing and advertising will be coordinated with the Environmental Services Division, NDOT Public Hearings Officer, and NDOT Public Information Office. For further information on NDOT’s public involvement procedures, see Chapter 6.

Comments on the DEIS can be submitted in written or electronic media to NDOT or FHWA within 45 days of the availability of the DEIS unless the FHWA determines, for good cause, that a 60 day comment period is warranted. The DEIS will be available for a minimum of 15 days prior to the Location/Design Hearing. The notice of the public hearing in local newspapers will announce the Location/Design Hearing and where and how the DEIS may be obtained or reviewed and commented on.

If it is the intention of FHWA and NDOT to issue a combined Final EIS (FEIS) and Record of Decision (ROD), it must be noted in the DEIS and the preferred alternative identified. See Activity No. 21 information on the preparation of a ROD.

Regulations and Guidance

40 CFR 1502.19 "Circulation of the Environmental Impact Report"
40 CFR 1503.1 "Inviting Comments"
40 CFR 1506.9 "Filing Requirements"
40 CFR 1506.10 "Timing of Agency Action"
23 CFR 771.123(f-i) "Draft environmental impact statements"
ACTIVITY NO. 14: LOCATION/DESIGN HEARING

The Environmental Services Division, in cooperation with the NDOT Hearings Officer and the FHWA Division Office, will hold a Location/Design public hearing.

Information presented at the meeting will include items such as:

- project location,
- project description,
- purpose and need for the project,
- summary alternatives and environmental impacts and mitigation measures, and
- project schedule

The meeting will be an open-house style meeting and include display boards, a formal presentation, and a short question and answer period following the formal presentation. Additionally, a handout packet will be prepared for each person in attendance. The handout will include a welcome letter, a copy of the presentation, the purpose and need for the project, a summary of environmental impacts and mitigation measures, copies of each display board, and a comment form.

Determine, based on the composition of the surrounding neighborhoods, if a Spanish language or other applicable language version of the meeting handout or presentation is needed and if a translator should attend the meeting.

See Chapter 6 for descriptions of public hearing types and other aspects of NDOT’s public involvement procedures.
ACTIVITY NO. 15: EVALUATE AND RESPOND TO SUBSTANTIVE COMMENTS

The Environmental Services Division, in cooperation with the FHWA Division Office will evaluate comments and prepare responses. Possible responses include:

- modifying alternatives including the proposed action;
- developing and evaluating alternatives not previously considered;
- supplementing, improving or modifying analyses;
- making factual corrections; or
- explaining why the comments do not warrant further agency response by citing the sources, authorities or reasons that support that position and, if possible, indicating those circumstances that would trigger reappraisal or further response.

It is not necessary or appropriate to respond to all comments by letter. The responses will meet the requirements of 40 CFR 1503.4 which includes, as one example, using the FEIS as the mechanism for the response.

Regulations and Guidance

*40 CFR 1503.4 “Response to Comments”*
*23 CFR 771.125(a) “Final environmental impact statements”*
*CEQ Q&A Question 14d “Rights and Responsibilities of Lead and Cooperating Agencies”*
*CEQ Q&A Question 29 “Responses to Comments”*
*AASHTO Practitioner’s Handbook 02 Responding to Comments on an Environmental Impact Statement – August 2016*

ACTIVITY NO. 16: PREPARE/REVIEW ADMINISTRATIVE DRAFT FEIS OR COMBINED FEIS/ROD

An Administrative Draft FEIS or FEIS/ROD will be prepared to reflect responses to comments (see Activity 15), identify the preferred alternative for the project (if not a combined FEIS/ROD) and evaluate reasonable alternatives considered. It also will discuss substantive comments and responses received on the DEIS, summarize public involvement, including coordination with participating and cooperating agencies, and describe the mitigation measures to be incorporated. The document also will document compliance with environmental laws and Executive Orders.

The Environmental Services Division will review the Administrative Draft FEIS or FEIS/ROD and will coordinate the document with NDOT Divisions for review and comment. The Environmental Services Division also will coordinate the Administrative Draft FEIS or FEIS/ROD with participating and cooperating agencies for their input. The Environmental Services Division will incorporate changes in the document as necessary to respond to comments resulting from the review within NDOT and the coordination with participating and cooperating agencies and the public.
Based on FHWA Technical Advisory T6640.8A, there are four options to prepare a FEIS: traditional approach, condensed FEIS, abbreviated FEIS, and the errata sheet approach. NDOT in cooperation with FHWA, will agree on the format to be used.

**Regulations and Guidance**

- 40 CFR 1502.9(b) "Draft, Final, and Supplemental Statements"
- 23 CFR 771.125 “Final environmental impact statements”
- 23 CFR 774.3 “Section 4(f) approvals”
- FHWA Environmental Guidebook
- FHWA Technical Advisory T6640.8A – October, 1987
- FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance
- FHWA Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews – January, 2013

**ACTIVITY NO. 17: FHWA REVIEW OF ADMINISTRATIVE DRAFT FEIS OR FEIS/ROD**

The Environmental Services Division will submit the Administrative Draft FEIS or FEIS/ROD to the FHWA Division Office and Cooperation Agencies for review and comment.

The Environmental Services Division will incorporate changes in the Administrative Draft FEIS or FEIS/ROD as necessary to respond to comments provided by the FHWA Division Office and Cooperation Agencies and will prepare the Administrative Draft FEIS or FEIS/ROD for the FHWA Legal Sufficiency Review (see Activity 16).

**ACTIVITY NO. 18: FHWA LEGAL SUFFICIENCY REVIEW (DRAFT FEIS OR FEIS/ROD)**

The Environmental Services Division will submit the Administrative Draft FEIS or FEIS/ROD to the FHWA Division Office with a request for legal sufficiency review in accordance with 23 CFR 771.125(b).

The FHWA Division Office will coordinate the Administrative Draft FEIS or FEIS/ROD for review by the FHWA Legal Counsel to determine if it meets legal sufficiency requirements. The FHWA Division Office will provide the Environmental Services Division with comments provided by the FHWA Legal Counsel, if any.

If a legal sufficiency review was completed for the DEIS and if there have been no substantive changes to the document, FHWA may waive a legal sufficiency review of the FEIS or FEIS/ROD.

**Regulations and Guidance**

- 23 CFR 771.125 “Final environmental impact statements”
ACTIVITY NO. 19: PREPARE/PROCESS FEIS OR FEIS/ROD APPROVAL

The Environmental Services Division will incorporate changes in the Administrative Draft FEIS or FEIS/ROD to respond to legal sufficiency comments. The NDOT Director will sign the FEIS or FEIS/ROD as will any Cooperating Agency signatories, and the Environmental Services Division will submit the FEIS or FEIS/ROD to the FHWA Division Office along with a transcript of each public hearing held and a certification that a required hearing was held.

For those actions that do not require prior concurrence from the FHWA Headquarters, the FHWA Division Administrator, or his/her designee, may adopt and sign the FEIS or FEIS/ROD. After adoption and signature, the FHWA Division Administrator will ensure that the Environmental Services Division, the FHWA Headquarters, the FHWA Legal Counsel and the FHWA Resource Center each receive one copy of the signed FEIS or FEIS/ROD.

For projects in the categories described in 23 CFR 771.125(c), FEISs or FEIS/RODs will be submitted to the FHWA Washington Headquarters, Office of Program Development, for prior concurrence. The FHWA Washington Headquarters will notify the FHWA Division Administrator when the FEIS or FEIS/ROD may be released to the public and the EPA, at which time the FHWA Division Administrator will adopt and sign the FEIS or FEIS/ROD. After adoption and signature, the FHWA Division Administrator will ensure the Environmental Services Division, the FHWA Headquarters, the FHWA Legal Counsel and the FHWA Resource Center each receive one copy of the signed FEIS or FEIS/ROD.

Regulations and Guidance

23 CFR 771.113(a)(2) “Timing of Administration activities”
23 CFR 771.125(c) “Final environmental impact statements”
23 CFR 771.125(e) “Final environmental impact statements”
23 CFR 774.3 “Section 4(f) approvals”
CEQ Q&A Question 6 “Environmentally Preferable Alternative”
CEQ Q&A Question 34b “Records of Decision”
FHWA Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews – January 2013

ACTIVITY NO. 20: CIRCULATE FEIS OR FEIS/ROD

The FEIS or FEIS/ROD will be circulated to governmental and non-governmental entities and the public that made substantive comments on the DEIS or requested a copy of the FEIS. Circulation will be accomplished no later than the date the document is filed with the EPA. The following describes the processing of the FEIS or FEIS/ROD by the FHWA and the EPA:

1. The FHWA Division Office will submit the signed FEIS or FEIS/ROD electronically using the EPA Central Data Exchange (CDX).
2. The EPA will publish the Notice of Availability for the FEIS or FEIS/ROD in the *Federal Register*. The publication date will be on Friday of the week following that in which the EPA received the FEIS or FEIS/ROD. If a combined FEIS/ROD is not being issued, then the date of publication in the *Federal Register* will establish the beginning of the 30-day period that will elapse before the FHWA can sign the ROD.

3. Upon request, the FHWA Division Office or any leading agency will provide interested parties with information or status reports on the EIS and other elements of the NEPA process.

The Environmental Services Division will circulate the FEIS or FEIS/ROD in accordance with the regulations and guidance cited below. The Environmental Services Division, in cooperation with the FHWA Division Office, will evaluate comments received on the FEIS.

If a combined FEIS/ROD is not prepared a draft ROD will be prepared for the project and will summarize and respond to other comments.

The Environmental Services Division, in cooperation with the FHWA Division Office will evaluate comments received on the FEIS/ROD and assess if a revised ROD must be issued.

**Regulations and Guidance**

40 CFR 1502.19 "Circulation of the Environmental Impact Statement"
40 CFR 1506.9 "Filing Requirements"
40 CFR 1506.10 "Timing of Agency Action"
23 CFR 771.125(f) “Final environmental impact statements”
23 CFR 771.125(g) “Final environmental impact statements”

FHWA Environmental Guidebook

FHWA Technical Advisory T6640.8A – October, 1987

*FHWA Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews* – January 2013

**ACTIVITY NO. 21: REQUEST RECORD OF DECISION (ROD)**

If a combined FEIS/ROD is not prepared, a draft ROD reflecting the selected project alternative will be coordinated with cooperating agencies prior to submitting the document to the FHWA.

After circulation/coordination of the draft ROD and responding to any substantive issues raised, the Environmental Services Division will submit the draft ROD to the FHWA Division Office. The FHWA will complete and sign a ROD no sooner than 30 days (the FHWA may adopt or revise the draft ROD) after publication of the FEIS notice in the *Federal Register*, or 90 days after publication of a notice for the DEIS, whichever is later.

The ROD will address the following key items:

- Identification of the selected alternative;
• description of each alternative considered and identification of the environmentally preferred alternative or alternatives;
• explanation of the balancing of values that formed the basis for the project decision;
• explanation of the basis for any Section 4(f) approval, if applicable;
• description of the specific measures adopted to minimize environmental harm and identification of standard measures (e.g., erosion control) appropriate for the proposed action;
• description of any monitoring or enforcement program that has been adopted for specific mitigation measures;
• identification of and response to substantive comments received on the FEIS; and
• summarization of and response to other comments provided, where appropriate.

See Section 2.3 “Preparing an Administrative Record”.

Regulations and Guidance

40 CFR 1505.2 "Record of Decision in Cases Requiring Environmental Impact Statements"
23 CFR 771.127 "Record of decision"
FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A – October 1987

ACTIVITY NO. 22: STATUTE OF LIMITATIONS (SOL) NOTICE

FHWA must post a Statute of Limitations (SOL) Notice to the Federal Register after the ROD, which begins the 150-day SOL. The public notification of the ROD and the SOL Notice should coincide.

The SOL Notice is implemented as part of SAFETEA-LU and MAP-21. The action relates to a transportation project and a SOL notification is published in the Federal Register announcing that a Federal agency has taken an action on a transportation project that is final under the Federal law pursuant to which the action was taken.

Regulations and Guidance

Section 1308 Efficient Environmental Review of Project Decision Making under 23 USC 139

Q & A - AD-5 MAP-21 Statute of Limitations (SOL) 150 days

ACTIVITY NO. 23: MONITOR FINAL DESIGN AND CONSTRUCTION

Representatives of the Environmental Services Division will review contract plans and special provisions and will attend preconstruction conferences for projects to ensure permit obligations, environmental commitments and environmental mitigation measures are adequately addressed.
See Section 2.4 for additional information on environmental commitments/permit obligations.

During the construction phase of the project, the Environmental Services Division in coordination with the Resident Engineer will monitor construction activities to ensure the contractor complies with the Construction Contract Documents, especially those concerning permit obligations, environmental commitments, and environmental mitigation measures.

Regulations and Guidance

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance
AASHTO Practitioner’s Handbook 04 Tracking Compliance with Environmental Commitments/Use of Environmental Monitors – November 2006

5.3 SUPPLEMENTAL EIS

The regulations and guidance cited below describe those circumstances where preparation of a Supplemental EIS may be appropriate (e.g., substantial changes in the proposed action, significant new information regarding environmental concerns) and provide direction on the format, content and processing of a Supplemental EIS:

40 CFR 1502.9(c) “Draft, Final, and Supplemental Statements”
23 CFR 771.130 “Supplemental environmental impact statements”
FHWA Technical Advisory T6640.8A – October 1987

5.4 RE-EVALUATIONS

After approval of the Record of Decision (ROD), NDOT shall consult with FHWA prior to requesting any major approvals or grants to establish whether or not the approved FEIS and ROD remain valid.

These consultations will be documented when determined necessary by FHWA and in a format agreed to by FHWA. The regulations and guidance cited below describe the triggers (e.g., timeframes) for re-evaluating NEPA documents and approvals:

- 23 CFR 771.129 “Re-evaluations”
- FHWA Technical Advisory T6640.8A – October, 1987
- CEQ Q&A Question 32 “Supplements to Old EIs”
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Chapter 6
PUBLIC INVOLVEMENT PROCESS

6.1 REGULATIONS & GUIDANCE

Acting under the authority of NRS 408.245, which provides for the acceptance of Federal Acts, NDOT accepts, as a continuing obligation, the responsibility for complying with the provisions of 23 USC 128 “Public Hearings” and 23 CFR 771.111 “Early Coordination, Public Involvement and Project Development” for NDOT projects involving funding or approval from the FHWA. The procedures for accomplishing compliance apply to the development of Federal-aid projects, other than projects of an emergency nature that will necessitate immediate repair of a highway facility. Public Meetings and Hearings conducted in support of the NEPA process will also conform to the NDOT Public Involvement/Public Hearings Procedures Policy and the NDOT Environmental Services Division Public Involvement/Public Hearing Procedures on National Environmental Policy Act (NEPA) Projects Policy.

6.2 PUBLIC INVOLVEMENT PROCEDURES

6.2.1 General

Public involvement for NDOT projects involving funding or approval from the FHWA will be accomplished through a variety of methods, as suited to the scope, potential socio-economic, environmental impacts, and potential for controversy and anticipated level of public interest. It will be initiated early in project development and will continue throughout the project development process. (See 23 USC 139, “Efficient environmental reviews for project decision-making” and associated implementation guidance for information on the requirements for involving “participating agencies” in the project development process.)

6.2.2 Intent-To-Study Letter

For projects requiring the preparation of an Environmental Assessment (EA) (see Chapter 4) or an Environmental Impact Statement (EIS) (see Chapter 5), the public and interested/affected agencies and organizations will be notified by an Intent-To-Study Letter. This letter contains the details of scheduled informational meetings (see Section 6.3.2), a request for expressions of concern or special knowledge from the addressee and may contain a location map or sketch of the project area. These letters are sent to affected Federal, State, and local agencies; political leaders; Indian Tribes; recognized special interest groups and known concerned/affected citizens, adjacent property owners (at a minimum within ¼ mile of either side of the project), and agencies serving as “cooperating” and “participating agencies” in the environmental review process.

6.2.3 Notice of Intent (NOI)

For projects involving the preparation of an EIS (see Chapter 5), the initial action to notify the public and interested/affected agencies and organizations of the project’s preliminary concept will
be the publication of a Notice of Intent (NOI) in the *Federal Register*. The CEQ regulations and 23 CFR 771 “Environmental Impact and Related Procedures” require the publication of a NOI in the *Federal Register* as soon as practicable after the decision is made to prepare an EIS and before the scoping process begins (40 CFR 1501.7). A NOI will also be published when a decision is made to supplement a Final EIS, but will not be necessary when preparing a supplement to a Draft EIS (23 CFR 771.130(d)). See the FHWA Technical Advisory T6640.8A for guidance on preparing a NOI, including recommended format, content and processing. In general, the NOI will:

- describe the proposed action and possible alternatives to accomplish the goals of the proposed action;
- describe the proposed scoping process for the action, including when and where any scoping meetings will be held; and
- provide the names and addresses of one or more FHWA contacts and one or more NDOT contacts who can answer questions about the proposed project and the EIS.

The draft NOI will be prepared and submitted to FHWA. FHWA will finalize the NOI and submit it to the Federal Register for publication.

**6.2.4 Transportation Notice**

NDOT provides additional public notice in the form of Transportation Notices. Transportation Notices are issued for public meetings and hearings. Transportation Notices are published in general circulation adjudicated newspapers of local, regional and/or ethnic distribution in the project area not less than 15 days prior to the meeting and, when newspapers are available and published on a suitable schedule, again on the day before and the day of the meeting. They are also posted on the NDOT website and may be posted at State and local government buildings, libraries, NDOT offices and other public or private locations as needed.

**6.2.5 Scoping**

Scoping is a study management technique described in 40 CFR 1500 et seq. to provide “an early and open process for determining the scope of issue to be addressed and for identifying the significant issues related to a proposed action.” For NDOT projects that do not require preparation of an EIS, the use of a widely distributed Intent-to-Study Letter, together with one or more informational meetings (see Section 6.3.2) constitutes the NDOT Scoping Process. For projects requiring an EIS, NDOT will schedule a formal scoping meeting with affected Federal, State and local agencies, including agencies serving as “participating agencies,” and will hold one or more informational meetings to accomplish scoping objectives with the public and interested organizations.

**6.2.6 Guidelines for Planning Ongoing Public Involvement**

After issuance of the Intent-to-Study Letter or NOI and completion of the scoping process for a project, the project study group will plan ongoing public involvement activities based on consideration of the following guidelines:
1. **Meeting Type.** Select the appropriate meeting type for the situation (see Section 6.3). As practicable, use the open-house with formal presentation format. This format allows enhanced opportunities for the public to drop-in, when convenient, to individually discuss the project and tends to be more successful in eliciting feedback from participants. Formats may be varied, as needed, to accommodate specific needs. A court reporter will be present to record the presentation and Q&A portions of the meeting and to accept individual verbal comment submittals.

2. **Time & Location.** Schedule public meetings or hearings at a convenient time and location for those expected to attend. Generally accepted times for meetings or hearings would be Tuesday, Wednesday, or Thursday evenings between 4:00 p.m. and 7:00 p.m. (although the hours and days for meetings and hearings are flexible and will be tailored to the needs of the intended audience). All NEPA-related public hearings or meetings should be conducted in a public building, such as a school, or other state, county, or city facility. The location will be convenient and as close to the project as practicable. Accessibility needs of persons with disabilities also will be considered in selecting the facility for a public meeting or hearing.

3. **Attendees.** Appropriate NDOT personnel as determined by the project manager and the Environmental Services Division project coordinator will participate in the public meetings or hearings, and the FHWA will be invited for Federal-aid projects.

4. **Information.** Large display boards, large plan sets, and other media will be available for viewing. Handouts with project specific information and other information needed to achieve the goal of the meeting will be prepared (see Section 6.3.3.6). Comment forms will be provided at public meetings and hearings (see Section 6.3.1).

5. **Roles & Responsibilities.** NDOT personnel will be available at public meetings and hearings to explain the project, answer questions and encourage individuals to provide comments on the project. The Project Manager will be responsible for ensuring that substantive comments received at public hearings and informational meetings are documented in the project file and responded to. When a public meeting or hearing is held for a Federal-aid project, the Environmental Services Division will submit a transcript of the meeting or hearing to the FHWA along with a certification that a required hearing was held or a hearing opportunity was offered. The Environmental Services Division will ensure the transcript is accompanied by copies of written statements from the public, both submitted at the public meeting or hearing or during the comment period.

NDOT, in cooperation with the FHWA, will develop a coordination plan for public and agency participation on projects requiring an EIS. The plan will be developed early in the environmental review process after project initiation and will identify coordination points. The following are example coordination points for a project involving the preparation of an EIS:

- NOI publication and scoping activities;
- development of purpose and need;
- identification of the range of alternatives;
- collaboration on impact assessment methodologies;
- completion of the Draft EIS;
- identification of the preferred alternative and the level of design detail;
- completion of the Final EIS;
• completion of the Record of Decision (ROD); and
• completion of permits or approvals after the ROD.

In addition, the coordination plan will establish a schedule of regular Project Management Team meetings and identify which persons, organizations or agencies will be included for each coordination point, as well as timeframes for input by those persons, organizations and agencies. FHWA policy requires a negotiated schedule for the NEPA process for EIS projects. If the negotiated schedule will be included in the coordination plan, that schedule will be prepared in consultation with each participating agency and will include the timing of coordination with those agencies and the public.

6.3 PUBLIC INVOLVEMENT METHODS

6.3.1 Overview

NDOT may use the most appropriate means and methods available to ensure meaningful public involvement. These include electronic and print media as well as the use of social media and in-person live meetings. Current policy intends that NDOT meetings and hearings utilize an open-house format with a formal presentation followed by a brief question and answer session. In-person meetings should afford participants the opportunity to informally interact with NDOT, FHWA, and project consultant personnel before and after the presentation. The question and answer portion of the meeting will be conducted according to the ground rules presented at the end of the formal presentation and comments received will be documented for the public record. NDOT generally conducts two types of in-person meetings:

• informational meetings; and
• public hearings.

The following principles apply to all public meetings and hearings:

1. Public meetings or hearings will be held to provide an opportunity for interested persons to participate in the project development and delivery process.

2. NDOT representatives will ensure the objectives of the public meeting or hearing are clearly communicated. Depending on the type of meeting, this may include:

   • stating that the purpose of the meeting is to discuss the purpose and need for a project;
   • presenting information on project alternatives;
   • providing an opportunity for public discussion of the project major features, including the social, economic and/or environmental effects of the project; and
   • Discussing construction impacts and scheduling.

3. NDOT representatives will ensure that materials intended for review by the public are available upon request for public review and copying. Any graphic depicting proposed
plans or design elements must be labeled “All information presented is preliminary subject to revision”.

4. The public will be afforded multiple methods to provide comments either in-person or at any point within the formal comment period. The procedure for these submissions will be described in the Transportation Notice, the Intent to Study Letter, and included in the meeting handout, and must include the final date for receipt of comments.

6.3.2 Informational Meetings

An informational meeting is a meeting in either a formal or informal setting, depending on its intended audience, at which NDOT and FHWA personnel present, receive and/or exchange information with the public. “Scoping” meetings (see Section 6.2.5) will be conducted under the title of Informational meeting. At a minimum, notice of informational meetings is provided in general circulation adjudicated newspapers of local, regional and/or ethnic distribution in the project area not less than 15 days prior to the meeting and, when newspapers are available and published on a suitable schedule, again on the day before and the day of the meeting. The meeting will be held in conjunction with a 30 calendar-day comment period beginning no later than the first date of advertisement in the newspaper. NDOT informational meetings are noticed and conducted in accordance with the methods and processes for public hearings (see Section 6.3.3).

6.3.3 Public Hearings

6.3.3.1 Legal Basis

For certain projects, a public hearing, or the opportunity for a public hearing, is required by Federal statute, Federal regulation, and/or Department policy (see NDOT Policy for Public Involvement/Public Hearing Procedures). EISs require that a public hearing be held (see Chapter 5), and EAs (see Chapter 4) require a public hearing or opportunity for such hearings. 23 USC 128 states that “Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings...” Furthermore, 23 CFR 771 FHWA “Environmental Impact and Related Procedures”, requires the “State highway agency” to hold one or more public hearings or offer the opportunity for public hearing(s) to be held at a convenient time and place for Federal-aid projects that:

- require significant amounts of right-of-way;
- substantially change the layout or function of connecting roadways, or of the facility being improved;
- have a substantial adverse impact on adjacent property;
- have a significant social, economic, environmental or other impact; or
- for which the FHWA and NDOT determine a public hearing is in the public interest.
6.3.3.2 Types of Public Hearings

When a public hearing is held for a project, the Project Manager will conduct the hearing in coordination with the Environmental Services Division and the FHWA. Project location, project design and associated impacts typically are the primary focus of public hearings. The project location and design may be addressed at one or more types of public hearings as follows:

1. **Location Public Hearing.** A Location Public Hearing is held when a project involves a new location where feasible alternatives can be developed before the route location is approved and before the Department is committed to a specific proposal. These are used very infrequently by NDOT.

2. **Design Public Hearing.** A Design Public Hearing is held for a project after a Location Public Hearing has been conducted and location approval has been issued, but before NDOT is committed to a specific design proposal. These are used very infrequently by NDOT.

3. **Location/Design Public Hearing.** A Location/Design Public Hearing combines the elements identified in both a Location and Design Public Hearing and is held prior to the Department committing to a specific location and design for a project. This is the most common hearing for NEPA projects.

If a hearing is being held as part of the public review of an EA or EIS document, then copies of that document will be available at the hearing for review. Environmental Services Division representatives will be present to explain and answer questions on the document and its contents.

6.3.3.3 Scheduling of Public Hearings

Public hearings will be held after the release of the draft environmental document and before NEPA approval. For projects requiring an EIS, the public hearing will be scheduled after the FHWA approves the Draft EIS. For projects involving an EA, the hearing will be scheduled after FHWA approval to circulate the EA. The location of a hearing and the number of hearings to be held will be determined by NDOT Environmental Services Division, FHWA, and the Project manager to ensure reasonable availability to attend by potentially affected individuals and organizations.

6.3.3.4 Notice of Public Hearing

The Department will provide advance notice of public hearings through advertisements that will appear in general circulation adjudicated newspapers of local, regional and/or ethnic distribution in the project area. The first notice must appear a minimum of 15 days prior to the hearing. Additional advertisements will be published before the hearing, including, if newspapers are available and published on a suitable schedule, the day before and the day of the hearing. News releases, notification on social media platforms, and bulk emails may be utilized to further publicize the public hearing and encourage attendance.

Additionally, notice will be provided through direct mail to individuals, agencies and organizations, including Federal, State, and local officials, listed on a mailing roster kept current by NDOT.
Anyone wishing to receive notice of transportation public meetings or public hearings will be placed on this list upon request.

Published notices will include schematic map(s) depicting the proposed project limits and sufficient details of the project area to enable the reader to easily identify the proposed improvement. Alternatives under consideration will be described in the text of the notice. The notice will state that:

- project information will be on display at the hearing location;
- Department personnel will be available to explain the project and answer questions;
- maps, drawings, EA or Draft EIS and other pertinent information will be available for review and copying by the public at the nearest District Office and/or some other location convenient to the hearing; and
- NDOT’s policy and procedures for oral and written statements (i.e., written statements must be submitted no later than 30 days following the hearing).

When residential and/or business structures are to be acquired, the notice will also indicate that the Relocation Assistance Program will be discussed. The Department will furnish the FHWA Division Administrator with a copy of the Notice of Public Hearing at the time of first publication.

### 6.3.3.5 Public Hearing Format

Unless otherwise determined, all public hearings will be conducted in the open-house format with a formal presentation. The open-house format allows for a continuous flow of visitors over a period of hours. The open-house format facilitates a higher level of personalized service through NDOT personnel interaction with attendees and is less intimidating to the public. During the open-house portion of the hearing, NDOT representatives will be in attendance to provide explanatory project information and answer questions. In addition, the NDOT Public Hearing Officer or their representative will be present. FHWA has recognized the benefits of this format and encourages its use as an effective public involvement method that meets the public hearing requirements of 23 CFR 771.111 “Early Coordination, Public Involvement and Project Development.”

At the hearing, aerial photos will be displayed showing the proposed project, property lines, existing and proposed right-of-way, and proposed easements for each alternative being studied. Duplicate displays may be provided, depending on the expected attendance. Any graphic depicting proposed plans or design elements be labeled “All information presented is preliminary subject to revision”. Right-of-way plans also may be provided for viewing, if available. In addition, a handout will be prepared to describe and explain the location, design and alternatives for the project and will include maps depicting the project location/alternatives.

The formal presentation component of the hearing requires a moderator to preside over the public hearing. An NDOT representative will serve as moderator for formal presentation public hearings, but NDOT may arrange for local public officials to conduct the required public hearing for some projects. In these instances, NDOT will ensure that appropriate Department representatives are in attendance to fulfill NDOT’s responsibilities for public hearing requirements.
The moderator will open with a brief explanation of the format, which will make presentations and how public comments will be received. In areas where a project may affect large non-English speaking groups, NDOT will provide interpreters.

NDOT Right-of-Way Survey Services Division representatives will be at the hearing for projects involving property acquisition and will be available to explain and discuss the Relocation Assistance Program. The Right-of-Way Survey Services Division will be responsible for determining what relocation materials will be available at the meeting.

Representatives of the Environmental Services Division will be in attendance at each hearing to explain the environmental study and process and to answer questions. Copies of the environmental study will be available for review at the hearing. A written summary of the environmental study will be included in the public hearing handout package. In addition, the Environmental Services Division will make hard copy or electronic copies of the environmental document available upon request.

Provisions will be made for submitting written and oral statements at the hearing and entering them into the official hearing transcript. The procedure for submitting written statements will be described in the Transportation Notice (see Section 6.2.4), the Intent-to-Study Letter (see Section 6.2.2), and at the public hearing, including the final date for receipt of comments.

6.3.3.6 Public Hearing Handouts

As discussed previously, a handout will be provided at each public hearing or information meeting. Handouts shall include:

- Cover sheet
- Welcome letter
  + Identify all the ways comments can be submitted
  + Identify the closing date for receipt of comments
- Copy of the presentation
- Copies of display boards (if a display board graphic was included in the presentation or if it conveys the same information as a slide form the presentation, it does not need to be reproduced here again)
- Comment form (this should the very last sheet of the handout so it can be easily removed for submittal at the time of the meeting)

6.3.3.7 Hearing Transcript/Documentation

All public hearings and information meetings will be attended by a court reporter who will prepare a verbatim written transcript of the oral proceedings. These transcripts will be available for public review and copying at NDOT Headquarters. A copy of the transcripts also will be forwarded to the FHWA along with copies of written statements from the public, both submitted at the public hearing or during the announced comment period.
The final transcript also may include exhibit photos, attendance roster, public notices, listings of agencies, organizations and individuals notified of the hearing, and a copy of written material submitted by these groups or individuals.

6.4 INTERAGENCY COORDINATION

During the development of a proposed project, NDOT coordinates with a variety of regulatory and resource agencies and Native American Tribes/Groups. Many of these contacts are informal and can cover a wide range of topics specific to those agencies. Notices of upcoming public involvement activities (see Section 6.3) afford another method for agencies to obtain information or provide comment on proposed projects.
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## Figure

Figure 7-A — SECTION 106 COMPLIANCE PROCEDURES FLOWCHART | 7.3
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SECTION 106

7.1 SECTION 106 COMPLIANCE PROCEDURES

Section 106 of the National Historic Preservation Act (NHPA) requires that proposed federally funded or approved undertakings, including undertakings on federal lands or undertakings with federal permits, consider effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP). Generalized step-by-step activities for complying with Section 106 are presented in Figure 7-A – Section 106 Compliance Procedures Flowchart. Prior to starting the process, the Cultural Resource Section (CRS) confers with the project manager to determine whether the project is a federal undertaking or involves a federal action. Depending on the outcome, a determination may be made that 1) the project does not involve a federal undertaking, 2) the project has no potential to cause effect, or 3) that the project is subject to Section 106. If there is FHWA federal-aid involved, the process detailed in the 2014 Transportation Programmatic Agreement will be followed.

Additional information on Section 106 consultation can be found in the American Association of State Highway and Transportation Officials (AASHTO) Practitioner’s Handbook 06, Consulting Under Section 106 of the National Historic Preservation Act.

Regulations and Guidance

Programmatic Agreement among the Federal Highway Administration, the Nevada Department of Transportation, the Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Federal-Aid Transportation Projects in the State of Nevada – 2014
Consulting Under Section 106 of the National Historic Preservation Act – August 2016
AASHTO Practitioner’s Handbook 06, August 2016 Consulting Under Section 106 of the National Historic Preservation Act
Figure 7-A—SECTION 106 COMPLIANCE PROCEDURES FLOWCHART

1. Determine Area of Potential Effect (APE)
2. Obtain Right-of-Way Entry Permits
3. Identify Historic Resources
4. Identify Properties Eligible for NRHP
5. Assess Effects on Eligible Properties
6. Assess Adverse Affects
7. Resolve Adverse Affects
8. Implement Compliance Commitments
ACTIVITY NO. 1: Determine APE

The CRS will determine the need for Section 106 evaluation and/or need for Native American Consultation for each project. The CRS monitors the Project Scheduling and Management System (PSAMS), materials site requests, and maintenance activities to identify NDOT projects or actions involving federal funding, federal approvals/permits or federal lands that have the potential to affect sites on or eligible for the NRHP (i.e., “historic property,” per 36 CFR Part 800.16(l)(1)). The CRS determines the Area of Potential Effect (APE) and documents the APE (i.e., the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties) for FHWA. There are three separate APEs: the direct APE, the indirect APE, and the Native American Consultation/Coordination APE (see Chapter 15). The direct APE is defined as the area in which direct impacts to resources may occur. The indirect APE includes the area that may be indirectly affected by auditory, visual and atmospheric impacts on resources. The CRS will negotiate with the FHWA, the SHPO/THPO, and other federal agencies, if necessary, to determine the APE and to seek concurrence on the adequacy of the APE.

Upon consultation with the CRS, Local Planning Agencies (LPA) may be required to contract with a consultant to complete Section 106 reports or studies. Any consultant reports or studies will be submitted to the CRS for review and forwarding on to FHWA.

The CRS will coordinate with the NDOT Right-of-Way Survey Services Division to determine ownership of the properties in the APE (e.g., privately-owned, state-owned, federal lands). The Native American Consultation Coordinator will determine which, if any, Native American tribes/organizations claim an interest in lands within the APE that would require consultation/coordination.

If a Cultural Resource consultant is hired, the CRS will coordinate with the Cultural Resource Consultant to conduct background research to determine the extent of information available on historic properties within the APE and the need for, and extent of, further identification efforts. The background research will include the following components:

- reviewing existing information on historic properties within the APE (e.g., previous/current surveys, previously recorded sites, existing clearance status of areas within the APE);
- seeking information, as appropriate from individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area; and
- the Native American Consultation Coordinator will solicit information from consulted Native American tribes/organizations to assist in identifying historic properties, including those off tribal lands, that may be of traditional religious and cultural significance and that may be eligible for the NRHP.

Regulations and Guidance

36 CFR Part 800 “Protection of Historic Properties”
ACTIVITY NO. 2: Obtain Right-of-Entry Permits

1. **Private Property.** The CRS will work with the NDOT Right-of-Way Survey Services Division to obtain written clearance/permission for right-of-entry to the property.
2. **Federal Property.** The CRS will obtain a Permit or Fieldwork Authorization for access to a property managed by a federal agency.
3. **Native American Lands.** NDOT Right-of-Way Division will work with the tribe to obtain written clearance/permission for right-of-entry to the property. The Native American Consultation Coordinator and the Project Manager will consult with the affected tribal officials to inform them of the planned field work and to determine if there are tribal standards or guidelines (e.g., additional environmental and business ordinances, confidentiality concerns) that would affect how the work is to be performed. The FHWA Environmental Program Manager or Native American Consultation Coordinator will provide the tribal officials a map of the APE and other available information (e.g., survey reports, information on known sites). NDOT will be sensitive to who the legal representative of the tribe is and will ensure that appropriate parties are involved in the consultations/negotiations.

**Regulations and Guidance**

Bureau of Land Management (BLM) – [Obtaining a Cultural Resource Use Permit for BLM-Managed Lands](https://www.blm.gov/)

36 CFR Part 251.54 US Forest Service (USFS) “Land Uses, Proposal and Application Requirements and Procedures”

Bureau of Land Management, Nevada – [Cultural Resources Inventory General Guidelines](https://www.blm.gov/)

ACTIVITY NO. 3: Identify Historic Resources

Based on the results of the background research and consultation accomplished in Activity 1, the CRS, or the Cultural Resource consultant, will conduct further studies/surveys needed to identify historic resources within the APE for the reasonable alternatives under study. This may involve any or all of the following:

- further background research, consultation, and/or oral history interviews;
- archaeology surveys and/or testing for evaluation of identified sites for NRHP eligibility determination;
- historic structures surveys/evaluations of identified structures for NRHP eligibility determination; and
- Native American Consultation/Coordination.

The CRS will determine whether field surveys will be conducted by consultants. If consultants will be used, the CRS may initiate the process of securing consultant services for performing the work, or the engineering consultant will hire a sub-consultant to do the cultural work. The field survey must be supervised by a fieldwork supervisor who meets the Secretary of the Interior’s (SOI) professional standards for the appropriate area of expertise required for the survey. All work...
performed by people not meeting the SOI’s professional standards must be reviewed and approved by the fieldwork supervisor. In consultation with the SHPO/THPO, the CRS will determine if there are other “consulting parties” and/or local governments that have an interest in the APE that should be invited to participate in the Section 106 process. The CRS also will consult with the SHPO/THPO on planning for public involvement to provide information about the undertaking and its effects on historic properties, and to seek comment and input. The CRS will give due consideration to confidentiality concerns of affected parties in planning for public involvement.

Regulation and Guidance

36 CFR Part 800 “Protection of Historic Properties”
Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation

| ACTIVITY NO. 4: Identify Properties Eligible for the NRHP |

The CRS will initiate field surveys to identify historic properties within the APE that may be eligible for the NRHP.

After completing the resource identification research/studies/surveys and documenting the findings, the CRS will initiate consultation and negotiations with the FHWA, the SHPO/THPO and, as applicable, the affected federal land management agencies (FLMAs) and Native American groups/tribes to apply the NRHP eligibility criteria to the identified resources within the APE that have not been previously evaluated for NRHP eligibility, or that require an updated evaluation.

Upon conclusion of the preliminary consultation and negotiations, the CRS will prepare documentation of the recommended findings regarding resource eligibility and will submit it through FHWA and/or the FLMA to the SHPO/THPO. The CRS will negotiate, as necessary, with the SHPO/THPO to achieve concurrence with the eligibility recommendations approved and submitted by FHWA and/or the FLMA as the responsible “Agency Official” for the Section 106 compliance process. In some instances, a request for a formal determination of eligibility from the Keeper of the National Register will be necessary.

Resources determined to meet the NRHP eligibility criteria will be treated as “historic properties” subject to further compliance with the Section 106 process. If the CRS and the FHWA, or appropriate FLMA, have not determined the NRHP eligibility of a historic property (e.g., eligibility is undetermined) it will be treated as eligible until such time as the determination is final. Historic properties on or eligible for the NRHP are determined to warrant preservation in place are subject to Section 4(f) requirements. See Chapter 8 for information on Section 4(f) properties and procedures.

If the APE changes as project development progresses, the CRS will ensure appropriate identification and consideration of “historic properties” in the altered APE. This may include issuing new task orders for additional surveys and background research.
ACTIVITY NO. 5: Assess Effects on Eligible Properties

The CRS will work with the Project Management Team (PMT) to determine the potential effects of the undertaking on historic properties in the APE (e.g., direct construction/maintenance impacts, indirect visual and atmospheric impacts, impacts from temporary easements, utility easements, staging and storage areas, access roads, material sources, waste areas).

The assessment of effects will result in one of the following findings:

1. **No Historic Properties Affected.**
   - no historic properties are present, or
   - historic properties are present but the undertaking will have no effect on them.

   If it is determined that no historic properties will be affected, the CRS will prepare documentation of this finding (see 36 CFR Part 800.11(d)) and submit it to FHWA and/or the FLMA for forwarding to the SHPO/THPO.

2. **Historic Properties Affected.** The CRS will initiate coordination with the PMT to determine if adjustments can be made to eliminate potential adverse effects. Adjustments that are reasonable and feasible should be incorporated in the undertaking. If historic properties are still affected, NDOT will coordinate with FHWA and/or the FLMA to notify the consulting parties, including Native American groups/tribes, to invite their views on the effects and will then assess identified adverse effects (see Activity 7).

Regulations and Guidance

**36 CFR Part 800 “Protection of Historic Properties”**

ACTIVITY NO. 6: Assess Adverse Effects

In consultation with the SHPO/THPO and Native American groups/tribes that attach religious or cultural significance to identified historic properties, the CRS, with FHWA and/or the FLMA, will apply the criteria of adverse effect (36 CFR Part 800.5) to historic properties that the undertaking will affect. Application of the criteria will result in one of the following findings:
1. **Finding of No Adverse Effect.** If NDOT and FHWA and/or the FLMA propose a finding of no adverse effect, NDOT will initiate steps, with FHWA and/or the FLMA, to notify consulting parties of the finding and provide them with supporting documentation.

   If the SHPO/THPO agrees with the finding, and no consulting party has objected, the undertaking may proceed under the No Adverse Effect finding, provided the Advisory Council on Historic Preservation (ACHP) is not reviewing the finding (see 36 CFR Part 800.5).

   If the SHPO/THPO or other consulting party provides written notification indicating that it disagrees with the finding, NDOT and FHWA and/or the FLMA will either consult with the party to resolve the disagreement or request the ACHP to review the finding.

2. **Finding of Adverse Effect.** If an adverse effect is found, NDOT, with FHWA and/or the FLMA, will continue consultation to resolve the adverse effect.

**Regulations and Guidance**

36 CFR Part 800 “Protection of Historic Properties”

*Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements With Historic Sites*

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**ACTIVITY NO. 7:** Resolve Adverse Effects

NDOT, with FHWA and/or the FLMA, will confer with the SHPO/THPO, interested persons and, as appropriate, the ACHP to seek ways to avoid, minimize or mitigate adverse effects that an undertaking may have on a historic property. NDOT and FHWA and/or the FLMA will make information available to the public and afford an opportunity for members of the public to provide their views on resolving the adverse effects. The information provided will be tailored to meet confidentially concerns regarding the historic properties. A Memorandum of Agreement (MOA) outlining the measures that NDOT/FHWA will take to avoid, minimize or mitigate the adverse effects will be prepared and executed.

After execution of the final MOA, the CRS will prepare a mitigation plan for implementing the measures to avoid, minimize and mitigate the undertaking’s adverse effects on historic properties.

Note that, in some cases, the consulting parties may be unable to resolve the adverse effects. See 36 CFR Part 800.7 for a description of the procedural options to address this situation.

If changes occur in the APE after completion of the compliance process, the CRS will determine if the Section 106 process will need to be reopened. If NDOT determines that the changes in the APE will result in an adverse effect on a historic property, the CRS will consult with the SHPO/THPO and FHWA and proceed with the process for resolution of the Adverse Effects.

See Section 2.3 “Preparing an Administrative Record”.
Regulations and Guidance

36 CFR Part 800 “Protection of Historic Properties”
Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements With Historic Sites
43 CFR Part 7 “Protection of Archaeological Resources”
43 CFR Part 10 "Native American Graves Protection and Repatriation Regulations"
Environmental Guidebook/Historic Preservation/Archaeology, FHWA

ACTIVITY NO. 8: Implement Compliance Commitments

The CRS will coordinate with the PMT to ensure avoidance stipulations, as well as compliance commitments (e.g., minimization and mitigation measures) are explained in the Construction Contract Documents.

NDOT will implement mitigation commitments as the project moves toward construction. During and after the project’s construction, the CRS will monitor the activities to ensure fulfillment of avoidance stipulations and compliance commitments, including timely completion of agreed to mitigation reports, documents, etc.

See Section 2.1 “Project Development Process.”

Regulations and Guidance

AASHTO Practitioner’s Handbook 04, November 2006 – Tracking Compliance with Environmental Commitments/Use of Environmental Monitors
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Figure 8-A — SECTION 4(f) PROCESS ................................................................. 8.2
8.1 SECTION 4(f) PROCESS

Section 4(f) regulations govern the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects. A Section 4(f) evaluation must be prepared for each Section 4(f) property within a proposed project before the use of the Section 4(f) property is approved (23 CFR 774).

![Diagram of Section 4(f) Process]

**Figure 8-A — SECTION 4(f) PROCESS**
Section 4(f) requires consideration of:

- parks and recreational areas of national, state, or local significance that are both publicly owned and open to the public; and
- publicly owned wildlife and waterfowl refuges of national, state, or local significance that are open to the public to the extent that public access does not interfere with the primary purpose of the refuge.

The Environmental Services Division will identify potential Section 4(f) properties and coordinate Section 4(f) applicability with the FHWA.

The FHWA will determine the applicability of Section 4(f) to specific resources. (See 23 CFR 774.11 and the FHWA Section 4(f) Policy Paper (July 20, 2012) for further specific guidance on Section 4(f) applicability, addressing various resource types, and Transportation Enhancement Projects).

Regulations and Guidance

23 CFR 774 – Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))
FHWA Section 4(f) Policy Paper, July 20, 2012, 3.1 Identification of Section 4(f) Properties
23 USC 103(c)(5) “Exemption of Interstate System”
FHWA SAFETEA-LU: 6007 “Q and A on the Exemption of the Interstate System”
FHWA Fundamental Requirement of 4(f) FHWA Section 4(f) Tutorial

The Environmental Services Division will evaluate the project’s effects to identify use of land from a Section 4(f) resource. The Environmental Services Division will coordinate with the official(s) with jurisdiction over the Section 4(f) resources and with the FHWA. For historic sites, the Environmental Services Division will coordinate with the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO), the FHWA, and, as applicable, the Advisory Council on Historic Preservation. See Chapter 7 for more information on the Section 106 compliance process.

Where an issue of potential constructive use of a Section 4(f) property arises and FHWA decides that Section 4(f) does not apply, the environmental document should contain sufficient analysis and information to demonstrate that the resource(s) is not substantially impaired.

Regulations and Guidance

23 CFR 774.15 Constructive use determinations
ACTIVITY NO. 3: DEVELOP ALTERNATIVES AND MEASURES TO MINIMIZE HARM

The Environmental Services Division, in cooperation with the FHWA and the Project Management Team (PMT), will develop alternatives that would avoid use of land from Section 4(f) properties, if possible, and develop measures to minimize harm if there are no feasible and prudent alternatives that would avoid use of Section 4(f) properties.

Regulations and Guidance

23 CFR 774.7 Documentation
23 CFR 774.3 Section 4(f) Approvals
FHWA Section 4(f) Policy Paper, July 20, 2012, "3.3.3.2 Alternative with Least Overall Harm"

ACTIVITY NO. 4: DETERMINE IF SECTION 6(f) PROPERTIES ARE AFFECTED

Section 6(f) of the Land and Water Conservation Fund (LWCF) Act prohibits the conversion of properties purchased or improved with LWCF funds to non-recreation uses without approval by the National Park Service (NPS) or their state designee. The Section 4(f) identification process should also evaluate if the project potentially involves properties purchased or improved with LWCF funds.

While Section 6(f) and Section 4(f) often apply to the same properties they are parts of different laws, with key differences being:

- Section 4(f) applies only to programs and policies undertaken by the US Department of Transportation. Section 6(f) applies to all federal agency programs and policies.
- Section 4(f) allows more flexible mitigation opportunities. Section 6(f) requires that any conversion of 6(f) resources be replaced with lands of equal value, location and usefulness.
- Section 6(f) can apply on fully state-funded projects where no federal nexus exists.
- Section 6(f) will still apply even if a Land and Water Conservation Fund (LWCF) property has been determined to be not a significant park resource under Section 4(f)

Additional information on Section 6(f) is in Section 15.1 Recreational Land Conversions Section 6(f).
ACTIVITY NO. 5: DETERMINE APPLICABILITY OF de minimis IMPACT FINDING

For unavoidable use of a Section 4(f) property, the Environmental Services Division, in cooperation with the FHWA and the PMT, will evaluate whether the proposed use would result in a de minimis impact, and coordinate the findings with the appropriate official(s) with jurisdiction and make available for public review.

Regulations and Guidance

23 CFR 774.17 De Minimis Impacts as defined
23 USC 138 “De Minimis Impacts”

ACTIVITY NO. 6: DETERMINE APPLICABILITY OF PROGRAMMATIC EVALUATION

For each use of a Section 4(f) property that is not subject to a de minimis Impact Finding, the Environmental Services Division, in cooperation with the FHWA and the PMT, will determine applicability of a Programmatic Section 4(f) Evaluation.

The conditions for applicability of the Programmatic Section 4(f) Evaluations relate to the type of project, the severity of impacts to a 4(f) property, the evaluation of alternatives, the establishment of a procedure for minimizing harm to the 4(f) resource, adequate coordination with appropriate entities, and the NEPA class of action. There are five approved Nationwide Programmatic Section 4(f) Evaluations, as follows:

1. “Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges”;


3. “Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites”;

4. “Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects”; and

5. “Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property”.

Documentation requirements and approval procedures are included in each programmatic evaluation.
ACTIVITY NO. 7: PREPARE INDIVIDUAL SECTION 4(f) EVALUATION

An Individual Section 4(f) Evaluation will be prepared (including a Draft version and a Final version) when the use of a Section 4(f) resource is not subject to a de minimis Impact Finding and does not meet the criteria for use of any of the Programmatic 4(f) evaluations.

The Individual Section 4(f) Evaluation documents the evaluation of the proposed use of Section 4(f) properties in the project area of all alternatives. The individual Section 4(f) evaluation requires discussion of two findings:

1) That there is no feasible and prudent alternative that completely avoids the use of Section 4(f) property; and
2) That the project includes all possible planning to minimize harm to the Section 4(f) property resulting from the transportation use (See 23 CFR 774.3(a)(1) and (2)).

The Individual Section 4(f) Evaluation will be provided to the officials with jurisdiction over the Section 4(f) property and the US Department of the Interior for review and comment.

The FHWA Nevada Division Administrator approves Final Individual Section 4(f) Evaluations.

For projects processed with an EIS or an EA, the Individual Section 4(f) Evaluation should be included as a separate section of the document. Pertinent information from various sections of the EIS or EA/FONSI may be summarized in the Individual Section 4(f) Evaluation to reduce repetition. For projects processed as Categorical Exclusions, a separate Individual Section 4(f) Evaluation document should be prepared.

See Section 2.3 “Preparing an Administrative Record.”

Regulations and Guidance

23 CFR 774.7 “Documentation"  
FHWA Section 4(f) Policy Paper, July 20, 2012  
FHWA Environmental Guidebook  
Chapter 8 – Section 4(f)  
Section 4(f) Guidance and Legislation Documents  
FHWA Technical Advisory T6640.8A – October 1987
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SOCIO-ECONOMICS

9.1 SOCIO-ECONOMIC ANALYSIS PROCESS

Socio-Economic Impact Analysis is a process to evaluate the effects of a transportation action on a community and its quality of life. The analysis process is an integral part of project planning and development that shapes the outcome of a project. Its information is used continuously to mold the project and provide documentation of the current and anticipated social environment of a geographic area with and without action. The analysis should include all items of importance to people, such as mobility, safety, employment effects, relocation, isolation, and other community issues.

Transportation investments have major influences on society, with significant economic and social consequences. However, in many instances in the past, impacts on people have not received the attention they deserve. The Socio-Economic Impact Analysis process (Figure 9-A) alerts affected communities and residents, as well as transportation decision makers, to the likely consequences of a project, and ensures that human values and concerns receive proper attention during project development.
ACTIVITY NO. 1: INITIATE SOCIO-ECONOMIC IMPACT ANALYSIS

The Environmental Services Division will monitor proposed projects for potential socio-economic impacts and will provide input into the project purpose and need and the development of project alternatives. Elements that can trigger a socio-economic analysis include:

- population effects/population type (e.g., Native American tribes)
- impacts on neighborhoods or community facilities (e.g., community cohesion or access effects);
- potential impacts to Environmental Justice (EJ) populations (see Chapter 16);
• residential development or displacement effects;
• business development or displacement effects;
• employment effects;
• impacts on business sales levels;
• impacts on community fiscal conditions and public service providers;
• noise impacts on residential communities;
• air quality impacts; and
• aesthetic impacts or issues.

Regulations and Guidance

23 USC 109(h) (Consideration of possible adverse economic, social and environmental effects of Federal-aid highway projects)

National Environmental Policy Act of 1969

23 CFR 771 “Environmental Impact and Related Procedures”

EO 12898 on Environmental Justice (1994)


ACTIVITY NO. 2: DEFINE AFFECTED AREA

The Environmental Services Division will identify the geographic region expected to be affected by the project. Socio-Economic Analysis should identify a geographic region which incorporates the communities expected to be affected by the project based on scoping, public involvement, and interagency coordination. This should include the project study area and may extend beyond it.

The study area typically includes communities within and immediately surrounding the project study area, often delineated by the Census tracts or Census block groups that include the potentially affected neighborhoods or communities. In addition, analysts should recognize that the project might have social consequences to communities well beyond the immediate geographic area. For purposes of the socio-economic impact analysis, this will include recognition that the project might have social consequences for communities beyond the immediate project area and that the scope of the socio-economic impact study area may change as more information is collected and alternatives are introduced.

Regulations and Guidance


FHWA Environmental Guidebook

FHWA Technical Advisory T6640.8A – October 1989

FHWA Community Impact Assessment Website
ACTIVITY NO. 3: CONDUCT DATA COLLECTION AND RESEARCH

The Environmental Services Division will collect data through field surveys, from government sources and private data repositories, or from other sources to adequately describe the characteristics of the project location. Examples of pertinent information include:

- transportation data;
- demographic information;
  - population;
  - age, gender and ethnic distribution;
  - special population subgroups (e.g., disabled persons); and
  - income levels;
- neighborhood boundaries;
- housing;
  - density,
  - multi versus single family,
  - owner versus rental,
  - occupancy rate, and
  - condition;
- community facilities;
  - location and type, and
  - access to and from;
- public services (e.g., police, fire);
- business;
  - number and type,
  - ownership,
  - stability, and
  - number of employees;
- tax base/economy;
  - employment, unemployment, and labor force data,
  - income distribution, and
  - tax base (e.g., sales and property tax revenues).

Regulations and Guidance

FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A – October 1987
FHWA Community Impact Assessment Website
ACTIVITY NO. 4: DETERMINE AND ANALYZE IMPACTS

The Environmental Services Division will examine the anticipated future conditions with the proposed project in comparison to the anticipated conditions without the proposed project to identify impacts (i.e., positive and negative impacts, temporary and long-term impacts, as well as secondary and cumulative effects). The Analyst will consider community goals when identifying impacts, will review and research issues the public perceives as an impact, and will consider the magnitude of an issue in determining the appropriate level of analysis. Examples of impacts that could be assessed include:

1. **Social Impacts:**
   - changes in neighborhoods or community cohesion;
   - changes in travel patterns and accessibility;
   - impacts on school districts, recreation areas, churches, businesses, police and fire protection, etc.;
   - social groups benefited or harmed by the proposed project (e.g., elderly, non-drivers, transit-dependent, minority and ethnic groups);
   - changes in ethnic or minority employment opportunities;
   - disproportionate impacts to any social groups;
   - noise impacts or air quality impacts; and
   - aesthetic or visual impacts.

2. **Economic Impacts:**
   - impacts on the regional and/or local economy (e.g., effects on development, tax revenues and public expenditures, employment opportunities, accessibility and retail sales);
   - impacts on the economic vitality of highway-related businesses and the resulting impact on the local economy; and
   - impacts on established business districts.

3. **Relocation Impacts:**
   - households to be displaced, including family characteristics;
   - comparison of available decent, safe and sanitary housing in the area with the housing needs of persons displaced;
   - affected neighborhoods, public facilities, non-profit organizations, and families which may require special relocation considerations;
   - measures to be taken where existing housing does not meet the needs of the persons displaced; and
   - numbers, types and sizes of businesses and farms (see Chapter 15) to be displaced and availability of sites for relocation, likelihood of relocation and potential impacts caused by displacement or proximity of the highway, if not displaced.
4. **Land Use Impacts:**

   - impacts on development trends and governmental plans and policies on land use and growth,
   - consistency with adopted comprehensive development plans, and
   - foreseeable secondary impacts of development induced by the project.

The Environmental Services Division will identify groups that are adversely affected by the project and will identify and address disproportionately high and adverse impacts on minority or low-income populations (see Chapter 16).

**Regulations and Guidance**


*FHWA Environmental Guidebook*

*FHWA Technical Advisory T6640.8A*

*FHWA Community Impact Assessment Website*

*EO 12898 on Environmental Justice* (1994)

*DOT Order 5610.2a Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, May 2, 2012.

*DOT Order 6640.23A FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, June 14, 2012.

*42 USC 61 Uniform Relocation Assistance and Real Property Acquisition Policies for Federally Assisted Programs*, January 1, 2012

*49 CFR Part 24 “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.”*

**ACTIVITY NO. 5: EXAMINE MITIGATION OPTIONS**

The Environmental Services Division will work with the Project Management Team (PMT) to identify design or engineering options to address adverse socio-economic impacts – starting with avoidance, and then moving on to minimization and mitigation.

**Regulations and Guidance**


*FHWA Environmental Guidebook*

*FHWA Technical Advisory T6640.8A*

*FHWA Community Impact Assessment Website*

*EO 12898 on Environmental Justice* (1994)

*DOT Order 5610.2a Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, May 2, 2012.

*DOT Order 6640.23A FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, June 14, 2012.
ACTIVITY NO. 6: DOCUMENT SOCIO-ECONOMIC IMPACT ANALYSIS

The Environmental Services Division will prepare documentation regarding the results of the analysis of socio-economic impacts. Associated avoidance, minimization and mitigation measures will be included in the environmental documentation for the proposed project.

Mitigation commitments will be included in the NEPA document.

See Section 2.3 “Preparing an Administrative Record.”

Regulations and Guidance

FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A
FHWA Community Impact Assessment Website

ACTIVITY NO. 7: INCLUDE MITIGATION COMMITMENTS IN CONTRACT DOCUMENTS

The Environmental Services Division will coordinate with the PMT to ensure avoidance, minimization and mitigation measures for addressing the project’s adverse socio-economic impacts are reflected in the project design and in the Construction Contract Documents.

ACTIVITY NO. 8: MONITOR MITIGATION COMMITMENTS

The Environmental Services Division will monitor project construction activities to ensure mitigation commitments for addressing adverse socio-economic impacts are implemented as per plans and in accordance with the Construction Contract Documents. The effectiveness of implemented mitigation measures should also be noted in any documentation produced.
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Chapter 10
THREATENED AND ENDANGERED SPECIES

10.1 EVALUATION AND CONSULTATION PROCEDURES

The process for evaluating threatened and endangered species issues is depicted in Figure 10-A.

1. Evaluate Project for Presence of Protected Species/Habitat

2. Assess Effects on Protected Species/Habitat

3. Prepare Biological Assessment, If Applicable

4. Initiate Formal Consultation with USFWS

5. Review Contract Documents for Mitigation Commitments

6. Monitor Construction

10-A — THREATENED AND ENDANGERED SPECIES EVALUATION
ACTIVITY NO. 1: Evaluate Project for Presence of Protected Species/Habitat

The Environmental Services Division will conduct an evaluation of the project area to determine whether listed or proposed species or designated or proposed critical habitat is present. NDOT Staff Biologist will obtain a species list from Nevada Natural Heritage Program. The level of evaluation will be appropriate to the scope of the project and will include requesting from the US Fish and Wildlife Service (USFWS) information regarding listed or proposed species and designated or proposed critical habitat in the project area, conducting field surveys, and review of substantiated information from other credible sources. Other sources of information may include:

- US Forest Service,
- National Park Service,
- Bureau of Land Management, and
- Nevada Department of Wildlife.

If there are no protected species or habitat in the project area the requirements of Section 7 of the Endangered Species Act are satisfied. The results of this coordination will be included in the environmental documentation for the project.

Regulations and Guidance:

50 CFR 424 “Listing endangered and threatened species and designating critical habitat”
FHWA Environmental Guidebook – “Water, Wetlands, and Wildlife”
FHWA Technical Advisory T6640.8A – October 1987
AASHTO Practitioner’s Handbook 17, Complying with Section 7 of the Endangered Species Act for Transportation Projects – November 2016

ACTIVITY NO. 2: Assess Effects on Protected Species/Habitat

If listed or proposed species or designated or proposed critical habitat occur in the project area, the Environmental Services Division will conduct an evaluation of the potential impacts to determine whether any protected species or critical habitat are likely to be adversely affected by the project. Informal consultation with the USFWS, in cooperation with the FHWA, will be undertaken as a part of the evaluation to:

- clarify whether and, if so, what listed or proposed species or designated or proposed critical habitats are in the project area;
- determine what effect the action would have on these species or critical habitats;
- explore ways to modify the project to reduce or remove adverse effects on the species or critical habitats; and
- determine the need to enter into formal consultation for listed species or designated critical habitats.
If the initial assessment of effects results in a determination that the proposed project will not affect listed or proposed species or designated or proposed critical habitat, the Section 7 requirements are satisfied, and further consultation is not required.

If the initial assessment of effects results in a determination that the project may affect protected species or critical habitat, further consultation with the USFWS will be necessary and the Environmental Services Division will prepare a biological assessment.

Regulations and Guidance:

50 CFR 402.13 “Informal Consultation”
AASHTO Practitioner’s Handbook 17, Complying with Section 7 of the Endangered Species Act for Transportation Projects – November 2016

ACTIVITY NO. 3: Prepare Biological Assessment, If Applicable

The purpose of the biological assessment is to evaluate the potential effects of the project on listed and proposed species and designated and proposed critical habitat and determine whether formal consultation is necessary. The biological assessment will include the following:

- results of an on-site inspection and data-gathering to determine if listed or proposed species or designated or proposed habitat are present;
- review of the literature;
- analysis of the effects of the action on the species and habitat, including consideration of cumulative effects and the results of any related studies; and
- analysis of alternative actions considered for the proposed action.

The biological assessment or an appended action to programmatic biological opinion (PBO) will be submitted to the USFWS within 180 days and 45, respectively, of receipt of a species list from the USFWS or USFWS concurrence in a species list submitted by the Environmental Services Division unless a different period of time is agreed to by the USFWS and the FHWA. The Environmental Services Division will submit the completed biological assessment or the PBO appended action to the FHWA for forwarding to the USFWS. The USFWS will respond in writing within 30 days as to whether it concurs with the findings of the biological assessment.

If preparation of a biological assessment results in a determination that the proposed action will have no effect or is not likely to adversely affect any listed or proposed species or designated or proposed critical habitat, and if the USFWS concurs with the determination, formal consultation is not required, and the Section 7 requirements are satisfied and no further consultation is required.

If preparation of a biological assessment results in a determination that the proposed action is likely to adversely affect listed or proposed species or designated or proposed critical habitat, formal consultation (for listed species or designated critical habitat) will be required.
Regulations and Guidance:

50 CFR 402.12 “Biological Assessment”
FHWA Environmental Guidebook – Wildlife and Habitat
FHWA Technical Advisory T 6640.8A – October 1987
FHWA Environmental Guidebook – Endangered Species Act (ESA) Webtool

ACTIVITY NO. 4: Initiate Formal Consultation with the USFWS

If it is determined that the project is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat, the Environmental Services Division, in cooperation with the FHWA, will initiate formal consultation with the USFWS. Formal consultation will result in issuance of a biological opinion and, as applicable, an incidental take statement by the USFWS.

See Section 2.3 “Preparing an Administrative Record.”

Regulations and Guidance:

50 CFR 402.14 “Formal Consultation”
FHWA Environmental Guidebook – “Water, Wetlands, and Wildlife”
FHWA Technical Advisory T6640.8A – October 1987
AASHTO Practitioner’s Handbook 17, Complying with Section 7 of the Endangered Species Act for Transportation Projects – November 2016

ACTIVITY NO. 5: Review Construction Documents for Mitigation Commitments

The Environmental Services Division will coordinate with the Project Management Team to ensure that avoidance, minimization and mitigation measures for addressing the project’s impacts on protected species and habitat are reflected in the Construction Contract Documents. The Environmental Services Division, in coordination with the Stormwater Division as applicable, will ensure the construction documents address the terms and conditions of the biological opinion.

ACTIVITY NO. 6: Monitor Construction

For projects involving formal consultation, NDOT must report on the progress of the project and its impact on the species and critical habitat. The information will be used to amend, as appropriate, the biological opinion, reasonable and prudent alternatives (RPAs), reasonable and prudent measures (RPMs), terms and conditions, and to make necessary adjustments to the baseline. Project monitoring is designed to do the following:
• detect adverse effects resulting from the proposed action,
• detect when the level of anticipated incidental take is approached,
• raise a red flag if the level of anticipated incidental take is exceeded, and
• determine the effectiveness of RPMs.

NDOT will submit a monitoring report, as specified in the biological opinion, to the USFWS (through the FHWA). The monitoring report is a summary of the activities taken place on the specific project in the biological opinion. The report also discusses compliance issues and the number of protected species handled, observed, injured, or killed during the project.

Regulations and Guidance:

50 CFR 402.14(i)(3) “Incidental Take Permit”
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Chapter 11
MATERIAL SITES
ENVIRONMENTAL CLEARANCE PROCEDURES

11.1 OVERVIEW

NDOT maintains an inventory of thousands of material sites statewide. Some are held in fee by NDOT but the overwhelming number of them reside on lands administered by the Bureau of Land Management (BLM) and a handful other federal agencies. The Environmental Services Division is responsible for evaluating potential and existing material sites to ensure compliance with environmental permit requirements and, as applicable, the National Environmental Policy Act (NEPA). Refer to the Joint Memorandum of Understanding (MOU) between NDOT and the BLM for new material sites on BLM land. The Environmental Services Division will perform a material site assessment of existing and new material sites prior to use to provide required clearances as needed.

11.2 REQUEST FOR USE OF AN EXISTING MATERIAL SITE

After material site rights-of-way have been acquired by NDOT, requests to environmentally clear the site may come to the Environmental Services Division from the Materials Division for further testing of a site, from the Right-of-Way Survey Services Division for use of a site to provide materials for a roadway project, and from maintenance crews for materials for district maintenance and betterment projects. Clearance of existing material sites occurs according to the activities depicted in Figure 11-A.

Figure 11-A — PROCESS FOR REQUEST FOR USE OF AN EXISTING MATERIAL SITE
ACTIVITY NO. 1: Initiate Contact and Collect Data

Clearance requests typically include NDOT material site numbers, BLM application numbers (if applicable), location descriptions and maps (i.e., roadway and milepost locations), pit sketch maps, access information, and legal descriptions. Maintenance requests may require the Environmental Services Division to collect and compile this information from NDOT’s GIS material sites database. For material sites on private lands, the Environmental Services Division may request an entry permit from the Right-of-Way Survey Services Division.

The Environmental Services Division will review existing data for environmental conditions, potential impacts, and applicable legal requirements concerning cultural resources, biological resources, and naturally occurring asbestos/erionite, as well as for any other resources (e.g., wetlands) based on the known history of the material site. The Environmental Services Division will determine if previous clearances remain valid or if updated field surveys or consultations are needed.

ACTIVITY NO. 2: Conduct Field Reviews and Surveys

If needed, the Environmental Services Division will conduct field reviews and new surveys to document resources and determine potential impacts. The Cultural Resource, Biology, and Hazardous Waste sections within the Environmental Services Division will be responsible for surveys and reviews within their area or areas of expertise.

ACTIVITY NO. 3: Initiate Consultations and Permitting Process

If the site requires updated consultation with regulatory agencies and/or updated permitting, the Environmental Services Division will pursue the necessary actions to complete consultations and/or obtain the necessary permits.

The Environmental Services Division will disseminate copies of the acquired permits and documentation of consultations to other NDOT divisions and land managing agencies as needed.

ACTIVITY NO. 4: Provide Environmental Clearance

Based on input from staff specialists, the Environmental Services Division will prepare an environmental clearance memorandum specifying the type of clearance (e.g., for sampling, for project use) and providing clearance information. Permits, documentation of consultations, evidence of fee payment and mitigation may also be included in the clearance document. The Environmental Services Division will send the memorandum to the Right-of-Way Survey Services Division, the Materials Division and, if requested, District Maintenance.
For requests to use a material site on a project, receipt of this document prompts the Right-of-Way Survey Services Division to advise the Materials Division the site is cleared for use.

11.3 REQUEST ASSOCIATED WITH ACQUISITION OF A NEW OR EXPANDED MATERIAL SITE

The Materials Division sends a memorandum to the Right-of-Way Survey Services Division requesting acquisition of right-of-way for use as a material site. The Right-of-Way Survey Services Division then requests the environmental clearance as depicted in Figure 11-B.

Figure 11-B — PROCESS FOR NEW OR EXPANDED MATERIAL SITE
ACTIVITY NO. 1: Materials Division Request for Testing

Prior to proposing acquisition of a new material site or the expansion of an existing material site, the NDOT Materials Division will usually require testing of a site to determine the suitability of the material for use on future highway projects. This testing is done only after the land management agency (usually BLM) has issued an Exploration Permit. For testing on BLM land, BLM is the lead federal agency for issuing the Exploration Permit and complying with NEPA.

ACTIVITY NO. 2: Initiate Contact and Collect Data for BLM Exploration Permit

For material sites on public land, the Environmental Services Division will contact the land managing agency to discuss environmental clearance requirements for an Exploration Permit and to arrange for surveys and possibly a field review. If requested by the land management agency, the field review may include agencies and disciplines involved in species, land, or other resources or issues on or adjacent to the site. The Environmental Services Division will conduct the necessary field reviews and surveys to document resources and determine impacts. The Environmental Services Division may be required to complete the “Material Site Field Checklist” (see Figure 11-C) to determine areas of potential impact.

For sites on BLM land, the Environmental Services Division provides the BLM any required documentation and permits to complete its NEPA process and issue the Exploration Permit. If the BLM requires Form SF-299 (“Application for Transportation and Utility Systems and Facilities on Federal Lands”) at this time, the Environmental Services Division, in coordination with the Materials and Right-of-Way Survey Services Divisions, will prepare and submit it. This is considered a “Pre-Application Activity” by BLM, and the FHWA is not involved in the undertaking at this time.

Regulations and Guidance

### MATERIAL SITE FIELD CHECKLIST

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<th>Critical Element</th>
<th>Yes</th>
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<td>Other land uses (mining claims, leases, utilities)</td>
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<td>Other</td>
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Land Status: __________________________  Land Use Plan: __________________________

Does the action conform to the land use plan: Yes ________  No ________

Notes:

Signed: ____________________________________  NDOT Representative _______________

BLM Representative _______________________

---

Figure 11-C — MATERIAL SITE FIELD REVIEW CHECKLIST
### ACTIVITY NO. 3: BLM Issues the Exploration Permit to NDOT

When the BLM has completed its NEPA compliance, the BLM will issue the Exploration Permit and authorize NDOT activities in writing. The authorization will require compliance with the mitigation determined through the BLM NEPA process. NDOT will be responsible for obtaining any permits needed from other agencies. NDOT Materials Division will complete its testing of the proposed material site in compliance with any mitigation measures established by BLM. The BLM “Pre-Application Process” is now over.

### Regulations and Guidance


### ACTIVITY NO. 4: Initiate Contact and Collect Data for NEPA Document

Following testing, the Materials Division will send a memorandum to the Right-of-Way Survey Services Division requesting acquisition of right-of-way for use as a material site. The Right-of-Way Survey Services Division will then request the environmental clearance of the proposed pit for acquisition. This begins the “Title 23 Application Activities” between NDOT, FHWA, and BLM. FHWA is now the federal lead agency for completion of NEPA documentation needed for the BLM to issue the easement deed to NDOT for the new material site or expansion of an existing material site.

The Environmental Services Division will gather information about the pit from the Materials Division and/or the Right-of-Way Survey Services Division. This information may include location maps, pit sketch (if available), legal description, shape file, relevant reports, and possibly entry permits for private lands.

The Environmental Services Division will collect preliminary information on environmental conditions, potential impacts, and applicable legal requirements (e.g., cultural resources, biological resources, air quality, water quality, hazardous materials/waste, noise, socio-economics, naturally occurring asbestos/erionite).

If not completed during Activity 1, the Environmental Services Division will contact the appropriate land management agency office (usually BLM) to determine a point of contact for submitting Form SF-299 (“Application for Transportation and Utility Systems and Facilities on Federal Lands”) and coordination of the NEPA process. In coordination with the Materials and Right-of-Way Survey Services divisions, the Environmental Services Division will prepare and submit Form SF-299.
In coordination with the land managing agency, the Environmental Services Division will undertake any required studies needed for preparation of the NEPA document.

Regulations and Guidance


ACTIVITY NO. 5: Conduct Field Reviews and Surveys

Once the relevant land management agency has responded to the Form SF-299 submittal, the Environmental Services Division’s Cultural Resource Section and Biology Section will conduct any additional field reviews of the site.

For sites on public land, the Environmental Services Division will contact the land managing agency to arrange another field review, if needed. If requested by the land management agency, the field review may include agencies and disciplines involved in species, land, or other resources or issues on or adjacent to the site. The Environmental Services Division will conduct the necessary field reviews and surveys to document resources and determine impacts. The Environmental Services Division may need to complete the “Material Site Field Checklist” (see Figure 11-C) again to determine areas of potential impact.

Regulations and Guidance


ACTIVITY NO. 6: Prepare Draft NEPA Document

Following all field reviews, surveys, staff specialist evaluations, and completion of resource agency consultations, the Environmental Services Division will prepare the NEPA document for acquisition of the material site. This is typically an Environmental Assessment (EA) for BLM lands. If the site is on BLM land, the EA format is decided upon in consultation with them.

The Environmental Services Division will conduct an internal review of the draft environmental document and will then send the document to the FHWA and land management agency for review and comment.
Regulations and Guidance


ACTIVITY NO. 7: Finalize NEPA Document and FONSI

The Environmental Services Division will prepare the final NEPA document based on comments received from the FHWA and the land management agency. The Environmental Services Division will send the final NEPA document to the land management agency with a request for concurrence in the determination of impact. The agency, usually the BLM, will review the final NEPA document and provide a written concurrence to FHWA through NDOT. FHWA will then approve the EA for public review. NDOT will arrange for the EA to be available for 30 days for public review and comment.

Once the comment period ends, the Environmental Services Division will address any comments received in consultation with the FHWA and BLM and prepare a draft Finding of No Significant Impact (FONSI). After BLM has reviewed the draft FONSI the Environmental Services Division will submit it to FHWA for approval. The FHWA will provide the approved FONSI to the Environmental Services Division.

When NDOT receives the approved FONSI from FHWA, the Environmental Services Division will prepare a memorandum for the Right-of-Way Survey Services Division and the Materials Division specifying that the NEPA process has been completed for the proposed material site acquisition or expansion. Receipt of this document prompts the Right-of-Way Survey Services Division to contact the land management agency or private land owner to begin the acquisition process.

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AIR QUALITY

12.1 NDOT AIR QUALITY ANALYSIS

ACTIVITY NO. 1: Obtain Information for Air Quality Analysis

1. Design Files. Digital files of the project plans and, if a quantitative analysis is necessary, roadway geometry for the existing condition and the design-year condition preferred alternatives. These files will be in compatible MicroStation format, complete with elevation data. Design files for the project are provided by NDOT’s Design Division, NDOT’s Project Management Division, or the project consultant.

2. Traffic Data. As applicable to complete the appropriate analysis, link/roadway segment activity data for the design-year (i.e., no-build and preferred-build alternatives) traffic volume,
and the free-flow speed data for each affected intersection or freeway link. For
intersections, peak-hour approach and departure volumes (veh/hr) are required. For
freeway segments, directional peak-hour volumes are required. For intersection approach
and departure links and freeway segments, the average peak-hour free flow speed is
required data. For intersections, the total cycle length, red time and delay time, signal type,
arrival rate, and saturation flow rate are required.

Traffic activity data, including vehicle miles travelled (VMT) and average annual daily traffic
(AADT), are requested from NDOT’s Traffic Information and Traffic Engineering Divisions or
the project consultant. The project consultant’s methodology and data shall be approved by
the necessary NDOT Traffic Divisions prior to use in the air quality analysis.

Vehicle mix information (i.e., proportions of vehicle types) is not available for individual
projects but is available for the regional transportation system. The analyst will consult the
local metropolitan planning organization (MPO) or air quality agency to obtain vehicle mix
data, regional fuel data, and I/M data (inputs for developing project level MOVES). NDOT’s
Traffic Information Division may have updated vehicular mix data, but the analyst must use
the same vehicular mix data used by the local air agency or MPO.

3. **Traffic Analysis Reports.** Traffic Analysis Reports, which include detailed traffic forecast and
design alternative information for project corridors or regional-scale transportation systems,
to perform mobile source air toxics (MSAT) emission inventories. Consultant-provided
Traffic Analysis Reports shall be approved by the necessary NDOT Traffic Divisions prior to
use in the air quality analysis.

** ACTIVITY NO. 2a: Conduct Qualitative Analysis **

For projects where an air quality analysis is required, the Environmental Services Division will
complete a qualitative analysis, when applicable.

** ACTIVITY NO. 2b: Conduct Quantitative Analysis **

When necessary, emission factor modeling and air dispersion modeling will be performed per
regulatory and agency requirements to demonstrate that the proposed project will not cause
new violations, or exacerbate existing violations, of the NAAQS.

Quantitative modeling will be performed for CO as follows:

1. **Emission Factor Modeling.** To compute emission factors for various pollutants, the
Environmental Services Division will use the most current Emission Factor Model, Motor
Vehicle Emission Simulator (MOVES), as approved by the US Environmental Protection
Agency (EPA).
Consult the local air quality agency or MPO for local inputs to be used in the emission factor model (e.g., Clark County Department of Air Quality [CCDAQ], Washoe County – Division of Air Quality Management [WC-DAQM]).

2. **Air Dispersion (Hot-Spot) Modeling.** Use the most current EPA-approved model for CO dispersion modeling. The model requires traffic activity data, plus the emission factors.

   CO hot-spot modeling will be performed for the design-year BUILD condition for the preferred design alternative. If this first-pass analysis produces a model exceedance, then the design-year NO BUILD condition will be analyzed.

   For quantitative CO modeling, the local background concentration will be added to the model concentrations for each receptor to determine compliance with the NAAQS. To derive background concentrations, use monitoring data from an EPA-approved network operated by the local air quality agency. These data are requested from the local agency or retrieved from the EPA’s AirData website. Plan each modeling task on a case-by-case basis, using best judgment and available guidance to determine the appropriate background value.

   It is not unusual for BUILD model concentrations to be higher than NO BUILD concentrations. Model concentrations are dependent upon both the emission rate of CO and traffic activity. As long as the total impact for the design year (i.e. background + model concentrations) does not exceed the NAAQS, then no operational phase mitigation measures for the project are required.

3. **Qualitative Assessments for PM$_{10}$ and PM$_{2.5}$.** Projects in PM$_{10}$ and PM$_{2.5}$ non-attainment and maintenance areas are subject to hot-spot analyses to determine air quality impacts. Dispersion modeling is not required, but NDOT will perform a qualitative assessment of local factors to demonstrate the proposed project will not create new violations of the NAAQS.

   Nevada is attaining the NAAQS for PM$_{2.5}$, so a qualitative assessment for this pollutant is not required. Clark County (hydrographic area [HA] 212) and Washoe County (HA87) are in non-attainment for PM$_{10}$. Therefore, impacts for these pollutants must be assessed for projects in these areas.

   Follow EPA guidance for quantitative and qualitative PM$_{10}$ assessments. For EIS projects, IAC (Interagency Consultation) with representatives from FHWA, EPA, county officials, NDOT, and the consultant is to be conducted before the air quality document is accepted.

4. **Assessing Ozone Impacts.** Ozone is an area-wide pollutant assessed as part of the development of state implementation plans (SIPs). State and local air quality agencies develop SIPs for non-attainment areas. In addition, ozone is evaluated as a regional pollutant by MPOs, using emissions inventories for its precursors, NO$_X$ and VOCs, as part of the regional conformity process. Ozone is not a concern as a hot spot pollutant.

5. **Mobile Source Air Toxics (MSATs).** The EPA has currently established a list of six priority MSATs. The EPA defines the priority MSATs as those most likely to present the highest risks to human health.
The priority MSATs include the following volatile organic compounds (VOCs): benzene; formaldehyde; acetaldehyde; acrolein; 1,3-butadiene; and Diesel Particulate Matter (DPM), a fine aerosol composed of solid and liquid particles. MSATs are emitted from highway vehicles (e.g., cars, trucks, buses) and non-road sources (e.g., aircraft, marine vessels, construction equipment).

Air toxics analysis is an ongoing area of research by the EPA and FHWA.

In contrast to criteria pollutants, there are no ambient standards for MSATs. Therefore, it is not possible to determine whether project-specific MSAT emission levels should be considered significant. It is possible to determine MSAT emission trends over time and to determine whether meaningful differences in MSAT emission levels occur between project alternatives.

The Environmental Services Division will complete an MSAT analysis, per FHWA requirements. The EPA’s Emission Factor Model (most recent version of MOVES) has functionality to calculate emission factors for the six priority MSATs, and its use is required by the EPA and FHWA for quantitative MSAT assessments. Emission factors for MSATs vary as a function of speed, vehicle mix, fuel composition, and diurnal fluctuations in temperature.

Follow the most recent FHWA guidance for performing and interpreting MSAT emissions inventories for transportation project alternatives.

Greenhouse Gases (GHGs):
The Environmental Services Division shall include language pertaining to GHGs, as required.

**ACTIVITY NO. 3: Document Air Quality Impacts**

The Environmental Services Division will prepare a statement of the air quality impacts and mitigation measures to be included in the NEPA document, and a technical memorandum or report for the administrative record. This is a summary report of air dispersion modeling results to show compliance with the NAAQS and to outline operational and construction phase mitigation measures that may be required. Each document is described below:

1. **Outline for Technical Memorandum:**
   - **Executive Summary.** A one-page summary of results and recommendations.
   - **Introduction.** Summarize the project and the proposed action/alternative.
   - **Existing Conditions.** Summarize the existing air quality conditions. Include tabulations of monitoring data and a statement of the attainment status of the various criteria pollutants.
   - **Operational Phase Impacts.** Describe the CO modeling methodology and model results in tabular format. Describe the PM$_{10}$ analysis and assess PM$_{10}$ impacts, if necessary.
Write a short statement assessing ozone. Describe operational phase mitigation measures, if required.

- **Construction Impacts and Mitigation.** Discuss that there may be short-term localized increases in CO and PM$_{10}$ due to construction activity. Mitigation for these impacts is done through enforcement of existing air quality regulations by State or local air quality agencies.

- **Transportation Conformity.** A statement that the two requirements for project-level transportation conformity have been satisfied. Mention IAC was conducted, if required.

- **Mobile Source Air Toxics (MSATs).** Discuss the results of the MSAT analysis.

- **Appendices.** Attach emission factor and dispersion model input and output files, maps of roadway geometry and model receptor points, and the MSAT analysis. All data and supporting documents will be provided electronically for the administrative records.

2. **NEPA Document.** The NEPA document will contain pertinent information needed to support the analysis of air quality impacts of project alternatives and will include a discussion of mitigation measures for the air quality impacts.

See Section 2.3 “Preparing an Administrative Record.”

### 12.2 NDOT AIR QUALITY COMPLAINT RESPONSE

The Environmental Services Division receives complaints from citizens and local air quality agencies. The most common complaints relate to fugitive dust. Each complaint is handled on a case-by-case basis.

The State and local air quality agencies enforce air quality regulations and standards. Contractors working for NDOT are required to comply with air quality regulations and are responsible for knowing what air quality regulations apply, and what types of air quality permits are required.

NDOT complies with air quality regulations during its day-to-day operations, as specified in the most recent guidance for maintenance personnel.

![Diagram of Air Quality Complaint Response](image-url)

**Figure 12-B — AIR QUALITY COMPLAINT RESPONSE**
ACTIVITY NO. 1: Identify Location and Cause of Complaint

Determine if the complaint pertains to NDOT and whether the activities of a contractor or NDOT precipitated the air quality complaint.

ACTIVITY NO. 2: Respond to Complaint

1. Complaint Against a Contractor. If the actions of a Contractor prompt an air quality complaint, the Environmental Services Division will inform the Resident Engineer and/or the Project Manager.

2. Complaint Against the Department. If the actions of NDOT prompt an air quality complaint, the Environmental Services Division will notify the District in which the alleged air quality violation occurred as to the nature of the complaint.

12.3 NDOT AIR QUALITY PERMITTING

NDOT districts apply for and manage air quality permits, as required and dictated by the type of activity performed. The Environmental Services Division is not involved in managing or renewing these permits.

NDOT does not acquire or hold air quality permits on behalf of contractors. Contractors shall obtain, pay for, and comply with any required permit. Contractors are required to implement best management practices and adhere to federal, state, and local regulations, laws, and ordinances.
# Chapter 13

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**Activity No. 1:** Identify Location of Complaint and Verify the Standing of the Complainant

**Activity No. 2:** Research Complaint

**Activity No. 3:** Conduct an Onsite Visit (if applicable)

**Activity No. 4:** Prepare and Provide Results of the Onsite Visit

**Activity No. 5:** File Records

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TRAFFIC & CONSTRUCTION NOISE

13.1 TRAFFIC NOISE ANALYSIS

In the development of a federal project, federal-aid highway project, or one that requires approval by the FHWA, a traffic noise analysis may be necessary. As applicable, analysis will be conducted according to current regulation, FHWA guidance documents, and NDOT policy. In any other application where traffic noise may be an issue of concern, the regulation, FHWA guidance documents, and NDOT policy will be used to complete any traffic noise analysis and study. In addition, when it becomes available, the NDOT Traffic Noise Manual can be reviewed for further guidance.

Regulations, Guidance and Policy:

FHWA Analysis and Abatement Guidance (current edition)
NDOT Traffic and Construction Noise Analysis and Abatement Policy (current edition)

13.2 CONSTRUCTION NOISE

Noise related to construction activities on an NDOT project will be evaluated per applicable regulations, guidance, and policy on a project-by-project basis and addressed in the project’s plans and special provisions, as needed.

13.3 PROCEDURE FOR TRAFFIC NOISE COMPLAINTS

The public may submit a complaint regarding noise. Typically, these complaints are prompted by perceived noise problems from traffic or construction.
ACTIVITY NO. 1: Identify Location of Complaint and Verify the Standing of Complainant

It is imperative to identify the location of the complaint to determine jurisdictional authority. If under FHWA or NDOT authority, evaluate the reason and activity that may be causing the complaint. Verify complainant is valid to location (owner, president of HOA, etc.). When an inquiry comes in, begin a record for each contact with the citizen (e.g., date and time, who with), document electronic or postal communications, and date and time when field visits were conducted. As a part of this Activity, the traffic noise engineer will investigate activities near the complaint and whether NDOT construction activities are taking place and traffic noise abatement measures for the location were provided as a part of a previous NDOT project.

ACTIVITY NO. 2: Research Complaint

Research and document the following:

- collect county assessor information and aerial imagery (including when property was built and purchased by complainant, and historic relationship to roadway);
- find last contract work in area and temporal and spatial relationship to the property’s history of development (use the NDOT Design Division’s contract search tool and then App Xtender to pull as-built plans);
- retrieve traffic data (usually TRINA) for sites nearby;
• review current 5-year plan and determine if a Type 1 project is scheduled in the area of the property;
• if so, inform the complainant that a Type 1 project is scheduled, and a traffic noise analysis will be initiated at the appropriate time;
• and if none are schedule, inform complainant that additional analysis will not be conducted until a Type 1 project is scheduled.

ACTIVITY NO. 3: Conduct an Onsite Visit (if applicable)

Meet with and discuss the concerns of the complainant. At a minimum, verify and document the following during this Activity:

• date of visit;
• name of complainant;
• address of complainant;
• concerns of complainant;
• location and plausible causes of perceived noise impact/concern (e.g., construction activity, traffic, etc.);
• proximity of NDOT facilities; and
• proximity of various other sources of noise (e.g., commercial or industrial activities, airports, railroads, etc.).

ACTIVITY NO. 4: Prepare and Provide Results of Onsite Visit

Prepare and transmit a letter response to the complainant providing the results of Activities 1-3, as necessary. The letter will include a summary of the data and results, according to regulations, guidance, policy; and photos and maps, as necessary.

ACTIVITY NO. 5: File Records

Ensure all records are kept for each inquiry and placed into the “complaints and requested measurements” file in the 013Noise file on DATSRV1.
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Chapter 14
HAZARDOUS MATERIALS/WASTE

14.1 HAZARDOUS MATERIALS/WASTE ASSESSMENT PROCEDURES

Identify properties with recognized environmental conditions (REC) early in the project development process. Early identification of the environmental conditions allows NDOT to minimize or avoid the problem site(s). If avoidance is not possible, further investigation and potential remediation of the environmental conditions can be addressed in a logical, timely manner. Actions will be designed and implemented to:

- protect the health and safety of the public, NDOT personnel and contractors; protect the environment; and
- minimize NDOT's legal and financial liabilities related to the hazardous materials/waste.

Figure 14-A — HAZARDOUS MATERIALS/WASTE ASSESSMENT

1  Conduct Initial Site Assessment

2  Initial Site Assessment Determination/Investigation

3  Evaluate Environmental Concerns

4  Evaluate Avoidance/Corrective Action

5  Develop Corrective Action
ACTIVITY NO. 1: CONDUCT INITIAL SITE ASSESSMENT

The Hazardous Materials/Waste Engineers will work with the Project Management Team to conduct an initial site assessment (ISA) for determining the environmental conditions with a potential to impact the project. The ISA will be modeled after the American Society for Testing and Materials (ASTM) standards and regulations for environmental site assessments. At a minimum, the following tasks will be performed:

- determine the extent of property needed and the area of potential effect (e.g., using alignment/grade information, right-of-way map, aerial photographs);
- conduct a site visit to look for indicators of the presence of environmental conditions (e.g., odors, surface staining, vegetation damage, oil sheen, old gas stations, auto shops, dry cleaners, other signs of industrial or commercial activities, current or historical, that indicate the potential to impact the project);
- conduct environmental database review; and
- interview local officials, property owners and/or occupants to obtain further information for specific properties.

If entry upon other than highway rights-of-way is necessary for conducting the ISA, permission or special use permits will be obtained prior to entering upon the property.

Regulations and Guidance

ASTM Standard E 1527 or E 1528
40 CFR Part 312 “Standards and Practices for All Appropriate Inquiries”
Hazardous Waste Sites Affecting Highway Project Development, FHWA Interim Guidance, August 1988
Supplemental Hazardous Waste Guidance, FHWA, January 1997

ACTIVITY NO. 2: INITIAL SITE ASSESSMENT DETERMINATION/INVESTIGATION

If the ISA determined that no known environmental concerns are located in the project area that would warrant additional investigation, this finding, along with supporting materials, will be included in the project file and will be reflected in the environmental documentation for the project.

If the ISA determines that further investigations are warranted, the Hazardous Materials/Waste Engineers will document this finding in the project file, along with supporting materials, and will proceed with the appropriate investigations.

The Hazardous Materials/Waste Engineers will provide information regarding the ISA results to the Nevada Division of Environmental Protection (NDEP) as necessary.
ACTIVITY NO. 3: EVALUATE ENVIRONMENTAL CONCERNS

The Hazardous Materials/Waste Engineers will initiate actions to accomplish additional investigations. (If entry upon other than highway rights-of-way is necessary for conducting the site investigations, permission or special use permits will be obtained prior to entering the property.) The tasks for further investigation may include the following:

- determining property ownership (historic and current) and potentially responsible parties (e.g., searching NDEP records, working with NDOT Right-of-Way Survey Services Division on deed or title searches);
- conducting interviews with past and present owners, operators and occupants;
- reviewing historical sources of information (e.g., aerial photographs, fire insurance maps, building department records, chain of title documents, land use records);
- conducting searches for recorded environmental cleanup liens;
- reviewing Federal, State, Tribal and local government records (e.g., CERCLIS records, public health records, Emergency Response Notification System records);
- conducting further visual inspections of the properties; and
- performing site sampling/testing (e.g., materials/wastes, soil, surface water, groundwater) to reveal the nature and extent of contamination and provide information for a rough design and/or cost estimate for corrective action.

Prior to conducting site sampling/testing, the Hazardous Materials/Waste Engineers will prepare a sampling/testing plan that will include a quality assurance/quality control component to ensure proper and adequate handling, sampling, chain-of-custody of samples and testing protocols. A “Site Safety and Health Plan” (SSHP) will also be prepared to address worker and public safety. The Hazardous Materials/Waste Engineers will provide the sampling plan to NDEP for comment and concurrence as necessary.

Right-of-way acquisition may require demolishing structures. Prior to activities that disturb building materials, a survey for asbestos containing materials (ACM) and regulated materials (e.g., lead, fluorescent lamps) for subsequent removal is accomplished.

Regulations and Guidance

40 CFR Part 312 “Standards and Practices for All Appropriate Inquiries”
ACTIVITY NO. 4: EVALUATE AVOIDANCE/CORRECTIVE ACTION

The Hazardous Materials/Waste Engineers will work with the project manager and/or engineer to determine which identified properties should be avoided and those for which avoidance options (e.g., moving the road) are practical.

For properties that will impact the project, the Hazardous Materials/Waste Engineers will investigate options for addressing the environmental concerns in a manner that will satisfy Federal, State and local laws and regulations. These options may include:

- have the owner (or other potentially responsible party) satisfy the regulatory requirements prior to acquisition;
- evaluate risk-based alternatives and corresponding corrective action; and/or
- develop a corrective action plan, including costs, to satisfy the regulatory requirements (the cost of which would be factored into the determination of the purchase price for the affected property).

Regulations and Guidance

*Supplemental Hazardous Waste Guidance, FHWA, January 1997

ACTIVITY NO. 5: DEVELOP CORRECTIVE ACTION

The Hazardous Materials/Waste Engineers will develop a corrective action plan that will evaluate alternatives for addressing the environmental concerns and will recommend an alternative solution. Alternatives for dealing with the environmental concerns may include pre-construction action (e.g., underground storage tank removals, waste disposal) or actions to be implemented during construction (e.g., excess excavation). The plan will include provisions to address the following:

- qualification of parties;
- implementation of quality assurance/quality control procedures, documentation and reporting requirements; and
• recommendations to be included in the Special Provisions, and special considerations to be implemented during construction.

The Hazardous Materials/Waste Engineers may submit the proposed corrective action plan to NDEP for comment and concurrence.

See Section 2.3 “Preparing an Administrative Record”.

Regulations and Guidance

29 CFR Part 1910 “Occupational Safety and Health Standards”
Hazardous Waste Sites Affecting Highway Project Development, FHWA Interim Guidance, August 1988
Supplemental Hazardous Waste Guidance, FHWA, January 1997
FHWA Environmental Guidebook
FHWA Technical Advisory T6640.8A – October 1987

14.2 DISTRICT SUPPORT

The Hazardous Materials/Waste Engineers provide support to NDOT District Offices in the following ways:

1. Maintenance Facility and Laboratory Inspections. Inspection of large maintenance facilities (e.g., Reno, Las Vegas) occurs approximately every 18 months, while smaller maintenance facilities are inspected every three years. The purpose of these periodic inspections is to help the facilities:

   • identify compliance with Best Management Practices (BMP); and
   • ensure hazardous material/waste is managed and disposed of properly; and
   • evaluate regulatory compliance as appropriate; and
   • follow-up, as necessary, with NDOT offices to accomplish steps necessary to address identified problems (e.g. Equipment Division for Underground Storage Tank issues/removals).

2. Response to Regulatory Agency Inspections. Maintenance facilities are inspected by regulatory agencies (e.g., NDEP, State Fire Marshal, local government). The Hazardous Materials/Waste Engineers will assist with the interpretation of and response to the results of these inspections.

3. Assisting with the Underground Injection Control (UIC) Program. The Hazardous Materials/Waste Engineers are responsible for applying to the NDEP for the Underground Injection Control (UIC) permits for NDOT facilities and for submitting a yearly report. The Hazardous Materials/Waste Engineers conduct annual reviews of a sample of NDOT UIC permit holders to ensure compliance with permit and reporting requirements.
4. **Facilities Asbestos Management.** The Hazardous Materials/Waste Engineers assist the District Offices and the Architectural Division in asbestos identification and disposition and compliance with OSHA worker safety standards related to asbestos.

5. **Emergency Response.** In the event of a hazardous material/waste emergency (e.g., reportable quantity spill), the following regulatory agencies will be notified by the District Office:

- Nevada Highway Patrol (NHP), and
- NDEP.

The Hazardous Materials/Waste Engineers assist the Districts in determining the type and quantity of the material/waste release/spill and ensure that the release/spill is reported to NDEP. The Hazardous Materials/Waste Engineers conduct follow-up monitoring of the release/spill clean-up to verify that it was completed.

6. **Contamination Discovered During Construction.** When unknown materials are exposed during construction, the Hazardous Materials/Waste Engineers assist in determining the appropriate response and ultimate disposition of the materials.
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Chapter 15
OTHER ENVIRONMENTAL ANALYSES/PERMITS

15.1 LAND AND WATER CONSERVATION FUND ACT - SECTION 6(F)

15.1.1 Introduction

Section 6(f) of the Land and Water Conservation Fund Act of 1965 prohibits the conversion of property acquired or developed with Land and Water Conservation Fund (LWCF) grants to a non-recreational purpose without the approval of the Department of the Interior’s National Park Service (NPS). Section 6(f) further directs the Department of the Interior to assure that replacement lands of equal fair market value, location, and usefulness are provided as conditions to such conversions. Consequently, where conversions of Section 6(f) lands are proposed for highway projects, replacement lands will be required.

There is an overlap between Section 4(f) and Section 6(f). Lands acquired and/or developed with LWCF funds are generally public parks or recreation areas, and therefore, both are Section 4(f) properties and subject to the requirements of Section 6(f). In identifying Section 4(f) properties, it is important to determine whether Section 6(f) LWCF funds were used to purchase all or part of the Section 4(f) property, or to develop a specific part of the property.

Regulations and Guidance

Title 16 USC Chapter 1, Subchapter LXIX, Part B, Section 4601-8(f)(3), Land and Water Conservation Fund; “Conversion of Property to Other Uses”.

Title 36 CFR Part 59, Land and Water Conservation Fund Program of Assistance to States; “Post-Completion Compliance Responsibilities”.

15.1.2 Procedures

The Environmental Services Division will coordinate with the Nevada Department of Conservation and Natural Resources (DCNR), Nevada Division of State Parks (NDSP), LWCF Grants Coordinator, to identify properties that have been acquired or developed with LWCF funds that would be affected by proposed NDOT projects.

When an NDOT project proposes to convert 6(f) lands, the Section 6(f) compliance process discussed below will be addressed in the environmental documentation for the project (see Chapter 3, Chapter 4, and Chapter 5) and in the documentation prepared for compliance with Section 4(f) (see Chapter 8).
**ACTIVITY NO. 1:** Determine if 6(f) Properties are Present

Once the location and extent of the proposed project has been established, verify if it might impact potential 6(f) properties. These are usually parks, recreation areas or open spaces. Contact the administrator of these properties to inquire if they are aware of 6(f) funds having been used to create or improve the property. Section 6(f) applies only to the portion of a property acquired or developed with LWCF assistance.

**ACTIVITY NO. 2:** Coordination with DCNR – Nevada State Parks

For projects in Nevada, information on Section 6(f) properties is maintained by NDSP. Section 6(f) determinations also require concurrence by NPS, who administers the LWCF program. If it appears a 6(f) property may be impacted by a project, contact the NDSP LWCF Liaison for confirmation.

NDSP and NPS must ensure that all practical alternatives to converting the Section 6(f) property have been evaluated. Where no practical alternative exists to a conversion, the act requires that replacement property be acquired for those lands to be converted, and the agencies are charged with ensuring that proposed replacement lands would be reasonably equivalent.

A conversion occurs when the use of a Section 6(f) site is changed for longer than six consecutive months to something other than funded, regardless of whether the change is temporary or permanent. Changes in use of Section 6(f) sites lasting less than 6 months are not considered to be conversions, although they would be evaluated under NEPA as recreation impacts.

Conversions can occur in three different ways:

1. when the use of an *entire* Section 6(f) resource site would be changed for longer than six months;
2. when use of a *portion* of a Section 6(f) resource would be changed for longer than six months (known as a partial conversion); or
3. when a project would occur on the same property where the Section 6(f) resource is located, and would not directly affect the Section 6(f) resource, but would affect access to or other reasonable use of the Section 6(f) resource on the site for more than six months.

NDSP and NPS may determine use of 6(f) lands does not constitute a conversion if the conversion enhances the purpose of the property.

**ACTIVITY NO. 3:** Addressing a 6(f) Conversion

When it is determined a Section 6(f) property will be converted to other uses by a project, approval for the conversion must be granted by the NPS at the request of NDSP. In accordance with 26 CFR Part 59.3(b), the request should be in writing and must provide the NPS Regional Director with relevant information regarding the following prerequisites for conversion:
• All practical alternatives have been evaluated;
• The fair market value of the replacement property is at least equal to that of the converted property;
• The replacement property is at least as useful and of similar location as the converted property;
• The replacement property has met the eligibility requirements for LWCF assisted acquisition as outlined in 36 CFR 59.3(b)(4)(i-iv);
• All other relevant agency coordination has been completed, including compliance with Section 4(f); and
• The proposed conversion and replacement is in accordance with the Statewide Comprehensive Outdoor Recreation Plan (SCORP), which identifies public recreation trends and provides strategies for improving outdoor recreation within the state.

The overall viability and recreational usefulness of replacement lands is partly dependent on the timetable to develop the replacement park(s). While replacement of sites is usually expected to occur within three years of conversion approval, full development of the site may be beyond the three years if the NPS and NDSP agree.

**Regulations and Guidance**

**36 CFR 59** LWCF  
**NPS/FWCF Manual**  
**23 CFR 774** – Section 4(f)  
**FHWA Technical Advisory – Guidance for Preparing and Processing Environmental and Section 4(f) documents** – October 1987  
**16 USC - Conservation Chapter 1 - National Parks, Military Parks, Monuments, and Seashores - Subchapter LXIX-Outdoor Recreation Programs, Part B** - LWCF

### 15.2 NOXIOUS WEEDS AND INVASIVE SPECIES

#### 15.2.1 Introduction

Federal and State requirements are in place for controlling or eliminating noxious weeds and invasive species in relation to highway facilities and projects.

**Regulations and Guidance**

**Executive Order 13112** on Invasive Species  
**16 USC 4701** et seq., *Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990*  
**7 USC 2801** et seq., *Federal Noxious Weed Act of 1974*  
**16 USC 1531** et seq., *Endangered Species Act of 1973*  
**23 USC 329**, “Eligibility for Control of Noxious Weeds and Aquatic Noxious Weeds and Establishment of Native Species”  
**Nevada Revised Statute (NRS) 555**, “Control of Insects, Pests and Noxious Weeds”  
**Greener Roadsides, Quarterly FHWA newsletter**.
15.2.2 Procedures

The Environmental Services Division will conduct surveys to identify noxious weeds and invasive species and coordinate the information with the Maintenance Division and the Project Management Team (PMT).

For noxious weeds and/or invasive species identified along NDOT facilities, the Maintenance Division will implement practices to control or eliminate the weeds and/or species.

For corridors and alignments for proposed projects, the Environmental Services Division will coordinate with the PMT to identify measures to minimize the spreading or introduction of noxious weeds and/or invasive species. The Environmental Services Division will coordinate with the Nevada Department of Agriculture to discuss noxious weed and invasive species issues and prevention and control measures. On projects where noxious weeds and/or invasive species are known to be present, the Environmental Services Division will ensure the environmental documentation for the project (see Chapter 3, Chapter 4 and Chapter 5) identifies:

- noxious weeds or invasive terrestrial or aquatic animal or plant species in the study area,
- the potential impact of disturbances caused by construction, and
- preventive or eradication measures that would be implemented on the project.

The Environmental Services Division will review the Construction Contract Documents for noxious weeds and/or invasive species aspects and will conduct monitoring of the implementation of preventive or eradication measures during construction.

15.3 FARMLAND IMPACTS

15.3.1 Introduction

The Farmland Protection Policy Act (FPPA) requires that before taking or approving an action that would result in conversion of farmland as defined in the Act and implementing rules, NDOT must examine the effects using the criteria set forth in the implementing rules, and if the effects are adverse, must consider alternatives to lessen them.

Regulations and Guidance

7 CFR 658, Farmland Protection Policy Act  
FHWA Environmental Guidebook  
FHWA Technical Advisory T 6640.8A – October 1987  
NRCS Web Soil Survey

15.3.2 Procedures

The Environmental Services Division will identify farmland that would be affected by proposed NDOT projects and coordinate with the Natural Resources Conservation Service (NRCS), Nevada field office to verify whether specific properties meet the definition of farmland as set forth
in 7 CFR 658.2(a). When coordination with NRCS is necessary to determine whether a site is farmland, the request to NRCS will be submitted on Form AD-1006.

For projects that would impact farmland, the Environmental Services Division will provide information on the location of farmland in the project area to the Project Management Team and coordinate in evaluating potential farmland impacts of project alternatives and options for avoiding and minimizing those impacts.

The Environmental Services Division will complete Parts I and III of Form AD-1006 and will submit three copies of the form and three copies of maps indicating the location of the project to the NRCS, Nevada field office.

The NRCS will make a determination as to whether the proposed project area contains prime, unique, statewide or local important farmland. In cases where farmland will be converted, NRCS will complete Parts II, IV and V of Form AD-1006 and will return two copies to NDOT.

The Environmental Services Division will complete Parts VI and VII of Form AD-1006 and, in cooperation with the FHWA Division Office, will make a determination as to whether the proposed conversion is consistent with the FPPA.

For projects in which the alternatives under consideration involve farmland subject to the FPPA and once a final decision has been made on the project alternative selected for implementation, the Environmental Services Division will provide a copy of Form AD-1006, indicating the final decision, to the NRCS Nevada field office.

### 15.4 WILD AND SCENIC RIVERS

#### 15.4.1 Introduction

The *Wild and Scenic Rivers Act* and implementing rules provide that for any Federally-assisted “water resources project” (i.e., any...construction of developments that would affect the free-flowing characteristics of a Wild and Scenic River or Study River), no license, permit or other authorization can be issued without prior notice to the Secretary responsible for administering the river (i.e., the Secretary of the Interior, through the NPS, US Fish and Wildlife Service (USFWS) and the Bureau of Land Management (BLM); or the Secretary of Agriculture, through the US Forest Service (USFS)) and a determination that the project will not have a direct and adverse effect on the values that provide the basis for designation as a Wild and Scenic River or Study River.

#### Regulations and Guidance

- **16 USC 1278**, “Wild and Scenic Rivers, Restrictions on Water Resources Projects”
- **36 CFR 297**, “Wild and Scenic Rivers”
- *FHWA Section 4(f) Involvement – Wild and Scenic Rivers System*, May 26, 1981
- **23 CFR 771.135(d)**, “Environmental Impact and Related Procedures, Section 4(f)”
- *FHWA Environmental Guidebook – Legislation, Policy and Guidance*
- *FHWA Technical Advisory T 6640.8A* - October 1987
15.4.2 Procedures

The Environmental Services Division will monitor the NPS and USFWS Nationwide Rivers Inventory information and Federal Register notices issued by the US Department of the Interior to identify river segments determined to have potential for classification as Wild and Scenic Rivers and those segments that have received such designation. The Environmental Services Division also will consult the listing of river segments designated for study in 16 USC 1276, Rivers Constituting Potential Additions to National Wild and Scenic Rivers System.

If a proposed action would have foreseeable adverse effects on a river on the National Wild and Scenic Rivers System or a river under study, the Environmental Services Division will coordinate with the agency responsible for management of the affected river segment (i.e., NPS, USFWS, BLM or USFS) and the PMT to develop options for avoiding or minimizing adverse effects. In the environmental documentation for the proposed action, the Environmental Services Division will reflect the results of early coordination and will identify the potential adverse effects on the natural, cultural and recreational values of the listed or Study River.

The Environmental Services Division will submit a request to the FHWA Division Office for obtaining consent for project approval from the Secretary of the Interior or, in accordance with 36 CFR 297.4, Requirements for Federal Agencies and 36 CFR 297.5, Determination, from the Secretary of Agriculture. The Environmental Services Division will provide FHWA the following information for purposes of the request to the Secretary of the Interior or the Secretary of Agriculture:

- name and location of affected river;
- location of the project;
- nature of the authorization being requested for the action;
- a description of the proposed activity; and
- other relevant information (e.g., plans, maps, environmental studies, assessments, environmental impact statements).

The Environmental Services Division will include a copy of the response from the Secretary of the Interior or the Secretary of Agriculture in the environmental documentation for the project.

15.5 IMPAIRED WATERS/TMDLS

Assessments of project effects on impaired waters (i.e., those listed on the Section 303(d) List) and Total Maximum Daily Loads (TMDLs) are the responsibility of NDOT’s Stormwater Division. See NDOT Stormwater Program for more information.

15.6 MIGRATORY BIRD TREATY ACT

15.6.1 Introduction

The Migratory Bird Treaty Act affords protection to migratory bird species native to the United States or its territories and makes it unlawful (unless and except as permitted by regulations) at
any time, by any means or in any manner to take, kill, capture, possess, buy, sell, trade, ship, import or export any migratory bird or any part, nest or egg thereof.

Regulations and Guidance

16 USC 703, “Taking, Killing or Possessing Migratory Birds Unlawful.“

15.6.2 Procedures

The Environmental Services Division will survey proposed projects to identify migratory bird nesting locations that would be affected by project construction operations. Where nesting locations would be affected by tree clearing or heavy equipment operations that would result in killing of migratory birds or destruction of their nests/eggs, the Environmental Services Division will coordinate with the PMT and the Construction Division to determine construction measures to avoid the nesting locations during the nesting season. The Environmental Services Division will include language in the Construction Contract Documents to reflect the work restriction and will monitor construction activities on the project to ensure compliance.

If it is not possible to avoid construction operations in the nesting areas during the nesting season, the Environmental Services Division will coordinate with the Roadway Design Division and the Construction Division to establish buffer areas to protect the nesting locations and to reflect their location and extent in the Construction Contract Documents.

The Environmental Services Division will coordinate with the USFWS, Nevada field office to review/confirm their findings on migratory bird nesting locations and measures to protect the nesting locations during the nesting season.

The Environmental Services Division will include information in the project environmental documentation (see Chapter 3, Chapter 4 and Chapter 5) regarding the migratory bird nesting locations, effects on the locations and measures to be implemented to ensure construction operations will not result in killing of migratory birds.

15.7 STATE PROTECTED SPECIES

15.7.1 Introduction

The State of Nevada, through the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), authorizes protection of selected plant, cactus and animal species declared to be in danger of extinction. No protected species may be removed or destroyed at any time by any means except under special permit issued by the Nevada State Forester or the Nevada Department of Wildlife (NDOW).

Regulations and Guidance

NRS 527.235-527.300 Protection and Propagation of Selected Species of Native Flora, Endangered Species Act of 1973
15.7.2 Procedures

The Environmental Services Division will survey the proposed project to identify protected plant, cactus, and animal species that would be removed or destroyed as a result of project construction. When the selected project alternative affects protected plant, cactus or animal species, the Environmental Services Division will submit an application to the Nevada State Forester or NDOW for a permit, in accordance with the applicable NAC. Depending upon the species, compliance for state protected species may occur as part of the consultation and compliance process for the Endangered Species Act (see Chapter 10).

The Environmental Services Division will comply with permit conditions stipulated by the Nevada State Forester or NDOW, which will include coordinating with the PMT to ensure that permit conditions are reflected in the Construction Contract Documents. The Environmental Services Division will monitor construction activities to ensure compliance with conditions included in the Construction Contract Documents.

The Environmental Services Division will ensure that the environmental documentation for the project includes discussion of potential effects on protected species and the applicability of permitting requirements.

15.8 TEMPORARY WORKING IN WATERWAYS/DISCHARGE PERMIT

NDOT’s Stormwater Division is responsible for securing water quality-related permits, including Temporary Working in Waterways/Discharge Permit for work within or immediately adjacent to Waters of the State. See NDOT Stormwater Program for more information.

15.9 NATIVE AMERICAN CONSULTATION/COORDINATION

15.9.1 Introduction

The NDOT Cultural Resources Section (CRS) identifies affected tribal lands and interests and ensures consultation with tribal officials to address effects of proposed projects on their lands or within tribal areas of interest.

The priority for Native American Consultation (NAC) is:

(1) Consultation pursuant to the National Historic Preservation Act (NHPA).

The other three areas of coordination and consultation are:
(2) Courtesy consultation for NDOT projects seeking to use Native American imagery or themes,
(3) consultation for transportation projects lacking a federal nexus as determined by the NAC Coordinator and the NDOT Cultural Resource Manager, and
(4) consultation pursuant to NEPA.

Federally recognized tribes within Nevada and adjacent states are consulted as appropriate for projects proposed within the state. Several non-federally recognized tribes and tribal organizations may also be consulted with on a project-by-project basis for their particular expertise or concerns.

Please keep in mind when planning your project schedule that Native American consultation is not a single meeting but rather a lengthy process and must be conducted in a manner respectful of tribal sovereignty and confidentiality issues. Tribal consultation takes place on a government-to-government basis and is the responsibility of the FHWA or the federal land management agency (FLMA) depending on pre-existing agreement or project-specific negotiation. The NAC Coordinator assists these federal agencies in the execution of their obligation. On FHWA federal-aid projects, the NAC Coordinator acts on behalf of FHWA, unless the tribe(s) request to consult with FHWA or the FLMA directly (2014 Section 106 Transportation Programmatic Agreement).

Projects proposed on tribal lands, or taking place on an easement on tribal lands, must comply with the tribe’s specific ordinances and regulations, often including additional environmental compliance measures, Tribal Employment Rights Ordinance (TERO), and business taxes. If your project requires acquiring right of way on tribal land, please contact the Right of Way Division at your earliest convenience to discuss that process and your options.

NDOT staff or contractors shall not meet with a tribe to discuss cultural resource issues or concerns without the prior approval and/or participation of the NAC Coordinator.

Any information concerning cultural resources received by NDOT staff or a consultant through non-cultural resource related meetings, or discussions should be forwarded to the NAC Coordinator immediately following such occurrence.

Regulations and Guidance

Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments, (1998)
36 CFR 800 “Protection of Historic Properties”
43 CFR Part 10, “Native American Graves Protection and Repatriation Regulations”
Native American Consultation Database (NACD)
Title VI of the Civil Rights Act of 1964
National Historic Preservation Act (1966)
National Environmental Policy Act (1969)
Nevada Revised Statute 383 (1977) Historic Preservation and Archaeology
American Indian Religious Freedom Act (1978)
Archaeological Resources Protection Act (1979)
Native American Graves Protection and Repatriation Act (1990)
Executive Order 12898 (1994) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
Executive Order 13007 (1996) Indian Sacred Sites
DOT Order 5610.2 (1997) to Address Environmental Justice in Minority Populations and Low-Income Population
Executive Order 13084 (1998) Consultation and Coordination with Indian Tribal Governments
Executive Order 13175 (2000) Consultation and Coordination with Indian Tribal Governments
Programmatic Agreement among the Federal Highway Administration, the Nevada Department of Transportation, the Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Federal-Aid Transportation Projects in the State of Nevada – 2014
FHWA website on tribal consultation
AASHTO website on tribal consultation
Advisory Council on Historic Preservation Office of Indian Affairs
Advisory Council on Historic Preservation Consulting with Indian Tribes in the Section 106 Process
National Native American Graves Protection Repatriation Act Native American Consultation Database

15.9.2 Procedures:

Section 106 Consultation

In determining the Area of Potential Effect (APE) for proposed projects (see Chapter 7), CRS notifies the NAC Coordinator of a proposed project and the NAC Coordinator will make a recommendation to the CRS Manager and the FHWA Environmental Program Manager as to consultation, pursuant to Section 106 of the NHPA, should be undertaken for a proposed project. These determinations are based on a number of criteria including federal facilities, funding, or approvals, and the presence of known historic properties or sites of traditional religious or cultural importance in the APE, and any conditions concerning tribal consultation contained within any current MOAs or MOUs. Note that not all sites of religious or cultural concern are documented so the absence of one in a background search does not indicate a lack of need for consultation. The NAC APE is defined as the entire valley in which a transportation project takes place.

The NAC Coordinator will prepare the Native American consultation package for FHWA including information on the proposed project, a location map, and information regarding previously documented historic properties within the APE. The FHWA Environmental Program Manager reviews the package and transmits it to the chairperson and cultural resources representative of the affected tribe(s). This initiates the formal government-to-government consultation process. The NAC Coordinator maintains close and open communications with the affected tribal
representatives, during which information will be solicited regarding documented and undocumented historic properties and sites of traditional religious or cultural importance within the proposed project area. This will be accomplished through appropriate levels of interaction and may take the form of in-person interviews, meetings, and site visits. Additionally, information will be solicited with regards to the proposed project and environmental concerns. At any point in the consultation process, if a tribe requests direct government-to-government consultation with FHWA on a proposed project, the FHWA Environmental Program Manager will be notified of the issues and begin to facilitate those consultations.

The NAC Coordinator, the CRS Manager, and the FHWA Environmental Program Manager will coordinate information, as appropriate, with the PMT to ensure consideration and response to the views and effects on tribal interests.

Often during the course of Section 106 consultation, questions related to general environment, right-of-way, general transportation planning and safety issues, economic development, etc., will be raised by the consulted party. In these instances, the NAC Coordinator will refer the question to the appropriate Division within NDOT, FHWA, or appropriate outside party for follow-up.

Advice for Other Transportation Projects

Upon request, the NAC Coordinator will provide a list of tribes and tribal organizations to be contacted for NDOT planning studies and other NDOT environmental efforts. It is the responsibility of the Project Manager or Consultant to conduct the coordination for that planning effort.

Courtesy Consultation

The NAC Coordinator will conduct a courtesy consultation of area tribes when there is a Landscape and Aesthetics project which proposes to utilize Native American imagery or discuss issues of specific concern to a Native American group. Examples of such work would be the use of rock art designs or basket patterns from an area as decorative elements in a soundwall or bridge (e.g., Las Vegas Spaghetti Bowl, Carson Bypass). Additional examples would be proposing to use historic photographs of Native Americans and discussing their history and/or practices as part of an informational kiosk (e.g., Schellbourne Rest Area).
## Chapter 16
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Chapter 16
ENVIRONMENTAL JUSTICE

16.1 ENVIRONMENTAL JUSTICE OVERVIEW

Environmental Justice (EJ) is grounded in the practice of making sure that both benefits and burdens of transportation investments are shared as equitably as possible among all affected communities. Effective and equitable transportation decision-making depends on understanding and properly addressing the unique needs and different socio-economic groups. Key legislation for promoting equitable treatment of all people was catalyzed with the Civil Rights Act of 1964-Title VI, which prohibits discriminatory practices in programs receiving Federal funds. The National Environmental Policy Act (NEPA) of 1969 requires Federal agencies to analyze the effects of proposed actions that significantly impact the quality of the human and natural environment. See Basic Environmental Justice Process, Figure 16-A.

Figure 16-A – BASIC ENVIRONMENTAL JUSTICE PROCESS
Executive Order 12898, Federal Actions to Address EJ in Minority and Low-Income Populations, was signed by President Bill Clinton on February 11, 1994, and directs Federal agencies to take appropriate and necessary steps to identify and address disproportionately high adverse effects of Federal projects on the health or environment of minority and low-income populations to the extent practicable and permitted by law.

The general principals required under Executive Order 12898 are as follows:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority and low-income populations;
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process;
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Disproportionately high and adverse impacts on minority populations and/or low-income populations have been defined as an adverse effect that:

- Is predominately borne by a minority population and/or low-income population; or will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or low-income population.

### 16.2 IMPLEMENTATION

The mission of EJ is to identify and address disproportionately high and adverse human health and environmental effects on minority populations and low-income populations. Early in the project development process a preliminary assessment of the demographic composition of the study area should be conducted.

Information from the preliminary demographic analysis should be incorporated into the project’s public involvement plan or process. NDOT should seek early and continuous involvement of low-income populations, minority populations, or Indian tribes. Any determination of the presence of an EJ population, as well as the basis for the determination, should be more substantively addressed in the appropriate NEPA documents.

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<tr>
<th>ACTIVITY NO. 1: DETERMINE IF A LOW-INCOME POPULATION EXISTS</th>
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<td>1. A low-income person is defined as one whose median household income is at or below the Department of Health and Human Services poverty guideline. Low-income populations in an affected area can be identified using household income data provided by the Bureau of the Census, American Community Survey 5-Year Estimates reports (such as DP03 - Selected Economic Characteristics). Include Census Track, Block Group data for the study area.</td>
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2. Obtain current year of the Health and Human Services (HHS) Poverty Level Table. Use the four-person family to establish median household income and poverty thresholds.

3. The low-income or population is meaningfully greater if the percentage of low-income households in the study area is higher than the City or County average. Note that no set threshold has been established for determining what constitutes a “meaningfully greater” percentage when making this comparison, but some EJ analysts (e.g., the Florida Department of Transportation) have used a threshold of 10 percent higher than the city or county average to determine whether a low-income population resides within the study area.

4. If a low-income population exists, proceed with Activity 5.

**Regulation and Guidance:**

- FHWA EJ Order 6640.23A 2012
- FHWA Guidance on Environmental Justice & NEPA 2011
- FHWA EJ Frequently Asked Questions
- FHWA EJ Reference Guide 2015
- HHS Poverty Guidelines

**ACTIVITY NO. 2 DETERMINE IF A MINORITY POPULATION EXISTS**

1. For purposes of EJ assessment, the following are considered minority populations:

- **Black:** a person having origins in any of the black racial groups of Africa;
- **Hispanic or Latino:** a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- **Asian American:** a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent;
- **American Indian or Alaskan Native:** a person having origins in any of the original people of North American, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; or
- **Native Hawaiian and Other Pacific Islander:** people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

2. Using Bureau of the Census, American Community Survey 5-Year Estimates data, minority populations should be identified where either:

- The minority population of the affected area exceeds 50 percent or;
- The minority population percentage of the affected area is meaningfully greater than the appropriate unit (city or county) of geographic analysis (Council on Environmental Quality, *Environmental Justice Guidance under the National Environmental Policy Act*, December 10, 1997, p. 25). It has become generally accepted in environmental
planning practice for federal projects that “meaningfully greater” is 10 percent or greater than the jurisdiction against which the social and economic data is compared.

- A minority population also exists if there is more than one minority group present and the minority percentage is calculated by aggregating all minority persons and meets one of the above thresholds.

3. If a minority population exists, proceed with Activity 5.

Regulation and Guidance:

FHWA EJ Order 6640.23A 2012
FHWA Guidance on Environmental Justice & NEPA 2011
FHWA EJ Frequently Asked Questions
FHWA EJ Reference Guide 2015
EJScreen EPA Environmental Justice Screening and Mapping Tool

ACTIVITY NO. 3: DOCUMENT TO FILE IF NO EJ POPULATION EXISTS

If no EJ populations can be identified, prepare documentation to file with supporting materials that indicate no defined EJ populations will be impacted by the project.

Proceed to Step 4 if EJ populations exist and will be impacted by the project.

Regulations and Guidance:

FHWA EJ Order 6640.23A 2012
Environmental Justice Policy Guidance for Federal Transit Administration Recipients

ACTIVITY NO. 4: AUGMENT PUBLIC INVOLVEMENT

Outreach to the public is already a critical component of NDOT’s project development processes; environmental justice simply requires assurances that there is meaningful involvement of minority and low-income populations in public outreach activities. Efforts to engage these populations early (including prior to the environmental documentation phase) can benefit from the greater degree of flexibility available to agencies with respect to decisions on project mode, location and enhancements. Their participation can provide valuable input and assist in validating information obtained from secondary sources such as U.S. Census Bureau data. They can play an integral role in identifying issues and concerns of their communities, cataloging community resources and past actions affecting their quality of life, suggesting project alternatives, and negotiating avoidance, minimization, mitigation, and enhancements.
Recognizing that a primary goal of environmental justice is to engage those groups who have traditionally been underrepresented in the project development process, the project team should proactively reach out to the minority or low-income populations/communities during the alternatives development and environmental inventory stages. It does not matter whether the study area is predominantly minority or low-income, or if there is only a small EJ community. Outreach is still required to get them involved in the project development process. This outreach effort begins early in the project (i.e., in the same time frame as focus group formation) and continues throughout the process. To be effective, the public involvement strategy should be tailored to use adaptive or innovative approaches that overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making process.

1. Public Involvement and Outreach:

   - Depending on project complexity and size the goal is to “provide opportunities to engage and inform”;
   - Identify location of EJ populations;
   - Identify leaders and trusted members of the community to assist with understanding community needs, platforms for communication and outreach tools;
   - Develop a public involvement plan and analyze tools and techniques that are most helpful in reaching populations with linguistic, institutional, cultural, economic, historical, or other potential barriers to communication;
   - Bring meetings, briefing and project/program information to the community;
   - Provide opportunities for feedback and comment;
   - Report back findings and how input was utilized; and
   - Document comments to file.

2. Continue public outreach throughout process.

3. To reach the EJ populations, consider the following strategies, which may be useful in identifying, contacting, and engaging the public in the project development process:

   - For the following agencies, organizations and/or stores, consider posting fliers and notices on bulletin boards; including information in church bulletins, homeowner association newsletters, etc.; offering to make project presentations; etc.:
     - homeowner/community associations
     - community action agencies
     - religious organizations (churches, etc.)
     - civil rights organizations
     - minority business associations
     - Chambers of Commerce (e.g., African-American, Hispanic, Asian)
     - business and trade organizations (e.g., Washington Board of Trade)
     - environmental and environmental justice organizations
     - rural/agricultural organizations
     - ethnic stores/shops
     - universities, colleges, vocational and other local schools
• senior citizen groups (e.g., senior centers, county Office of Aging)
• community/recreational centers
• grocery stores (newsletters in bags)
• Laundromats
• Tribal Centers
• Publish ads and notices in newspapers, radio and other media, particularly media targeted to minority and low-income populations – create notices that attract attention and are in layman’s terms.
• In addition to ads and notices, actively pursue having articles about the project published in local newspapers.
• Publish ads not just in the legal section of the newspapers, but also in more ‘popular’ sections.
• Include minority or low-income people on project focus groups.
• Depending on the make-up of the particular project area, consider translating documents, notices and hearings for non-English or limited English-speaking populations.

Regulation and Guidance:

FHWA – *EJ: What You Should Know*
23 CFR 771.111 “Early Coordination, Public Involvement and Project Development.”
*NDOT Public Involvement Plan*

**ACTIVITY NO. 5: OVERLAY SUBSTANTIAL ADVERSE EFFECTS**

1. If an EJ population is documented within the project area, revise demographic base map to show EJ community and community features.

2. Collect effect findings for physical intrusion:
   - Noise
   - Air
   - Section 4(f)
   - Hazardous Waste
   - Public Services
   - Utilities
   - Transportation
   - Residential and business displacements

3. Collect effect findings for community impacts:
   - Cultural Resources
   - Visual (from community)
   - Community cohesion
   - Access effects
When any member of a protected group is likely to be impacted, the environmental document should contain demographic information broken down by minority and low-income groups.

Regulation and Guidance:

FHWA – EJ: What You Should Know

ACTIVITY NO. 6: ANALYZE ADVERSE EFFECTS

To determine whether a proposed action is likely to have a disproportionately high and adverse human health or environmental effect on EJ populations, NDOT should identify a geographic scale suitable to the project area and assess effects within that area. It should be noted that impacts to EJ populations may be different from impacts on the general population due to a community’s distinct cultural practices.

There are no instruction booklets or references on what constitutes “disproportionate high and adverse effects” but several references provide sample of leading questions:

- Are the adverse effects predominately borne by EJ populations?
- Are the adverse effects more severe in magnitude than impacts to non-EJ populations?
- Is the project or program impacting a resource that is important to EJ populations?

Additional and more specific questions to consider for EJ Analysis:

1. Impact: Bodily Impairment, Infirmitly Illness or Death
   
   Quantitative:
   How will the traffic speed (or speed limit) within the target area change?
   How will the traffic volumes change?
   Is there a change in the volume or pattern of thru-traffic on local (target area) streets?
   Subjective:
   Will there be a change in the relative safety in the target area for pedestrians, bicyclists and motorists?
   Will the safe and easy access to community or regional resources (shopping, bus stops, schools, etc.) be changed?

2. Impact: Air, Noise, and Water Pollution and Soil Contamination
   
   Quantitative (and/or qualitative):
   Will traffic noise levels change?
   Will traffic induce air pollution change?
   Will local water and soil contamination levels change?
   Subjective:
   Will overall air, water, and noise quality of the target area change?
3. **Impact: Destruction or Disruption of Man-made or Natural Resources**

*Quantitative:*
- Will the number of trees and other plants change?
- Will waterways such as streams and brooks change?
- Will the number or size of parks, parkland, or outdoor recreational opportunities change?
- Will historic/cultural properties be impacted?

*Subjective:*
- Will the changes provide overall improvements or harm to the natural and man-made resources?

4. **Impact: Destruction or Diminution of Aesthetic Values**

*Quantitative:*
- Will any public art or statues be added, moved or removed?
- What percent of project costs is being spent on enhancements?
- Will the amount of open space change?

*Subjective:*
- Is the improvement attractive?
- Will the view or vista change?

5. **Impact: Destruction or Disruption of Community Cohesion**

*Quantitative:*
- Will man-made dividers, (such as an overpass, bridge, 4(f) land or wider highway or rail tracks) be constructed through a portion of an existing community and cause it to be segmented?
- Will elimination of current access roads isolate one part of the community from another?

*Subjective:*
- Is the proposed project or plan perceived to significantly benefit one portion of the existing neighborhood and significantly harm another portion of the same neighborhood?

6. **Impact: Destruction or Disruption of a Community’s Economic Vitality**

*Quantitative:*
- Will the number of locally owned businesses in the target area change?
- Will the total number of businesses in the target area change?

*Subjective:*
- Will the financial investment benefit the target area’s population?
- Will property owners land value change (reduction/increase)?
- Will the number of jobs available in the target area change?

7. **Impact: Destruction or Disruption of the Availability of Public & Private Facilities and Services**
Quantitative:
Will the time to travel to public and private facilities and services (such as schools, medical facilities, shopping, community centers, libraries, etc.) change?
Will there be a change in response time for emergency vehicles?
Will there be a change in the number and type of impediments to access public and private facilities (such as wider roadway crossing, additional bus transfers, increased walking distance to bus stops, etc.)?
Will the number/location of public or private facilities be changed?

Subjective:
Will changes to the perceived distance to or difficulty of getting to public and private facilities from the target area result in target population “giving up” interest in using them?

8. Impact: Vibration

Quantitative:
Will vibration levels caused by increased traffic or transit improvements change?
Subjective:
Will vibration levels caused by increased traffic reduce quality of life or enjoyment of property?

9. Impact: Adverse Employment Effects

Quantitative:
Will time to travel to jobs throughout the county change?
Will time to travel to jobs within the target area change?
Will the number of jobs change (How many jobs within the target area vs. county area or state will be lost/gained?)
Subjective:
Will the type of jobs available within the target area change?
Will the target area become a more or less attractive place for employers to locate their facilities?

10. Impact: Displacement of Persons, Businesses, Farms, or Non-profit Organizations

Quantitative:
How many target vs. non-target population persons will be displaced?
How many target vs. non-target population businesses will be displaced?
How does this impact traveling distance for target employees vs. non-target employees?
How many target vs. non-target farms/orchards will be displaced?
How does this impact target vs. non-target employees?
How many target vs. non-target population non-profit corporations will be displaced?
Subjective:
Will an alternate project location or project approach (which meets the project or plan's purpose and need) displace fewer target vs. non-target populations persons, businesses, farms, or non-profit corporations?
11. Impact: Increased Traffic Congestion

*Quantitative:*
Will traffic congestion levels change?

*Subjective:*
Will traffic circulation and community traffic patterns adversely affect the community, in the view of its residents?

12. Impact: Isolation

*Quantitative:*
Will access roadways into and out of the target area become dead ends or be cut-off?

*Subjective:*
Will roadways, bridges and other traffic improvements be constructed to surround the target area and create the feeling of an isolated “island”?

13. Impact: Exclusion or Separation of Minority or Low-Income Individuals within a Given Community or From the Broader Community

*Quantitative:*
Will the transportation changes result in increased travel time for the target vs. non-target population (to and from jobs, schools, churches, shopping, medical facilities, recreational facilities, etc.)?

*Subjective:*
Will the transportation improvements increase the feeling of exclusion or alienation between the target populations and the rest of the region?

14. Impact: The Denial of, Reduction in, or Significant Delay in the Receipt of Benefits

*Quantitative:*
Will access to or use of the transportation improvement be denied to any low-income or minority population or groups for reasons such as cost to use (i.e., Hot Lanes, tolls roads), ability to access, etc.?

*Subjective:*
Will access to or use of the transportation improvement be denied or more difficult to access based on its location?

*Subjective:*
Will the overall benefits and improvements being proposed by the plan or project be available to the same level and within the same basic time frame to the target population as it will to the broader community, region, or state?

Although important, the identification of disproportionately high and adverse effect on EJ populations does not preclude a project from moving forward.
Regulation and Guidance:

FHWA Guidance on Environmental Justice & NEPA 2011
FHWA EJ Frequently Asked Questions
FHWA – EJ: What You Should Know

ACTIVITY NO. 7: DETERMINE DISPROPORTIONATELY HIGH AND ADVERSE IMPACTS

As per FHWA Order 6640.23A, a disproportionately high and adverse effect on a minority or low-income population means the adverse effect is predominantly borne by such population or is appreciably more severe or greater in magnitude on the minority or low-income population than the adverse effect suffered by the non-minority or non-low-income population.

Under NEPA, consideration must be given to mitigation for all adverse effects regardless of the type of population affected. Discuss what measures are being considered for alternatives to avoid or mitigate the adverse effects. Follow the protocol of avoidance first, then minimization, and finally measures to offset or rectify the adverse effects.

Alternative Analysis:

1. NDOT should encourage the members of the communities that may suffer a disproportionately high and adverse effect from a proposed action to help develop and comment on possible alternatives to the proposed action as early as possible in the process.
2. Where an EIS is prepared, CEQ regulations require NDOT to identify an environmentally preferable alternative in the ROD.
3. When disproportionately high and adverse effect on an EJ population from a proposed action of alternatives, the distribution as well as the magnitude of the disproportionate impacts should be factors in determining the environmentally preferable alternative.
4. NDOT should consider the views it has received from the affected communities, and the magnitude of environmental impacts associated with alternatives that have a less disproportionate and adverse effect on EJ populations.

Mitigation Measures:

1. Mitigation measures should include steps to avoid, mitigate, minimize, rectify, reduce, or eliminate the impact associated with a proposed action.
2. Throughout the process NDOT should elicit views of the affected EJ populations on measures to mitigate impacts and carefully consider community views in developing and implementing mitigation strategies.
3. Mitigation measures identified in an EIS or developed as part of a FONSI should reflect the needs and preferences of affected EJ populations to the extent practicable.
4. In circumstances where EIS or EA are not prepared NDOT should ensure that the goals for public participation are satisfied to fullest extent possible.
A “disproportionately high and adverse” determination may be made if, after mitigation and benefits have been considered:

- The severity of the adverse impact is appreciably greater for protected populations than for non-protected populations.
- More adverse environmental impacts occur in areas with protected populations (regardless of severity) than in areas without protected populations.
- The project benefits do not affect protected populations to the same degree as other populations.
- The project is controversial and public comment shows that protected populations; do not feel that the project benefits them, or that the proposed mitigation is adequate.

When disproportionately high and adverse impacts to EJ populations have been identified, NDOT should state clearly in the EA or EIS whether, in light of all the facts and circumstances, a disproportionately high and adverse effect to EJ populations is likely to result from the proposed actions and any alternatives. The statement should be supported by sufficient information for the public to understand the rationale for the conclusions.

If there is a disproportionately high and adverse effect on an EJ population, after taking benefits and mitigation into account, the NEPA document must evaluate whether there is a further practicable mitigation measure or practicable alternative that would avoid or reduce the disproportionately high and adverse effect(s). FHWA will approve the proposed action only if it determines no such practicable measures exist, and the FHWA determination should be stated in the document. The NEPA document needs to describe how the impacted populations and communities were involved in the decision-making process. The document needs to also identify what practicable mitigation commitments have been made.

In addition, if the affected population is a minority population protected under Title VI, FHWA will not approve the proposed action unless FHWA determines:

1. There is a substantial need for the project, based on the overall public interest; and
2. Alternatives that would have less adverse effects on protected populations have either:
   a) Adverse social, economic, environmental, or human health impacts that are more severe; or
   b) Would involve increased costs of an extraordinary magnitude.

Where appropriate, the NEPA document must include both of these evaluations and contain the FHWA determination on the explicit issues required within these evaluations.

**Regulation and Guidance:**

*FHWA EJ Order 6640.23A*
*FHWA Guidance on Environmental Justice & NEPA*
FHWA – [Environmental Justice Website](#)
# Chapter 17

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<td>Figure 17-A — NOA AND ERIONITE ASSESSMENT</td>
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17.1 INTRODUCTION

Naturally Occurring Asbestos (NOA) and erionite are fibrous minerals that occur in soils and rocks and have been identified within the geology of Nevada. Both asbestos and erionite have been classified as Group 1 Carcinogens by the International Agency for Research on Cancer. NDOT, therefore, developed a comprehensive approach to NOA and erionite to protect its employees and the public during construction and operations of its facilities. A comprehensive approach minimizes NDOT project delays, additional project cost, and liability. The approach to assessing and managing NOA and erionite includes:

- evaluating projects, NDOT material sites, and rock, soil or other mineral materials that are imported for NDOT projects for their potential to contain NOA or erionite;
- conducting laboratory analysis as needed to complete the evaluation process;
- making recommendations to address NOA or erionite potentials identified during the evaluation process;
- compiling data on NOA and erionite in a GIS database; and
- providing awareness training to address NOA and erionite exposure as needed.

17.2 ASSESSMENT PROCEDURES

NDOT material sites, project sites, sites under NEPA review, commercial material pits, and any material imported to a site require assessment to determine the potential for sites and materials to contain NOA and erionite. Figure 17-A summarizes the steps required for assessments.
Figure 17-A — NOA AND ERIONITE ASSESSMENT

Pre-screen area for potential to contain NOA or erionite

- NDOT Material Sites
  - Low potential: no testing required - site cleared
  - Moderate and high potential: testing required
  - NOA and erionite <0.25% Cleared
  - NOA or Erionite ≥0.25% site not cleared

- NDOT Projects
  - Low potential: no testing required - no additional language required in specifications
  - Moderate and High Potential: testing required
  - NOA and erionite not detected: no additional language required in specifications
  - NOA or erionite detected: additional language to specifications

- NEPA Evaluations (include testing as needed)
  - Use information developed during evaluation to complete NEPA action

- Imported Materials
  - The supplier of the material is responsible for providing information as part of their submittal to demonstrate that the import material contains <0.25% NOA or erionite.
ACTIVITY NO. 1: Assess NDOT Material Sites

Material site clearance is requested for project and maintenance use as outlined in Chapter 11 of this manual. As part of the clearance process, material sites are evaluated for their potential to contain NOA and erionite. This includes prescreening the sites and reviewing the location, geology, and topography of the site and surrounding area. Sites are placed into the following categories based on the likelihood that a location will contain NOA or erionite.

- **Moderate-to-High Potential**: Relatively extensive intrusive or tuffaceous sedimentary formations are present at the site or the potential source areas for the alluvial fans where the proposed material sites are located.
- **Low-to-Moderate Potential**: Limited intrusive rocks at the site or in the potential source areas, and the upland bedrock (source) area for the alluvium is a significant distance away.
- **Very-Low-to-Low Potential**: Very little or no intrusive, metamorphic or tuffaceous sedimentary formations present at the site or within the source area.

NDOT has decided to further assess locations that fall into the Low-to-Moderate and Moderate-to-High categories by conducting soil and/or rock sampling. As results from the sampled locations are evaluated, this decision may be modified. NOA/Erionite Branch personnel coordinate the characterization activities.

To assure that defensible data are produced, evaluation activities follow the EPA model for evaluating sites. This includes having a Quality Assurance Project Plan (QAPP), Field sampling Plan (FSP), and a site-specific Health and Safety Plan (HSP) for the sites to be sampled. These plans are developed by the NOA/erionite Branch personnel.

If after sampling and testing, NOA and erionite are determined to be <0.25% the site is cleared for use. If NOA or erionite are ≥0.25%, it is recommended that material from the site is not used, and that the site be relinquished to BLM or other land owner/manager.

**Regulations and Guidance**

- [Guidance for Quality Assurance Project Plans, EPA QA/G-5](EPA, December 2001)
- [Sampling and Analysis Plan Guidance and Template](EPA, May 2014)
- [Master Sampling and Analysis Plan and Quality Assurance Plan for Statewide Naturally Occurring Asbestos (NOA) and Erionite Project](Tetra Tech, INC., 2017)

ACTIVITY NO. 2: Assess NDOT Project Sites

Project sites must be evaluated and characterized for the potential to contain NOA and erionite. This includes prescreening project sites and reviewing site location, geology, and topography,
and surrounding areas. Project sites are placed into the following categories based on the likelihood that a location will contain NOA or erionite.

- **Moderate-to-High Potential:** Relatively extensive intrusive or tuffaceous sedimentary formations are present in the project area or potential source areas of the project site’s soils.
- **Low-to-Moderate Potential:** Limited intrusive rocks in the project area or the potential source areas, and the upland bedrock (source) area for the soils in the project area is a significant distance away.
- **Very-Low-to-Low Potential:** Very little or no intrusive, metamorphic or tuffaceous sedimentary formations present in the project area or source area.

NDOT has decided to further characterize locations that fall into the Low-to-Moderate and Moderate-to-High categories by conducting soil and/or rock sampling. As results from the sampled locations are evaluated, this decision may be modified. NOA/Erionite Branch personnel coordinate the characterization activities.

To assure that defensible data are produced, evaluation activities follow the EPA model for evaluating sites. This includes having a QAPP, FSP, and site-specific HSPs for the sites to be sampled. These plans are developed by NOA/Erionite Branch personnel.

If NOA and erionite are identified at any level at the project site, Special Language will be added to the project specifications, requiring the contractor to address NOA/erionite issues during construction. This could involve one or more of the following:

- special health and safety requirements,
- air quality testing during and after the project,
- sampling of soil and rock within the project area,
- installation of Best Management Practices (BMPs) to reduce dust and track out, and
- awareness training for NDOT and contract personnel.

**Regulations and Guidance**

- Sampling and Analysis Plan Guidance and Template – EPA, May 2014
- Master Sampling and Analysis Plan and Quality Assurance Plan for Statewide Naturally Occurring Asbestos (NOA) and Erionite Project – Tetra Tech, INC., 2017
- OSHA Asbestos Standard, 1910.1001
- OSHA General Industry Standard, 1926.1101
ACTIVITY NO. 3: Evaluate Projects During the NEPA Process

As part of the NEPA process, a project area must be evaluated and characterized for the potential to contain NOA and erionite. This includes prescreening the area, including reviewing site location, geology, and topography. Sites are placed into the following categories based on the likelihood that a location will contain NOA or erionite.

- **Moderate-to-High Potential**: Relatively extensive intrusive or tuffaceous sedimentary formations are present in the project area or potential source areas for the projects soils.
- **Low-to-Moderate Potential**: Limited intrusive rocks in the project area or the potential source areas, and the upland bedrock (source) area for the soils in the project area is a significant distance away.
- **Very-Low-to-Low Potential**: Very little or no intrusive, metamorphic or tuffaceous sedimentary formations present in the project area or source area.

NDOT will decide if testing will be conducted for the project during the NEPA study or will be required when the project enters the design phase. NOA/Erionite Branch personnel coordinate the prescreening and any sampling activities deemed necessary.

If sampling is required, NDOT will follow the EPA model for evaluating sites. This includes having a QAPP, FSP, and site-specific HSPs for the sites to be sampled. These plans will be developed by NOA/Erionite Branch personnel.

Information generated during evaluation and characterization of the project area will be used to identify project impacts and mitigation strategies for the NEPA document.

**Regulations and Guidance**

- **Sampling and Analysis Plan Guidance and Template** – EPA, May 2014
- **Master Sampling and Analysis Plan and Quality Assurance Plan for Statewide Naturally Occurring Asbestos (NOA) and Erionite Project** – Tetra Tech, INC., 2017

ACTIVITY NO. 4: Assess Import Material

According to NDOT policy, rock, soil, and other mineral material (Materials) obtained or produced for use on NDOT projects shall not have NOA and/or erionite levels equal to or greater than 0.25%. Suppliers of such materials shall follow the procedure outlined in the *Documenting Naturally Occurring Asbestos and Erionite in Import Material for Nevada Department of Transportation Projects* (most recent edition) to document concentrations of NOA and/or erionite in the proposed imported material. The guidance document can be obtained by contacting the NDOT Environmental Services Division, NOA/Erionite Branch, at 775-888-7691.
After the evaluation of the imported material has been completed by the supplier, the evaluation will be sent to NDOT for review and concurrence. This must be done before the material is accepted for use on NDOT projects.

### ACTIVITY NO. 5: Maintain the NOA/Erionite GIS Database

The NOA/Erionite Branch has developed and will maintain a GIS database that serves as a repository for prescreening and testing data generated during the evaluation of material sites and project sites, and for information submitted by commercial pit operators. The GIS database will document information gathered by NDOT for NOA and erionite, and will be used as a decision-making tool for future projects and material site evaluations.
# Appendix A
## ACRONYMS

### — A —

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<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>AADT</td>
<td>Average Annual Daily Traffic</td>
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<tr>
<td>AASHTO</td>
<td>American Association of State Highway and Transportation Officials</td>
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<td>ACHP</td>
<td>Advisory Council on Historic Preservation</td>
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<tr>
<td>ACM</td>
<td>Asbestos Containing Material</td>
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<td>APE</td>
<td>Area of Potential Effect</td>
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<td>ASTM</td>
<td>American Society for Testing and Materials</td>
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<table>
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<tr>
<th>Acronym</th>
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<tbody>
<tr>
<td>BAPC</td>
<td>Bureau of Air Pollution Control, NV Division of Environmental Protection</td>
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<tr>
<td>BIA</td>
<td>(US) Bureau of Indian Affairs</td>
</tr>
<tr>
<td>BLM</td>
<td>(US) Bureau of Land Management</td>
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<tr>
<td>BMP</td>
<td>Best Management Practices</td>
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<tr>
<th>Acronym</th>
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<tbody>
<tr>
<td>CCDAQ</td>
<td>Clark County Department of Air Quality</td>
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<td>CE</td>
<td>Categorical Exclusion</td>
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<td>CEQ</td>
<td>(US) Council on Environmental Quality</td>
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<tr>
<td>CERCLA</td>
<td>Comprehensive Environmental Response, Compensation and Liability Act</td>
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<td>CERCLIS</td>
<td>Comprehensive Environmental Response, Compensation and Liability Information System</td>
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<td>CFR</td>
<td>Code of Federal Regulations</td>
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<td>CO</td>
<td>Carbon Monoxide</td>
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<td>CRS</td>
<td>Cultural Resource Section</td>
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<th>Acronym</th>
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<tr>
<td>DCNR</td>
<td>(Nevada) Department of Conservation and Natural Resources</td>
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<td>DEIS</td>
<td>Draft Environmental Impact Statement</td>
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<tr>
<td>DOI</td>
<td>(US) Department of the Interior</td>
</tr>
<tr>
<td>DOT</td>
<td>(US) Department of Transportation</td>
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<td>DPM</td>
<td>Diesel Particulate Matter</td>
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<tr>
<td>EA</td>
<td>Environmental Assessment OR Engineering Authorization (NDOT Specific)</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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REC  Recognized Environmental Conditions
ROD  Record of Decision
RPA  Reasonable and Prudent Alternative
RPM  Reasonable and Prudent Measure

SCORP  Statewide Comprehensive Outdoor Recreation Plan
SHPO  State Historic Preservation Office
SIP  State Implementation Plan
SOI  Secretary of the Interior
SOL  Statute of Limitations
SSHP  Site Safety and Health Plan

TERO  Tribal Employment Rights Ordinance
THPO  Tribal Historic Preservation Officer
TMDL  Total Maximum Daily Load

USDA  US Department of Agriculture
USFS  US Forest Service
USFWS  US Fish and Wildlife Service
UIC  Underground Injection Control

Veh/hr  Vehicles Per Hour
VMT  Vehicle Miles Traveled
VOC  Volatile Organic Compound

WC-DAQM  Washoe County Division of Air Quality Management
# Appendix B

## Environmental Directives and Guidance

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B.1 GENERAL

[See Chapter 3 “Categorical Exclusions”] [See Chapter 4 “Environmental Assessments”] [See Chapter 5 “Environmental Impact Statements”]


Purpose: Consider environmental factors through systematic interdisciplinary approach before committing to a course of action.

Applicability: Federal actions.

General Procedures: Procedures are in 40 CFR 1500-1508 and 23 CFR 771.

Coordination: Federal, State and local agencies.

2. 23 U.S.C. 139 “Efficient Environmental Reviews for Project Decision Making.”

Purpose: To improve the efficiency of environmental reviews by promoting a structured approach to involvement of other agencies (i.e., participating and cooperating agencies).

Applicability: Applicable to projects for which an Environmental Impact Statement is prepared pursuant to the National Environmental Policy Act. Also may be applied to projects involving the preparation of an environmental document pursuant to NEPA as deemed appropriate by the Secretary of the US Department of Transportation.

General Procedures: Identify and invite the involvement of participating agencies in determining purpose and need, range of alternatives, as well as methodologies and level of detail for environmental analyses. Prepare a participation plan, which may include a schedule for involvement activities.

Coordination: Federal, State and local agencies.


Purpose: To provide guidance on selecting logical termini for transportation projects to meet the requirements of 23 CFR 771.

7. FHWA “Environmental Review Toolkit” Website.

8. FHWA “Environmental Guidebook” Website.

Purpose: To provide up-to-date information to accelerate the delivery of transportation projects. The website provides information on environmental and transportation planning topics and for each topic, includes FHWA contact information, FHWA policy and guidance documents, transportation and environment websites, training information, State practices from the Streamlining and Stewardship Practices Database and a list of related newsletters (i.e., Successes in Stewardship).


Purpose: To provide guidance on maintaining the project file during the NEPA process and on compiling the administrative record if a lawsuit is filed to challenge the decisions made during the NEPA process.


Purpose: To provide recommendations for reviewing and responding to comments on an Environmental Impact Statement under NEPA.


Purpose: To provide recommendations on tracking compliance with environmental commitments during the environmental review phase as well as the design, construction, operations and maintenance phases of a transportation project.


Purpose: To provide recommendations, that are in accordance with NEPA, for defining the purpose, need and range of alternatives in Environmental Impact Statements and Environmental Assessments for transportation projects.

Purpose: To provide recommendations for developing and implementing an Environmental Management System to help meet goals and expectations for enhancing environmental and business performance and for demonstrating commitment to environmental stewardship.

B.2 PUBLIC INVOLVEMENT

[See Chapter 6]

1. 23 U.S.C. 128 “Public Hearings.”

Purpose: To ensure adequate opportunity for public hearing(s) on the social, economic and environmental effects of alternative project locations and major design features, as well as the consistency of the project with local planning goals and objectives.

Applicability: Public hearings or hearing opportunities are required for projects described in each State's FHWA-approved public involvement procedures.

General Procedures: Public hearings or opportunities for public hearings during the consideration of highway location and design proposals are conducted as described in the State's FHWA-approved public involvement procedures. States must certify to FHWA that such hearings or the opportunities for them to occur have been held and must submit a hearing transcript to FHWA.

Coordination: Federal, State and local agencies.

2. Nevada Department of Transportation Public Involvement Plan

B.3 HISTORIC AND ARCHEOLOGICAL PRESERVATION

[See Chapter 7]

1. 16 U.S.C. 470f Section 106 of the National Historic Preservation Act.

Purpose: To protect, rehabilitate, restore and reuse districts, sites, buildings, structures and objects significant in American architecture, archeology, engineering and culture.

Applicability: Properties in or eligible for inclusion in the National Register of Historic Places.

General Procedures: Procedures are in 36 CFR 800. (1) Identify and determine the effects of the project on properties included in or eligible for inclusion in the National Register of Historic Places, (2) coordinate with the State Historic Preservation Officer, consulting parties and the Advisory Council on Historic Preservation and (3) avoid or mitigate adverse effects to the greatest extent possible.
Coordination: State Historic Preservation Officer, Advisory Council on Historic Preservation and DOI (NPS).

2. **54 U.S.C. 306107 Planning and Actions to Minimize Harm to National Historic Landmarks.**

**Purpose:** To protect national historic landmarks and record historic properties prior to demolition.

**Applicability:** Properties designated as National Historic Landmarks. Properties are on or are eligible for inclusion on the National Register of Historic Places.

**General Procedures:** Procedures are in 36 CFR 65. (1) Identify and determine the effects of the project on subject properties and (2) afford Advisory Council on Historic Preservation an early opportunity to comment, in accordance with 36 CFR 800.

Coordination: State Historic Preservation Officer, Advisory Council on Historic Preservation and DOI (NPS).

3. **16 U.S.C. 469c Threat of Irreparable Loss or Destruction of Significant Scientific, Prehistoric, Historic or Archeological Data by Federal Construction Projects.**

**Purpose:** To preserve significant historical and archeological data from loss or destruction.

**Applicability:** Unexpected archeological resources discovered as a result of a Federal construction project or Federally licensed activity or program.

**General Procedures:** (1) Notify DOI (NPS) when a Federal project may result in the loss or destruction of a historic or archeological property and (2) DOI and/or the Federal agency may undertake survey or data recovery.

Coordination: DOI (NPS) Departmental consulting archeologist and State Historic Preservation Officer (SHPO).

4. **16 U.S.C. 470aa-mm Archeological Resources Protection.**

**Purpose:** To preserve and protect archaeological resources on public lands and Indian lands from loss or destruction.

**Applicability:** Archeological resources on Federal or Native American-owned property.

**General Procedures:** Procedures are in 43 CFR 7. (1) Ensure contractor obtains permit and identifies and evaluates resource, (2) Mitigate or avoid resource in consultation with State officials and (3) Apply for permission to examine, remove or excavate such objects.
Coordination: Department or agency having jurisdiction over land on which resources may be situated (e.g., BIA, BLM, DOA, DOD, NPS, TVA, USFS, SHPO, recognized Indian Tribe).


Purpose: To ensure that historic or prehistoric ruins or monuments, or objects of antiquity, situated on lands owned or controlled by the Government of the United States shall not be appropriated, excavated, injured or destroyed without the permission of the Secretary of the Department having jurisdiction over the lands on which the antiquities are situated.

General Procedures: Procedures are in 43 CFR 3. (1) Apply for a permit when a Federal project may result in the loss or destruction of a historic or prehistoric ruin or monument or any object of antiquity on lands owned or controlled by the US Government and (2) Include information regarding the plans for treatment of the object of antiquity.

Coordination: Secretary of Federal agency having jurisdiction over the lands on which the antiquities are located.

6. 23 U.S.C. 144(o) Historic Bridge Program.

Purpose: To complete an inventory of on-system and off-system bridges to determine their historic significance. Encourage the rehabilitation, reuse and preservation of historic bridges.

Applicability: Bridges listed on or eligible for listing on the National Register of Historic Places.

General Procedures: (1) Inventory bridges on and off the Federal-aid system to determine their historic significance, (2) seek to preserve or reduce impact to historic bridges and (3) seek a recipient prior to demolition.

Coordination: State Historic Preservation Officer, Keeper of the National Register and Advisory Council on Historic Preservation.


Purpose: To protect places of religious importance to American Indians, Eskimos and Native Hawaiians.

Applicability: Projects that affect places of religious importance to Native Americans.
General Procedures: Consult with knowledgeable sources to identify and determine effects on places of religious importance. Comply with Section 106 procedures if the property is historic.

Coordination: BIA, State Historic Preservation Officer, State Indian liaison and Advisory Council on Historic Preservation.


Purpose: To determine the rights of lineal descendants and Indian Tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects or objects of cultural patrimony with which they are affiliated.

Applicability: Human remains, funerary objects, sacred objects or objects of cultural patrimony that are in Federal possession or control; in the possession or control of any institution of State or local government receiving Federal funds; or excavated intentionally or discovered inadvertently on Federal or Tribal lands.

General Procedures: Procedures are in 43 CFR 10. Consult with known lineal descendants and Indian Tribe officials from Indian Tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; from Indian Tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects or objects of cultural patrimony; and from Indian Tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects or objects of cultural patrimony.

Coordination: DOI (NPS), BIA, State Historic Preservation Officer.


Purpose: To provide recommendations for complying with Section 106 of the National Historic Preservation Act during the environmental review process for transportation projects.

B.4 SECTION 4(F)

[See Chapter 8]


Purpose: To preserve significant publicly owned parks, recreation areas, and wildlife and waterfowl refuges and significant historic sites.
Applicability: Significant publicly owned public parklands, recreation areas, wildlife and waterfowl refuges and significant historic sites “used” for a highway project.

General Procedures: Procedures are in 23 CFR 771.135. Specific finding required: (1) project should avoid use of land from protected areas, unless there is no feasible and prudent alternative; and (2) selected alternative must include all possible planning to minimize harm to the protected area.

Coordination: DOI, DOA, HUD, State, or local agencies having jurisdiction, and State Historic Preservation Officer (for historic sites).

2. 23 U.S.C. 103(c)(5) “Exemption of Interstate System.”

Purpose: To recognize that the Interstate System shall not be considered a historic site for purposes of Section 4(f), but individual elements of the Interstate System may be specifically determined by the Secretary of the US Department of Transportation to be historic sites for Section 4(f) purposes.

Applicability: The Interstate Highway System.

General Procedures: The Secretary of the US Department of Transportation will determine those specific elements of the Interstate System that will be considered historic sites under Section 4(f) and will publish in the Federal Register a listing of those individual elements.

Coordination: FHWA.


Purpose: To provide that the requirements of Section 4(f) shall be considered satisfied if it is determined, in accordance with terms specified, that the program or project will have a de minimis impact on a resource protected by Section 4(f).

Applicability: Federal-aid highway projects or actions that affect resources protected by Section 4(f) and are subject to an approval action by an agency of the US Department of Transportation.

General Procedures: Evaluate and document that the effects of a project on a resource protected by Section 4(f) meet the stipulated criteria for de minimis impact. Request concurrence on De Minimis impacts from the FHWA or other involved agency of the US Department of Transportation.

Coordination: FHWA or other US Department of Transportation agency.


7. Nationwide Section 4(f) Programmatic Evaluations:
   e. “Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property,” FHWA, April 20, 2005.

**B.5 SOCIO-ECONOMICS**

[See Chapter 9]

1. 23 U.S.C. 109(h) “*Consideration of Economic, Social, and Environmental Effects.*”

   **Purpose:** To assure that possible adverse, economic, social and environmental effects of proposed highway projects and project locations are considered and that final decisions on highway projects are made in the best overall public interest.

   **Applicability:** Planning and development of proposed projects on the Federal-aid system for which the FHWA approves the plans, specifications and estimates or has the responsibility for approving a program.

   **General Procedures:** Procedures are in 23 CFR 771. Identify social, economic and environmental effects; consider alternative courses of action; involve other agencies and the public; use a systematic interdisciplinary approach.

   **Coordination:** Federal, State and local agencies.

2. 42 U.S.C. 4601 et seq. “*Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs.*”

   **Purpose:** To implement the Uniform Act as amended in an efficient manner; to ensure property owners of real property acquired for and persons displaced by Federal-aid projects are treated fairly, consistently and equitably; and so they will not suffer disproportionate injuries.
Applicability: Projects involving Federal-aid funds.

General Procedures: Procedures are in 49 CFR 24.

Coordination: DOT/FHWA has lead responsibility (Federal, State and local agencies).

3. Executive Order 12898 Environmental Justice.

Purpose: To avoid Federal actions that cause disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment.

Applicability: Federal programs and projects.

General Procedures: Procedures set forth in DOT Final Environmental Justice Strategy and final DOT Order (Federal Register, Volume 62, No. 72, pp. 18377-18381).

Coordination: FHWA headquarters and field offices.

B.6 THREATENED AND ENDANGERED SPECIES

[See Chapter 10]


Purpose: To conserve species of fish, wildlife and plants facing extinction.

Applicability: An action that is likely to jeopardize continued existence of threatened or endangered species or result in destruction or adverse modification of critical habitat.

General Procedures: Consult with the Secretary of the Interior or Commerce, as appropriate. Procedures for endangered terrestrial plant species are in 7 CFR 355. Procedures for endangered and threatened wildlife and plants are in 50 CFR 17 and 50 CFR 81. Identify and evaluate project effects on listed and proposed threatened and endangered species and designated and proposed critical habitat. Evaluate alternatives to avoid jeopardizing the continued existence of threatened or endangered species and the destruction or adverse modification of critical habitat for threatened or endangered species.

Coordination: DOI (FWS), Commerce (NMFS).

B.7 MATERIAL SITES

[See Chapter 11]

Purpose: To define specific policies and guidelines for processing new and amended Federal-aid highway rights-of-way, including materials sites.

Applicability: For material sites, the provisions of the agreement apply to the following: testing existing material sites on BLM land; acquisition of right-of-way for use of a material site; and use of a material site.

General Procedures: Collect data on the material site location, etc.; conduct preliminary field reviews and surveys of site; initiate consultations with regulatory agencies; prepare draft NEPA document; finalize NEPA document and obtain approval; and provide environmental clearances.

Coordination: BLM, FHWA, regulatory and resource agencies.

B.8 AIR QUALITY

[See Chapter 12]


Purpose: To ensure that transportation plans, programs and projects conform to the State’s air quality implementation plans.

Applicability: Projects in areas designated as non-attainment or maintenance areas for the criteria pollutants.

General Procedures: Transportation plans, programs and projects must conform to State Implementation Plans (SIPs) that provide for attainment of the national ambient air quality standards. Procedures for determining conformity of Federal actions to State or Federal implementation plans are in 40 CFR 93.

Coordination: FHWA, EPA, MPOs, State Departments of Transportation and State and local Air Quality Control Agencies.

2. NRS 445B.100 et seq. “Air Pollution.”

Purpose: To achieve and maintain levels of air quality that will protect human health and safety, prevent injury to plant and animal life, prevent damage to property and preserve visibility and scenic, esthetic and historic values of the State of Nevada.
Applicability: Facilities that meet air emissions thresholds for permitting and projects that will disturb 5 acres or more.

General Procedures: Coordinate with the Nevada Division of Environmental Protection, Bureau of Air Pollution Control or, for projects in Clark or Washoe Counties, with the designated air quality agency to obtain any necessary air quality permits.

Coordination: NDEP/BAPC, Clark and Washoe County air quality agencies.

B.9 SAFE DRINKING WATER

[See Chapter 3 “Categorical Exclusions”] [See Chapter 4 “Environmental Assessments”] [See Chapter 5 “Environmental Impact Statements”]


Purpose: To ensure public health and welfare through safe drinking water.

Applicability: (1) Public drinking water systems and reservoirs, including rest area facilities and (2) actions that have a significant impact on an aquifer or wellhead protection area, which is the sole or principal drinking water source as designated through the Federal Register process.

General Procedures: (1) Compliance with national primary drinking water regulations, (2) compliance with State wellhead protection plans and (3) compliance with MOAs between EPA and FHWA covering specific sole-source aquifers. National primary drinking water regulations are in 40 CFR 141, and regulations on sole source aquifers are in 40 CFR 149.

Coordination: EPA and appropriate State water quality agency.

B.10 NOISE

[See Chapter 13]


Purpose: To promulgate noise standards for highway traffic.

Applicability: Federally funded projects for the construction of a highway on new location, or the physical alteration of an existing highway which significantly changes either the vertical or horizontal alignment or increases the number of through traffic lanes.
General Procedures: (1) Noise impact analysis, (2) analysis of mitigation measures and (3) incorporate reasonable and feasible noise abatement measures to reduce or eliminate noise impact. Procedures for abatement of highway traffic noise and construction noise are in 23 CFR 772.


B.11 HAZARDOUS MATERIALS/WASTE

[See Chapter 14]


Purpose: To protect human health and the environment, prohibit open dumping, manage solid wastes and regulate treatment, storage, transportation and disposal of hazardous waste.

Applicability: Projects that take right-of-way containing a hazardous waste.

General Procedures: Coordinate with EPA or State agency on remedial action. Procedures for hazardous waste management and hazardous waste programs are in 40 CFR 260-271.

Coordination: EPA or State agency approved by EPA, if any.

2. 42 U.S.C. 9601 “Comprehensive Environmental Response, Compensation and Liability”.

Purpose: To provide for liability, compensation, cleanup and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Applicability: Projects that take right-of-way containing a hazardous substance.

General Procedures: (1) Avoid hazardous waste sites, if possible, (2) check EPA lists of hazardous waste sites, (3) field surveys and reviews of past and present land use, (4) contact appropriate officials if uncertainty exists, (5) if hazardous waste is present or suspected, coordinate with appropriate officials and (6) if hazardous waste is encountered during construction, cordon the area, stop the project and develop remedial action. Procedures for the National Oil and Hazardous Substances Pollution Contingency Plan are in 40 CFR 300. Procedures for the identification, investigation, study and response to a release of a hazardous substance are in 43 CFR 11. Standards and Practices for Inquiries are addressed in 40 CFR 312.
Coordination: EPA or State agency approved by EPA, if any.

   
   **Purpose:** To provide a framework around which effective processes for dealing with hazardous substances/waste can be built.

   
   **Purpose:** To provide additional guidance to supplement that provided in the 1988 “Interim Guidance – Hazardous Waste Sites Affecting Project Development.”

5. **NRS 459.610-658 “Program for Voluntary Cleanup of Hazardous Substances and Relief from Liability.”**
   
   **Purpose:** To provide permitting program for the voluntary cleanup of hazardous substances and relief from liability.
   
   **Applicability:** Projects involving acquisition of right-of-way containing a hazardous substance.
   
   **General Procedures:** (1) Submit application in writing to the Administrator of the Division of Environmental Protection of the Nevada Department of Conservation and Natural Resources, (2) include an environmental assessment of the property, including the source, nature and location of hazardous substances known to, or reasonably believed to be located on the property, (3) include a proposed general plan for removal or remediation of the hazardous substances on the property and (4) submit application fee and other information required. Procedures for participation in the program for voluntary cleanup of hazardous substances are in NAC 459.973-9743.
   
   **Coordination:** Nevada Department of Conservation and Natural Resources, Division of Environmental Protection.

**B.12 SECTION 6(F)**

[See Section 15.1]

   
   **Purpose:** To preserve, develop and assure the quality and quantity of outdoor recreation resources for present and future generations.
   
   **Applicability:** Projects that impact recreational lands purchased or improved with assistance under the Land and Water Conservation Fund Act (LWCF).
**General Procedures:** The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under the *Land and Water Conservation Fund Act* to other than public, outdoor recreation use. Regulations on post-completion compliance responsibilities (including conversion to other uses) are in 36 CFR 59.

**Coordination:** DOI, State agencies.

### B.13 INVASIVE SPECIES/NOXIOUS WEEDS

[See Section 15.2]

1. **Executive Order 13112 Invasive Species.**

   **Purpose:** To prevent the introduction of invasive species, provide for their control and minimize the economic, ecological and human health impacts invasive species cause.

   **Applicability:** Federal actions that affect the status of invasive species.

   **General Procedures:** Use relevant programs and authorities to: (1) prevent the introduction of invasive species; (2) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (3) monitor invasive species populations accurately and reliably; (4) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (5) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species and (6) promote public education on invasive species and the means to address them.

   **Coordination:** Invasive Species Council, State and local governmental agencies and affected landowners.


   **Purpose:** To develop and carry out environmentally sound methods to prevent, monitor and control unintentional introductions of non-indigenous species and to understand and minimize economic and ecological impacts of non-indigenous aquatic nuisance species that become established.

   **Applicability:** Waters of the US.

   **General Procedures:** Implement measures to control established aquatic nuisance species to minimize the risk of harm to the environment and public health and welfare.

   **Coordination:** Federal and State agencies, Indian Tribes, local governments, inter-jurisdictional organizations and other appropriate entities.

**Purpose:** To provide that Federal highway funding may be used for specified activities to establish native species and control noxious weeds and aquatic noxious weeds.

**Applicability:** Federal-aid highway projects.

**General Procedures:** Specified activities for establishing native species and for controlling noxious weeds may be carried out concurrently with, in advance of or following the construction of a project funded under Title 23.

**Coordination:** FHWA and local transportation authorities.

4. **NRS 555.130-201 “Inspection and Destruction of Noxious Weeds.”**

**Purpose:** To control the propagation and spread of weeds declared and designated as noxious.

**Applicability:** Land within the State of Nevada.

**General Procedures:** Persons owning, controlling or occupying lands in the State of Nevada shall cut, destroy or eradicate weeds declared and designated as noxious as provided in NRS 555.130, before such weeds propagate and spread and whenever required by the State Quarantine Officer.

**Coordination:** State Quarantine Officer.

### B.14 FARMLAND

[See Section 15.3]


**Purpose:** To minimize impacts on farmland and maximize compatibility with State and local farmland programs and policies.

**Applicability:** Projects that take right-of-way in farmland, as defined by regulation.

**General Procedures:** (1) Early coordination with the NRCS, (2) land evaluation and site assessment and (3) determination of whether or not to proceed with farmland conversion, based on severity of impacts and other environmental considerations. Procedures for compliance with the Farmland Protection Policy Act are in 7 CFR 658.

**Coordination:** NRCS.
B.15  WILD AND SCENIC RIVERS

[See Section 15.4]


   **Purpose:** To preserve and protect wild and scenic rivers and immediate environments for the benefit of present and future generations.

   **Applicability:** Projects that affect designated and potential wild, scenic and recreational rivers and/or immediate environments.

   **General Procedures:** Submit project plans and reports to the Federal agency responsible for administering the affected river. USFS procedures for wild and scenic rivers are in 36 CFR 297. BLM procedures for management areas are in 43 CFR 8350.

   **Coordination:** DOI (NPS, FWS, BLM) and/or Agriculture (USFS), State agencies.

B.16  MIGRATORY BIRDS

[See Section 15.6]


   **Purpose:** To protect most common wild birds found in the United States.

   **Applicability:** Makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import or export any migratory bird. Indirect killing of birds by destroying nests or eggs is applicable, so construction in nesting areas can constitute a taking.

   **General Procedures:** The FWS is to review and comment on the effects of a proposal that could kill birds, even indirectly.

   **Coordination:** DOI (FWS), State fish and wildlife agencies.

B.17  STATE OF NEVADA INCIDENTAL TAKE PERMITS

[See Section 15.7]

1. **NRS 527.260--527.300 “Protection and Propagation of Selected Species of Native Flora.”**

   **Purpose:** To conserve and protect the various species of flora in the State of Nevada that are threatened with extinction.

   **Applicability:** Projects that impact a species or subspecies of native flora that the Nevada State Forester Firewarden has determined to be threatened with extinction and placed on the Nevada list of fully protected species.
**General Procedures:** Coordinate with the State Forester Firewarden to obtain a special permit for removal or destruction of any member of the fully protected species, if necessary. Regulations for the permit procedures are in NAC 527.250-360.

**Coordination:** Nevada State Forester Firewarden.

**B.18 NATIVE AMERICAN CONSULTATION/COORDINATION**

[See Section 15.9]

1. **Executive Order 13084 and Executive Order 13175 Consultation and Coordination with Indian Tribal Governments.**

   **Purpose:** To establish regular and meaningful consultation and collaboration with Indian Tribal governments on matters that have Tribal implications.

   **Applicability:** Development and/or implementation of policies or programs that have Tribal implications.

   **General Procedures:** Coordinate and collaborate with Tribal government officials and decision-makers on matters having Tribal implications.

   **Coordination:** BIA, Tribal government officials and decision-makers.

2. **FHWA Tribal Issues.**

   **Purpose:** To provide transportation professionals with a one stop source for information on tribal consultation. The website contains documents and links to documents and websites that address key aspects of tribal issues and tribal consultation.

3. **“National NAGPRA” Website, NPS.**

   **Purpose:** To provide useful information on the NAGPRA law and regulations and a link to the Native American Consultation Database (NACD). The NACD is a listing of federally recognized tribes that have indicated interests in specific geographical areas. The database is not a comprehensive source of information but provides a starting point for consultation by identifying tribal leaders and NAGPRA contacts. The NPS periodically updates the NACD as information is received from Indian tribes, Alaska Native villages and corporations, Native Hawaiian organizations and the BIA.

4. **Tribal Consultation -- Best Practices in Historic Preservation, National Association of Tribal Historic Preservation Officers, May 2005.**

   **Purpose:** To provide guidance on effective methods for meaningful tribal consultation in the historic preservation process.
B.19 WILDERNESS AREAS

[See Chapter 3 “Categorical Exclusions”] [See Chapter 4 “Environmental Assessments”] [See Chapter 5 “Environmental Impact Statements”]


**Purpose:** To preserve and protect wilderness areas in their natural condition for use and enjoyment by present and future generations.

**Applicability:** Lands designated as part of the wilderness system by Congress.

**General Procedures:** Apply for modification or adjustment of wilderness boundary by either Secretary of the Interior or Agriculture, as appropriate. USFS regulations on Wilderness-Primitive Areas are in 36 CFR 293. DOI regulations on Wilderness Preservation are in 43 CFR 19 and FWS regulations on Wilderness Preservation and Management are in 50 CFR 35.

**Coordination:** USDA (USFS), DOI (FWS, NPS, BLM), and State agencies.