## Chapter 2
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Chapter 2
PROJECT DEVELOPMENT

2.1 PROJECT DEVELOPMENT PROCESS

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

ACTIVITY NO. 4: FINAL DESIGN

During the Final Design 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;
• 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.

ACTIVITY NO. 5: CONSTRUCTION/MAINTENANCE

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.

9. **Traffic Noise.**
• 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.

10. **Noise Complaints.**
• 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.

11. **Hazardous Materials.**
• 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.

14. **Noxious Weeds/Invasive Species.**
   • 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.)

16. **Migratory Bird Treaty Act.**
   • 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.