

Chapter 3 – ENVIRONMENTAL STEWARDSHIP

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CHAPTER 3

ENVIRONMENTAL STEWARDSHIP

3.1 INTRODUCTION

A primary goal of the Federal Lands Highway (FLH) Program is to provide environmental stewardship while designing safe highways and roads to serve our nation's Federal lands. This chapter discusses how to achieve that goal and provides information on the environmental role of the Federal Highway Administration (FHWA), guidance on environmental issues and a description of the environmental compliance process for use in carrying out highway and bridge design responsibilities. Implementing the approaches outlined in this chapter for environmental stewardship and regulatory compliance will promote consistency among the FLH programs and throughout the large geographical area served by these programs.

There is an important link between Chapters 2 and 3. [Chapter 2](#) "Planning and Programming" introduces the various types of roads, programs, agreements, agencies, studies and reports involved in the planning and programming process. During planning, the functional, structural or safety deficiencies of Federal lands roads are identified, the project purpose is developed, cost estimates are prepared and the preliminary delivery schedules are proposed. Then the projects are programmed or approved for development by the FLH and the partner agencies. Planning and programming are parts of a large-scale decision-making process involving multiple agencies, planning studies and reports. Environmental requirements and considerations can affect the feasibility of projects in the planning and programming process by influencing scope, schedule and budget. Similarly, the project purpose and need developed during the planning and programming process defines the range of required environmental activities to be implemented during the project development process to ensure regulatory compliance and timely project construction.

Chapter 3 is also linked to [Chapter 4](#) "Conceptual Studies and Preliminary Design." The environmental process discussed in Chapter 3 is conducted concurrently with the conceptual studies and preliminary design. Given that the information provided in the conceptual studies and preliminary design informs the decisions made in the environmental process, the formal project development process begins with the conceptual studies and preliminary design phase. Close coordination with the resource and regulatory agencies and the public is important to ensure that the range of improvement alternatives is established in recognition of overall environmental factors. This allows for an orderly and complete evaluation when determining the preferred alternative. A preferred alternative is selected after the range of improvement alternatives have been evaluated in the environmental documents, and by the resource and regulatory agencies and the public. At the conclusion of the conceptual studies and preliminary design phase, a decision should be made identifying the alternative selected for advancement into the design phase.

The sections below present the purpose and objectives of this chapter, its applicability to FLH projects and the organization of the remainder of the chapter.

Refer to [EFLHD – [CFLHD](#) – [WFLHD](#)] Division Supplements for more information.

3.1.1 PURPOSE

The purpose of this chapter is threefold:

1. To provide guidance on FHWA's environmental role in delivery of FLH projects and to explain how FHWA's role is different for each program, and may even vary among projects within the same program.
2. To provide guidance on identifying and addressing environmental issues. The chapter discusses FHWA responsibilities under the *National Environmental Policy Act* (NEPA) and other environmental requirements that may be applicable to FLH projects.
3. To describe the environmental compliance process for those projects where the FHWA is designated as the lead agency.

3.1.2 APPLICABILITY TO FEDERAL LANDS HIGHWAY PROJECTS

This chapter applies to actions or projects carried out under programs administered by the [FLH Divisions](#) (i.e., Central, Eastern, Western), including the Forest Highway Program, the Park Roads and Parkways Program and the Refuge Road Program, among others. These programs are administered in accordance with agreements established between the FHWA and the appropriate partner agencies (e.g., the U.S. Forest Service (FS), the National Park Service (NPS), and the US Fish and Wildlife Service (FWS)).

The respective agreements are listed and accessible for viewing on the [Electronic Centralized Agreement Library \(E-CAL\)](#). E-CAL also provides a summary of each agreement's purpose, the FHWA offices and non-FHWA parties involved, and financial requirements.

3.1.3 ORGANIZATION

The remainder of this chapter is organized as follows:

- [Section 3.2 – Responsibilities by Program](#) summarizes the roles of lead agencies, cooperating agencies and interagency/interdisciplinary teams; describes the agency's environmental responsibilities under existing program agreements; and identifies other agreements with Federal agencies in which the FLH has an environmental responsibility.
- [Section 3.3 – Laws, Regulations, Policies, Guidance and Permits](#) summarizes the major laws and implementing regulations that govern agency projects and actions. Resource-specific environmental issues that should be considered in the NEPA process are also discussed. The FHWA policies and a summary of available guidance covering a broad range of issues are included. Finally, the permits typically required for FLH projects are identified.

- [Section 3.4](#) – **Environmental Process** describes the elements depicted in the environmental process flowchart:
 - ◇ Planning and Programming,
 - ◇ Project Development,
 - ◇ Advertising and Award,
 - ◇ Construction, and
 - ◇ Evaluation.

This section also defines the goal of environmental streamlining and the methods used to accomplish this goal.

- [Section 3.5](#) – **NEPA Documentation** describes the NEPA class of action system and provides NEPA documents standards, guidance on preparation of each type of NEPA document, including sample outlines, checklists and timelines and a table showing the steps for obtaining internal document approvals (and delegation of authority).
- [Section 3.6](#) – **Tracking and Reporting** describes the *environmental document tracking system* (EDTS) and associated requirements, including the FHWA Headquarters requirement for annual reporting of wetland impacts and mitigation ratios, and provides guidance for using the tracking system.
- [Appendix 3A.1](#) – **Law, Regulations, Policies, Guidance and Permits** provides links to guidance material on State departments of transportation and other agency websites.
- [Appendix 3A.2](#) – **NEPA Documentation** provides links to guidance material related to NEPA documentation.

3.1.4 REVISIONS

This chapter is a working document that will be revised in response to changes in laws, regulations, policies or guidance on an as-needed basis. Chapter 3 is maintained and updated by the FLH Environment Team, which includes the environment team leader and environment senior technical specialist from each division, as well as the FLH environment discipline leader.

The revision process for updating information in this manual is described in [Section 1.1.5](#).

3.2 RESPONSIBILITIES BY PROGRAM

The FLH Divisions coordinate numerous programs with Federal Land Management Agencies (FLMAs), also referred to as the partner agencies. The FLH environmental role varies for each program. The FLH Division may serve as the NEPA lead agency, a NEPA joint lead agency, a NEPA cooperating agency and/or a member of a NEPA interagency/interdisciplinary team.

These environmental roles of the FLH Divisions are described in the first part of this section. Next, the specific programs administered by the FLH Divisions are identified and the NEPA compliance procedures and environmental role for each of those programs are described. Finally, agreements with other Federal agencies where FLH has a NEPA or environmental role are identified and described.

3.2.1 GENERAL ENVIRONMENTAL COMPLIANCE RESPONSIBILITIES

This section provides general definitions of the lead agency, joint lead agency, cooperating agency and interagency/interdisciplinary team and their roles. The responsibilities assigned under these different roles are intended to help streamline the environmental process by fostering close coordination among the partner, resource and regulatory agencies; encouraging the integration of NEPA requirements with other Federal environmental review and consultation processes; eliminating duplication in Federal, State and local procedures; and ultimately arriving at environmentally responsible transportation decisions.

The [Council on Environmental Quality \(CEQ\)](#) regulations (40 CFR 1500 -1508) introduce the concepts of *lead agency* (Section 1501.5) and *cooperating agency* (Section 1501.6). The *lead agency* determines the project's purpose and need, prepares the environmental documentation and is responsible for ensuring that NEPA requirements and other environmental requirements are met. Under NEPA, a *cooperating agency* has a jurisdictional authority or special expertise related to the project, although the agency's level of involvement varies with the project. [The Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#) also provides guidance on the roles of lead and cooperating agencies. The roles of lead, joint lead and cooperating agencies are further discussed below.

3.2.1.1 Lead Agency

In accordance with CEQ and FHWA regulations and guidance, the lead agency determines the NEPA class of action and the purpose and need for the project, and is responsible for ensuring that NEPA requirements and other environmental requirements are met. Generally, the lead agency is the agency providing the primary funding for the project, the agency with project approval or disapproval authority, or the agency with the most expertise concerning the project and its environmental effects.

The lead agency is typically determined through the program agreements that cover the standard procedures for coordinating FLH programs, described in [Section 3.2.2](#). If a program agreement does not specify lead agency roles, the lead agency is identified during development of the project-specific agreement, described in [Section 3.2.3.1](#).

When acting as lead Federal agency in the NEPA process, the FLH Division is responsible for establishing the scope of the environmental review, inviting cooperating agencies to participate, seeking consensus among stakeholders with diverse interests, resolving conflicts and ensuring that high-quality transportation decisions are fully explained in the environmental document. The environmental process in which FLH serves as the lead agency is outlined in [Section 3.4.2](#).

Section 6002 of the Safe, Accountable, Flexible, & Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) strengthens the management role of the FHWA during the environmental review process for projects, asserting that the FHWA is responsible for the overall direction of the process and for expediting the delivery of transportation projects. The statute also requires the FHWA to assume a lead agency or joint lead agency role for all EIS projects funded by the Highway Trust Fund and requiring U.S. Department of Transportation (USDOT) approval. Section 6002 also asserts that lead agencies must proactively identify and involve participating agencies; must provide opportunities for the involvement of participating agencies and the public; must consider input provided by these groups in developing the project purpose and need and in determining the range of alternatives; must collaborate with participating agencies in determining the level of detail and methods for the analysis of alternatives; and must also provide increased oversight in managing the process and resolving issues. Additional information is provided in the [SAFETEA-LU Environmental Review Process Final Guidance](#).

The [FHWA implementing regulations](#) provide guidance on the lead agency role in developing the NEPA documentation. Guidance on the appropriate exercise of authority by lead, joint lead and cooperating agencies in determining the project's purpose and need is [provided by the CEQ](#).

3.2.1.2 Joint Lead Agency

In accordance with [Section 1501.5\(b\)](#) of the CEQ regulations, Federal, State or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an EIS. The responsibilities of a joint lead agency are the same as those for the single lead agency, although a joint lead agency needs to exercise more sensitivity by following a process and producing a NEPA document that meets the requirements of all lead Federal agencies.

3.2.1.3 Cooperating Agency

Under NEPA, a cooperating agency is an agency with jurisdiction by law or special expertise associated with a proposed project. The agency might own needed property, issue required permits or have special expertise or interest in an affected element of the environment. The cooperating agency's level of involvement varies with the project.

Cooperating agencies are typically identified when an EIS is prepared, although they can also contribute to the preparation of environmental assessments (EAs) as well. The primary purpose of identifying cooperating agencies is to begin agency coordination early in the NEPA process. Therefore, cooperating agencies should be invited as early in the process as feasible, which is typically during the environmental scoping activity of the project development phase. See [Exhibit 3.4-A](#).

The participation of cooperating agencies should begin early in the project development process and continue throughout development of environmental documentation. The intent of this participation is to assist in identifying potential environmental impacts, alternatives, mitigating measures and required permits. Cooperating agencies review and comment formally or informally on EAs and EISs. They may also prepare special studies or share in the cost of the environmental documentation. Cooperating agencies may include Federal and State resource agencies and local and tribal governments.

The [CEQ regulations](#) provide guidance on selecting the cooperating agencies for a project and determining their respective roles. The policy on cooperating agency involvement is described in [Guidance on Cooperating Agencies](#), FHWA Memorandum, March 19, 1992.

The [CEQ Memorandum for the Heads of Federal Agencies Regarding Cooperating Agencies in Implementing the Procedural Requirements of NEPA](#), January 30, 2002 provides guidance on the importance of involvement by cooperating agencies.

The [CEQ Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to Be Cooperating Agencies in Implementing the Procedural Requirements of NEPA](#), 28 July 1999, urges agencies to more actively solicit the participation of State, Tribal and local governments as cooperating agencies in implementing the EIS process under NEPA.

In some instances, FLH may serve as a cooperating agency rather than as lead agency, as defined in specific program agreements. For example, in the Park Roads and Parkways Program (one of the major FLH programs), FLH will typically serve the role of cooperating agency. For EIS projects, FLH is required to serve as lead agency. See [Section 3.2.1.1](#).

No specific guidance is available regarding the roles and responsibilities of FLH as a cooperating agency. Typically, the expectations of the cooperating agency are stated in the project-specific agreements as described in [Section 3.2.3.1](#) or in the invitation letter sent by the lead agency.

Cooperating agencies may adopt the EA or EIS to satisfy their NEPA responsibilities. The CEQ regulations provide guidance on adopting NEPA documents. The [FHWA implementing regulations](#) (23 CFR 771.121) also provide guidance on adopting NEPA documents.

3.2.1.4 Interagency/Interdisciplinary Team

For all projects that require the FLH Division to serve as the lead agency, an interagency/interdisciplinary team (referred to here as the project team) is established to guide project development activities and ensure that all environmental resources and concerns are

identified and addressed. The project team is also a decision-making body that acts on behalf of the agencies to coordinate and share project-level activities and reach consensus on major project decisions. This team is composed of representatives of the partner agencies, which are:

- The affected FLMA,
- The State departments of transportation,
- The county (if any portion of the road is under county jurisdiction), and
- A representative of the FLH Division (with support from other agencies as needed).

To establish the team, the partnering agencies are requested to designate a member who can address the primary issues that the project will encounter and participate in project level decisions concerning transportation issues, alternative development and environmental impacts. The ideal team includes representation from multiple disciplines so all environmental and engineering elements receive balanced consideration.

The project team performs the following activities:

- Assists environmental planning and engineering offices in coordinating major proposals during conceptual studies and preliminary design;
- Acts as a steering team for project development activities (e.g., public involvement events, field and office reviews, interagency meeting);
- Correlates the expected project impacts and engineering needs; and
- Represents and advises its agency of any consequences of alternative highway locations and designs.

The project team members have authority to do the following:

- Make commitments concerning alternatives, and
- Call on needed and available disciplines within their respective agencies.

3.2.2 PROGRAM-SPECIFIC ENVIRONMENTAL COMPLIANCE RESPONSIBILITIES

FLH administers a number of programs through which it designs and constructs roads for other Federal agencies. See a brief [description of these programs and partner agencies](#).

The primary programs administered by the FLH Divisions include:

- The Forest Highway Program,
- The Park Roads and Parkways Program, and
- The Refuge Road Program.

Interagency agreements have been developed between the FHWA and the partner agencies for these programs. These agreements cover the standard procedures for coordinating the respective programs. Agreements for these and other FLH programs are accessible through the [Electronic Centralized Agreement Library \(E-CAL\)](#).

3.2.2.1 Forest Highway Program

3.2.2.1.1 Participating Agencies

The Forest Highway Program is delivered in partnership with the Forest Service (FS).

3.2.2.1.2 Existing Agreements

The [Memorandum of Understanding Related to Forest Highways over National Forest Lands](#), May 11, 1981, established procedures between the FHWA and the FS for coordinating the planning, reconnaissance, location, design, construction and signing as well as consideration of social, economic and environmental effects related to forest highway use and occupancy of national forest lands.

The May 11, 1981 memorandum of understanding (MOU) was supplemented by the [Memorandum of Understanding between United States Department of Agriculture, Forest Service and United States Department of Transportation, Federal Highway Administration, Regarding the Appropriation and Transfer of National Forest System Lands for Highway Purposes](#), August 20, 1998. This MOU describes the procedures for appropriating and transferring national forest lands to the public road agency for highway rights-of-way, and addresses the issue of NEPA document consistency with forest plans.

3.2.2.1.3 NEPA Roles and Responsibilities

The May 11, 1981 MOU does not directly specify the roles of the FHWA and the FS relative to NEPA documentation. However, FLH typically serves as lead agency with the FS serving as a cooperating agency.

The August 20, 1998 MOU assigns the FLH responsibility for compliance with NEPA and other legal requirements in arriving at its determination that use of FS land is necessary for the project; and the FS acts as a cooperating agency (or in some situations as a joint lead agency) in development of the NEPA document. FLH coordinates with the FS in determining the appropriate environmental analysis.

The August 20, 1998 MOU also discusses the need for consistency with the forest plan, both for projects affecting FS land and for projects requiring a consent to easement. The NEPA document should clearly state this. In rare cases, it may not be possible to satisfy the project purpose and need while maintaining consistency with the forest plan. In this situation, a n amendment to the forest plan may be considered.

3.2.2.2 Park Roads and Parkways Program

3.2.2.2.1 Participating Agencies

The Park Roads and Parkways Program is delivered in partnership with the NPS.

3.2.2.2 Existing Agreements

The [Interagency Agreement between the National Park Service and the Federal Highway Administration, Relating to Park Roads and Parkways](#), May 19, 1983 outlines general responsibilities for each agency in delivery of the Park Roads and Parkways Program. FLH has responsibility for program oversight and provides engineering, planning, design, and construction services. The NPS is responsible for the environmental review process, including protection of park resources.

There are three supplements to the May 19, 1983, interagency agreement:

- The [Memorandum of Understanding between Secretary of Transportation and Secretary of the Interior for Integrated Transportation Planning](#), November 25, 1997.
- The [Program Agreement between the National Park Service and the Federal Highway Administration for Highway Safety](#), July 7, 1999.
- The [Memorandum of Agreement between Department of Interior, National Park Service and the Department of Transportation, Federal Highway Administration for the President's National Park Service Deferred Maintenance Roads Initiative](#), January 2003.

None of these supplements amend the roles or responsibilities of the agencies outlined in the May 19, 1983 interagency agreement. However, the deferred maintenance roads initiative states the following:

“NPS will work with the Parks to ensure that the environmental process is completed in a timely manner and that the Parks have identified opportunities to streamline the environmental process.”

3.2.2.2.3 NEPA Roles and Responsibilities

Under this agreement, NPS has primary responsibility for NEPA compliance, including the public involvement process. In most cases, the NPS serves as lead agency and FLH serves as a cooperating agency. For EIS projects, FLH is required to serve as a lead agency. See [Section 3.2.1.1](#).

NEPA roles and other environmental roles of the agencies may be modified in accordance with project-specific agreements described in [Section 3.2.3.1](#).

3.2.2.3 Refuge Road Program

3.2.2.3.1 Participating Agencies

The [Refuge Road Program](#) is delivered in partnership with the FWS.

3.2.2.3.2 Existing Agreements

The [Interagency Agreement between the US Fish and Wildlife Service and the Federal Highway Administration Relating to Public Roads on the National Wildlife Refuge System](#), April 12, 1999, outlines general responsibilities for each agency in delivery of the Refuge Road Program. FLH has responsibility for program oversight and provides engineering, planning, design, and construction services. The FWS is responsible for the environmental review process, including protection of refuge resources.

3.2.2.3.3 NEPA Roles and Responsibilities

Under this agreement, the FWS has primary responsibility for NEPA compliance, including the public involvement process. In most cases, the FWS serves as the lead agency and the FLH serves as a cooperating agency.

3.2.3 OTHER AGREEMENTS AND PROGRAMS

The FLH may provide project delivery services funded through programs other than those identified above. The most common programs are briefly described in this section. Other agreements that direct the work performed by FLH are also described.

3.2.3.1 Project-Specific Agreements

In addition to the program agreements, any project proposed under the various programs requires a project-specific agreement. These project-specific agreements set forth the roles and responsibilities of each agency in the project and may assign roles differently from the program agreements. The project-specific agreements may also further detail cost-sharing responsibilities, data collection and reporting responsibilities, coordination and correspondence procedures and expectations of the lead and cooperating agencies.

3.2.3.2 United States Coast Guard

The [U.S. Coast Guard \(USCG\)/FHWA Memorandum of Understanding on Implementing NEPA](#) (N 6640.22), July 17, 1981, outlines the procedures for strengthening early coordination between the two agencies for environmental review, planning and development of the affected highway section. The memorandum states that when a highway section requires an action by both the FHWA and the USCG, the FHWA normally serves as lead agency for preparing and processing of environmental documents. The primary purpose of the agreement is to facilitate the permitting process for bridges over navigable waters.

3.2.3.3 Emergency Relief for Federally Owned Roads Program

FLH may be asked to provide project delivery services for projects funded through the Emergency Relief of Federally Owned (ERFO) Roads Program. Thorough guidance on the

ERFO program, including general agency roles and responsibilities, is provided in the [Emergency Relief for Federally Owned Roads Disaster Relief Manual](#). Project-specific agreements will further define roles and responsibilities.

3.2.3.4 Defense Access Roads Program

FLH may be asked to provide project delivery services for projects funded under the [Defense Access Roads \(DAR\) Program](#). FLH typically serves as the lead agency. Project-specific agreements will further define roles and responsibilities.

3.2.3.5 Indian Reservation Roads Program

The [Memorandum of Agreement between the Bureau of Indian Affairs and the Federal Highway Administration Relating to Indian Reservation Roads](#), May 24, 1983, provides guidance on the Indian Reservation Roads (IRR) Program that is administered by the FLH Headquarters in partnership with the Bureau of Indian Affairs (BIA).

Under the IRR program, the FLH Headquarters reviews and approves a program of projects proposed by the BIA. Based on that program of projects, funds are transferred to the BIA for delivery of projects. All project development work is typically performed by the BIA.

3.3 LAWS, REGULATIONS, POLICIES, GUIDANCE AND PERMITS

This section summarizes the environmental laws and implementing regulations applicable to the development of roadway projects, along with policies and guidance to ensure compliance. Commonly required permits, the issuing agency and the permit process are discussed at the end of this section.

NEPA and its implementing regulations and the associated FHWA policies and guidance are addressed first. Then, the individual environmental resources and associated laws and regulations to be considered during NEPA environmental review are discussed. For each environmental resource, the FHWA policies and guidance are identified.

Sources of additional guidance materials available online from State departments of transportation and resource agencies are provided in [Appendix 3A.1](#).

3.3.1 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (42 USC 4321; PL 91 90)

The purpose of NEPA is to ensure better decision-making with regard to the implementation of projects that affect the environment by ensuring that agencies consider the potential environmental consequences of their proposals, document their analyses and make this information available to the public for comment prior to project implementation. Section 2 of the statute states that its purposes are to:

“Declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” ([NEPA of 1969](#), as amended).

For information from [States with NEPA-equivalent laws](#) see the CEQ website

3.3.1.1 NEPA Implementing Regulations

Regulations for implementing NEPA in FLH projects are found in the [CEQ regulations](#) (40 CFR 1500) and the [FHWA implementing regulations](#) (23 CFR 771.109(c)(2)).

3.3.1.1.1 Council on Environmental Quality Regulations

The CEQ regulations (40 CFR 1500 [1978 amended]) set forth the NEPA compliance requirements for all Federal agencies. These requirements address NEPA and agency planning (with sections on lead agency and cooperating agency roles and scoping), the purpose

of an EIS, a recommended format, details on the purpose and need statement, development of alternatives, analysis of environmental impacts, and circulation of the document. See the [CEQ regulations](#) for an easy-to-use index.

3.3.1.1.2 Environmental Impact and Related Procedures

23 CFR 771 prescribes the FHWA policies and procedures for implementing NEPA and the CEQ regulations for highway and mass transit projects. See the [FHWA implementing regulations](#) for an easy-to-use index format.

3.3.1.2 FHWA Environmental Policies

A number of policies have been established to implement the requirements and intent of NEPA, as summarized below.

3.3.1.2.1 FHWA Environmental Policy Statement (FHWA 1990, 1994)

The first Environmental Policy Statement in 1990 affirmed the FHWA commitment to environmental protection and enhancement. These principles, reiterated in the 1994 [Environmental Policy Statement](#), are summarized in the list below:

- Full involvement of our partners;
- Complete integration of environmental concerns;
- Active protection and enhancement of our environment;
- Vigorous research, technology transfer and training; and
- Effective development and promotion of environmental expertise.

3.3.1.2.2 FHWA/Federal Transit Administration Interim Policy Guidance on Public Involvement (FHWA and FTA 1994)

This [guidance](#) declares that it is the policy of the FHWA and the Federal Transit Administration (FTA) to aggressively support proactive public involvement at all stages of planning and project development.

3.3.1.2.3 FHWA Vital Few Goals

The FHWA's three [vital few goals](#) are safety, environmental streamlining and stewardship, and congestion mitigation. Additional emphasis on environmental streamlining and stewardship is outlined in *Environmental Stewardship and Transportation Infrastructure Project Reviews*, Executive Order 13274 (EO 13274), issued on September 18, 2002.

The environmental streamlining and stewardship goal and EO 13274 set expectations, measures and methods for advancing an improved and efficient environmental review process and for demonstrating environmental stewardship. The success of this goal is focused on improving processes that influence outcomes. The performance objectives for the

environmental vital few goal measures process improvements and documents the results of significant stewardship activities.

3.3.1.2.4 Environmental Impact and Related Procedures

Both the [FHWA implementing regulations](#) for NEPA (23 CFR 771.105) and the [CEQ regulations](#) (Section 1500.2) for highway and urban mass transportation projects include sections titled *Policy*.

3.3.1.2.5 Procedures for Considering Environmental Impacts

[DOT Order 5610.ID](#), dated July 5, 2000, provides instructions for implementing NEPA Section 102(2) and CEQ regulations 40 CFR 1500–1508.

3.3.1.2.6 Other FHWA Guidance

Other FHWA guidance includes:

1. [Technical Advisory T6640.8A](#), **Guidance for Preparing and Processing Environmental and Section 4(f) Documents (FHWA, 1987)**. The stated purpose of Technical Advisory T6640.8A is to provide guidance to field offices and project applicants (i.e., States) on the preparation and processing of Section 4(f) evaluations and other NEPA documents. This technical advisory is one of the primary sources of guidance for agency staff to ensure compliance with NEPA and other environmental regulations.
2. [SAFETEA-LU Environmental Review Process Final Guidance \(FHWA 2006\)](#). The purpose of this guidance is to provide explanations of new and changed aspects of the environmental review process for FHWA practitioners. The guidance informs the reader about what, and how, things need to be done differently for EIS projects as a result of SAFETEA-LU.
3. [Summary of Environmental Legislation Affecting Transportation \(FHWA 1998\)](#). This source provides a matrix of laws, legislative and regulatory references, purpose of each statute, applicability to transportation projects, general procedures and agencies for coordination and consultation. This summary also is useful in identifying the resource surveys required for a proposed action, as discussed in [Section 3.4.2.2.1](#).
4. **The FHWA [Environmental Guidebook](#)**. The FHWA *Environmental Guidebook* provides information on environmental documentation, public involvement, Section 404 permitting under the *Clean Water Act*, and other relevant topics. The guidebook can be searched by subject.
5. **Communities of Practice**. [Re: NEPA](#) is the FHWA online “community of practice” supporting an open exchange of experience and information about NEPA, related environmental issues and transportation decision-making. The goal of Re: NEPA is to provide additional opportunities to explore the transportation decision-making process through discussion, research, assistance and education directed toward a streamlined

solution oriented process for balancing transportation needs with the social, economic, cultural and natural environments.

3.3.1.2.7 Program-Specific Guidance

This section provides links to the primary guidance documents used by the partner agencies in complying with the NEPA process. The following information is useful to ensure that the compliance needs of our partners can be addressed concurrently:

6. **Forest Highway Program.** The FS policies and procedures for implementing NEPA are contained in the FS [Environmental Policy and Procedures Manual](#) (FSM 1950). Detailed procedures for environmental analysis and documentation needed are set forth in the [Environmental Policy and Procedures Handbook](#) (FSH 1909.15).
7. **Park Roads and Parkways Program.** The policies and procedures by which NPS meets its NEPA requirements are set forth in [Director's Order 12 \(DO-12\)](#), *Handbook for Environmental Impact Analysis*. The DO-12 Handbook provides the NPS procedures and requirements for complying with NEPA.
8. **Refuge Road Program.** The FWS and Department of the Interior NEPA guidance and procedures are contained in the [FWS NEPA Reference Handbook](#). The Handbook provides the full text of various NEPA authorities, selected NEPA-related authorities and NEPA-related checklists. The Handbook includes documents cited in the FWS NEPA guidance, departmental procedures and memorandums.

3.3.2 RESOURCE-SPECIFIC ENVIRONMENTAL CONSIDERATIONS

NEPA serves as the encompassing law under which all other environmental compliance should be performed. The FHWA policy as stated in 23 CFR 771.105(a) is that:

(a) To the fullest extent possible, all environmental investigations, reviews and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.

NEPA requires that all Federal actions undergo planning to ensure that environmental considerations (e.g., impacts on geology and soils, threatened and endangered species, wetlands) are given due weight in project decision-making (42 USC 4321). In addition to the action itself, all interrelated and interdependent actions should be analyzed, including development of material source sites, use of disposal sites, development of construction staging areas, etc.

For many environmental resources, there are specific laws and processes for compliance. This section lists the environmental resources and associated laws, regulations, policies and guidance that are commonly considered during the NEPA process. After laws, regulations and guidance are briefly addressed for each resource, there is a discussion of requirements for NEPA documentation. A project's potential for impacts on a resource and the potential significance of those impacts determine the NEPA class of action (discussed in [Section 3.5.1](#)),

and the scope of investigations and documentation for each affected resources. For example, a project that has substantial impacts on various resources may require an EIS supported by technical reports addressing specific environmental resources. Results of the technical studies are summarized in the EIS. In contrast, a project classified as a categorical exclusion (CE), with very limited potential for impacts, is unlikely to require detailed investigations or extensive documentation.

When there are specific NEPA requirements for documentation for a particular environmental resource, the text below includes a summary of the requirements. Links to additional helpful information are located in [Appendix 3A.2](#). Various specific environmental resource technical report requirements are addressed in [Section 4.6](#). Requirements for other technical reports related to engineering that may be consulted during the environmental review process (e.g., hydraulic, geotechnical studies) are found in [Chapter 6](#) and [Chapter 7](#).

Generally, the regulations identified in the *Summary of Environmental Legislation Affecting Transportation* are the basis for the list of laws identified for the environmental resources below. The laws on the list that are not directly applicable to FLH projects are not included.

3.3.2.1 Air Quality

Laws, regulations and policies, as well as relevant guidance and required NEPA documentation pertaining to air quality are summarized below. The primary laws governing activities affecting air quality are the *Clean Air Act* (CAA) of 1970, and the *Clean Air Act Amendments* (CAAA) of 1990. Because these laws are cumbersome, a brief summary is provided in this section explaining how the laws work, important terms and their applicability to transportation projects.

A few common air pollutants are found throughout the United States. These pollutants can impair health, harm the environment and cause property damage. The U.S. Environmental Protection Agency (EPA) calls these pollutants *criteria air pollutants* because the agency has regulated them by first developing health-based criteria (science-based guidelines) as the basis for setting permissible levels. Under the CAA, the EPA sets limits on allowable concentrations of a pollutant in the air anywhere in the United States. One set of limits (primary standard) protects health; another set of limits (secondary standard) is intended to prevent environmental and property damage. A geographic area that meets the primary standard is called an *attainment area*; areas that do not meet the primary standard are called *nonattainment areas*.

Although the CAA is a Federal law covering the entire country, the States do much of the work to carry out this law. The law recognizes that it makes sense for States to take the lead in carrying out the CAA because pollution control problems often require special understanding of local industries, geography, housing patterns and other factors. Therefore, States are required to develop State Implementation Plans (SIPs) that explain how each State will meet its responsibilities under the CAA. A SIP is a collection of the regulations the State uses to clean up air pollution in a nonattainment area.

Transportation conformity, as required by the CAA, ensures that Federally funded or approved transportation plans, programs and projects conform to the air quality objectives established in the SIP. Transportation conformity regulations are developed by the EPA with USDOT input and concurrence. The USDOT (through the FHWA and the FTA) is responsible for implementing the conformity regulation in nonattainment and maintenance areas. The EPA has a consulting role in the analysis and finds that are required. An air quality conformity determination is required for all transportation plans and transportation improvement programs.

3.3.2.1.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern activities affecting air quality.

The CAA was enacted to protect and enhance air quality and to assist State and local governments with air pollution prevention programs (42 USC 7401 et seq.).

The CAAA, the *Intermodal Surface Transportation Efficiency Act* of 1991 (ISTEA) and the *Transportation Equity Act for the 21st Century* (TEA-21) reinforce the close linkage between clean air goals and transportation investments. These statutes also specify requirements that apply to transportation and air quality agencies throughout the United States. A key section of this law relating to conformity is Title I, *Provisions for the Attainment and Maintenance of National Ambient Air Quality Standards* (NAAQS).

3.3.2.1.2 Guidance

The following guidance is available:

- The [Transportation Conformity Reference Guide](#) describes the air quality conformity process in a question-and-answer format.
- Multiple sources of guidance on compliance with the CAA for transportation projects are compiled in the FHWA [Environmental Guidebook](#) and the FHWA [Air Quality Program](#).
- See the FHWA [Transportation Conformity Guidance for Qualitative Hot-spot Analysis in PM_{2.5} and PM₁₀ Nonattainment and Maintenance Areas](#).
- The EPA provides links to extensive background information on a wide range of [air quality topics](#), including an explanation of how EPA implements the requirements of the CAA in the *Plain English Guide to the Clean Air Act*.
- An air quality issue of rising importance is mobile source air toxics. See FHWA information on [Transportation and Toxic Air Pollutants](#).

[Appendix 3A.1.1.1](#) contains additional links to relevant guidance materials.

For projects sponsored through the Park Roads and Parkways Program, the project must also comply with [Director's Order 77](#), *Natural Resource Protection*.

3.3.2.1.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidance on the contents of the air quality section in an EIS. Additional guidance is available from the FHWA *Environmental Guidebook* and the guidance document titled *Discussion Paper on the Appropriate Level of Highway Air Quality Analysis for the CE, EA/FONSI, and EIS* (April 7, 1986). Both of these guidance documents are geared toward projects in urban areas; therefore, discretion should be used to determine if the required documentation is necessary for a given project. For projects involving earthwork, the construction impacts section of the NEPA document should identify appropriate best management practices (BMPs) for dust control.

The level of consideration, including analysis and documentation, appropriate for a given project will depend on a number of factors but particularly whether the area is within a designated nonattainment or maintenance area, the nature of the project and the projected traffic growth and characteristics. Exempt projects are considered to have a neutral impact on air quality; these are listed in [40 CFR 93.126](#).

As stated above, all transportation plans and transportation improvement programs are subject to air quality conformity determinations. The FHWA/FTA joint conformity determination is based on a quantitative demonstration that projected motor vehicle emissions from the planned transportation system do not exceed the motor vehicle emissions budget established in the SIP. If the NEPA process results in a project whose design concept and scope are significantly different from those in the transportation improvement program, then before NEPA process completion, the project should meet the criteria in [40 CFR 93.109–93.119](#) for projects not from a transportation improvement program.

In carbon monoxide and particulate matter non-attainment and maintenance areas, additional localized or microscale analysis may be necessary to determine project-level conformity for federally funded or approved highway and transit projects. These projects must come from a currently conforming transportation plan and transportation improvement program. This analysis is sometimes called *Hotspot Analysis*. Given the rural locations of most FLH projects, hotspot analysis is rarely required.

3.3.2.2 Coastal Areas and Shorelines

3.3.2.2.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws and regulations govern activities in coastal areas, including coastal zones and coastal barriers:

1. **Coastal Zones.** See the [Coastal Zone Management Act](#) (CZMA) of 1972 (16 USC 1451). Also, see the implementing regulations, 15 CFR 923-930.

The CZMA is intended to:

- Preserve, protect, develop and, where possible, restore or enhance the resources of the nation's coastal zone for this and succeeding generations.

- Encourage and assist the States to develop coastal zone management programs that provide for the protection of natural resources and the management of coastal development.
- Encourage the preparation of special area management plans, which provide for increased specificity in protecting significant natural resources, reasonable coastal dependent economic growth and improved protection of life and property in hazardous areas.

2. **Coastal Barriers.** See the [Coastal Barrier Resources Act](#) of 1982 (16 USC 3501).

Also, see the amendment to the *Coastal Barrier Resources Act*, the [Coastal Barrier Improvement Act](#) of 1990 (PL 101-591).

These laws limit Federal subsidies for development within the coastal barrier resources system and currently apply to the Atlantic Coast, Gulf Coast and Great Lakes.

3.3.2.2.2 Guidance

For further information on coastal areas and shorelines, see the following:

1. **Coastal Zones.** The FHWA [Environmental Guidebook](#) provides links to all of the laws, regulations and policies on coastal zones.
2. **Coastal Barriers.** The FHWA [Environmental Guidebook](#) provides links to all of the laws, regulations and policies on coastal barriers. The *Guidebook* includes links to FWS guidance to Federal agencies for complying with the *Coastal Barrier Resources Act*, dated October 6, 1983.

[Appendix 3A.1.1.2](#) contains web links to State coastal programs and relevant guidance materials.

3.3.2.2.3 NEPA Documentation Requirements

1. **Coastal Zones.** Generally, regulations associated with coastal zones are implemented at the State level and each State has its own procedures for determining whether a project requires a coastal zone consistency review. Therefore, each State has its own process for complying with the regulations. Therefore, it is important to check with the State in which the specific project is located and follow the appropriate process.

The NEPA document should identify the required permits and approvals, including permits or determinations needed from State or local jurisdictions. The document should also summarize the coordination efforts with the coastal resource agencies. The FHWA [Technical Advisory T6640.8A](#) provides additional guidance on documentation requirements for an EIS relative to coastal zone issues.

2. **Coastal Barriers.** The FHWA Technical Advisory T6640.8A contains guidance on the content requirements for an EIS relative to coastal barriers. If the project is in a coastal barrier unit, the NEPA document (i.e., CE, EA, EIS) should include the results of the consultation process and should summarize the results and findings of the consultation.

3.3.2.3 Earth (Geology and Soils)

3.3.2.3.1 Applicable Laws, Regulations and Policies

Aside from the requirements of NEPA, there are no major laws or regulations that directly govern activities affecting geology and soils.

Soils are often considered a source of pollutants in stormwater runoff at a construction site and are, therefore, regulated through the National Pollutant Discharge Elimination System (NPDES) administered by the EPA as authorized in Section 402 of the *Clean Water Act* (CWA). This program is described in [Section 3.3.3.3](#).

3.3.2.3.2 Guidance

The following guidance is available:

- Description of the EPA [stormwater program and permit requirements](#).
- Permit requirements are described in [Section 3.3.3.3](#).

[Appendix 3A.1.1.3](#) presents additional guidance materials.

For projects sponsored through the Park Roads and Parkways Program, the project must also comply with the [Director's Order 77](#), Natural Resource Protection.

3.3.2.3.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides no guidance on addressing geology and soils issues in an EIS. NEPA reporting requirements are a function of the project's NEPA class of action (described in [Section 3.5.1](#)) and the potential for significant impacts on geology and soils. Issues related to geology include potential of landslides, erosion/accretion and settlement. In marine areas, marine sediments, shoreline erosion/accretion and geology are primary concerns. The major issue related to soils is erosion. Requirements for geotechnical reports are defined in [Chapter 6](#), and [Chapter 4](#) includes technical report requirements at the conceptual phase. These technical reports provide an excellent starting point for obtaining relevant information to include in the NEPA document.

If a categorical exclusion (CE) is prepared, the project file should note whether any issues of concern relative to geology and soils have been identified for the project area and how these issues are addressed in the roadway design. If an EA or EIS is prepared and the project area is located in a landslide area, the NEPA document should identify if construction activities will affect slope stability. If settlement or slides are an issue for the road surface, the document should identify how the project will address these issues. If the project is in an area where geologic hazards are a concern (e.g., faulting, earthquakes), the document should state that current standard seismic designs would be used for all proposed structures.

The NEPA document should also identify the permits that will be acquired for the project and a list of best management practices to be incorporated during construction to control erosion and contain sediment runoff from the construction site.

The construction impacts section of the EA or EIS should also identify where borrow materials or waste sites will be located in relation to the project and the associated impacts as well as measures to minimize the impacts.

3.3.2.4 Energy

3.3.2.4.1 Applicable Laws, Regulations and Policies

Aside from the requirements of NEPA, there are no specific laws, regulations or policies related to energy.

3.3.2.4.2 Guidance

[Appendix 3A.1.1.4](#) contains additional links to relevant guidance materials.

3.3.2.4.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of energy issues and gives guidelines for preparing NEPA documents addressing energy.

Documentation related to energy is generally not required for a CE. Typically, energy can be adequately addressed with one or two lines in an EA or EIS as described in the technical advisory. Energy is more likely to be included in an EIS for projects in more urban areas.

3.3.2.5 Farmland

3.3.2.5.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the principal law governing impacts on farmlands is the [Farmland Protection Policy Act](#) (FPPA) of 1981 (7 USC 4201–4209).

The 1994 amendment to the statute identifies the Natural Resources Conservation Service (NRCS) regulations under the FPPA (7 CFR 658.4), including a scoring system for determining the potential impacts of a project that could hasten the conversion of farmland.

The NRCS responsibilities relative to prime and unique farmlands are described in [7 CFR 657.4](#).

3.3.2.5.2 Guidance

The following list provides links to guidance on farmlands as well as the NRCS guidance and forms.

- The FHWA [Environmental Guidebook](#) provides links to the FPPA as well as guidance on implementing the FPPA on highway projects.
- A summary of the [Farmland Protection Policy Act](#) and activities subject to the law, as well as the full text of the law and forms and instructions for completing the farmland documentation.

[Appendix 3A.1.1.5](#) contains additional links to relevant guidance materials.

3.3.2.5.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of farmland resources in an EIS.

For any project using Federal funding, a determination should be made whether Federal farmland will be converted by the project. A farmland technical report is typically not necessary for a project. Rather, it is more important to document compliance with the FPPA by completing the farmland conversion rating forms and coordinating with the local NRCS office. The NEPA documents should identify and take into account adverse effects of the project on the preservation of farmland; consider alternative actions that could lessen adverse effects; and ensure that programs, to the maximum extent practical, are compatible with other local or private policies or programs protecting farmland.

3.3.2.6 Floodplains

3.3.2.6.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, 42 USC 4321, the following laws and regulations govern activities in floodplains.

[Floodplain Management](#) (Presidential Executive Order 11988, May 24, 1977) directs Federal agencies to avoid to the extent possible adverse impacts associated with floodplains and to avoid direct or indirect support of floodplain development.

Current FHWA policy, regulations and nonregulatory procedural guidance for floodplains are provided in 23 CFR 650A, titled *Location and Hydraulic Design of Encroachment on Floodplains*.

3.3.2.6.2 Guidance

The following additional guidance is available:

- The FHWA [Environmental Guidebook](#) provides links to all of the laws, regulations and policies on floodplains.
- For projects sponsored through the Park Roads and Parkways Program, the project must also comply with [Director's Order 77-2, Floodplain Management](#).

[Appendix 3A.1.1.6](#) contains additional links to relevant guidance materials.

3.3.2.6.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidance on the content requirements for an EIS relative to floodplains.

Local, State and Federal water resources and floodplain management agencies should be consulted to determine if the proposed highway action is consistent with existing management programs and to obtain current information on development and proposed actions in the affected watershed. Generally, the information contained in the preliminary hydraulic report ([Section 3.3.2.6.4](#)) should be summarized in the NEPA document commensurate with the expected impacts of the project.

If there is regulatory floodway involvement for a CE, then the CE project file should document the project's consistency with EO 11988, and the regulatory floodway and demonstrate coordination with the Federal Emergency Management Agency (FEMA) and local floodway management agencies.

For an EA or EIS, a more detailed summary should be developed and incorporated into the document. The summary should address the following topics as required by EO 11988 and 23 CFR 650A:

- Alternatives to encroachment,
- Risk assessment,
- Impacts (on the floodplain and floodplain values associated with the project), and
- Measures to avoid or minimize floodplain impacts.

If the preferred alternative includes a floodplain encroachment resulting in a significant impact, the final EIS should include an *only practicable alternative finding* required by [23 CFR 650.113](#). It should be included in a separate subsection titled Only Practicable Alternative Finding and should be supported by the following information:

- The reasons why the proposed action must be located in the floodplain,
- The alternatives considered and why they are not practicable, and
- A statement indicating whether the action conforms to applicable State or local floodplain protection standards.

This finding should also be provided in a *finding of no significant impact* (FONSI) when the preferred alternative includes substantial encroachments on floodplains but overall the natural environment is not significantly affected. The FONSI should also include cost estimates for mitigation measures.

3.3.2.6.4 Hydraulic Report

Title 23 C.F.R. 650A states that a floodplain hydraulic report is required when floodplain encroachments are anticipated. The majority of the information required in this report is likely to be found in the preliminary hydraulic report as described in [Chapter 7](#) Hydrology/Hydraulics. The preliminary hydraulic report should provide sufficient information to make a finding in regard to floodplain encroachment impacts. The terminology of findings varies by State.

3.3.2.7 Hazardous Substances

3.3.2.7.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern hazardous substances.

- The [Resource Conservation and Recovery Act](#) of 1976 (RCRA) is administered by the EPA. This law requires the treatment, storage and disposal of hazardous waste. The 1984 amendment, Hazardous and Solid Waste Amendments, expanded the initial scope, prohibiting land disposal of certain wastes and creating treatment standards for these wastes.
- The [Comprehensive Environmental Response, Compensation, and Liability Act](#) of 1980, as amended (CERCLA), also known as the Superfund law, created the legal framework for identifying parties liable for hazardous waste contamination and requiring them to take responsibility for cleanup operations. Under this statute, a person or agency is required to provide notification of releases or potential releases of hazardous materials. This law created the EPA hazard ranking system and the National Priorities List (NPL).

Hazardous substance issues should also be addressed in the context of documentation prepared to comply with the following additional laws:

- *Clean Water Act* (33 USC 1251);
- *Safe Drinking Water Act* (42 USC 300f);
- *Toxic Substances Control Act* (15 USC 2601–2629);
- *Occupational Safety and Health Act* (OSHA); and
- *Clean Air Act* (42 USC 7901).

3.3.2.7.2 Guidance

The following guidance is available on hazardous waste:

- FLH follows the American Society for Testing and Materials (ASTM) standard for environmental site assessments. Practitioners should obtain the ASTM standards.
- Links to numerous guidance documents are available through the FHWA [Environmental Guidebook](#).

[Appendix 3A.1.1.7](#) contains additional links to relevant guidance materials.

3.3.2.7.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of hazardous waste issues.

Documentation requirements for hazardous substance issues are clearly defined in the FHWA *Environmental Guidebook*. This guidance mostly applies to internal recordkeeping but also describes the EA, FONSI and EIS documentation requirements.

At a minimum, the NEPA documentation should state whether the project is near a site on the National Priorities List. In addition, the NEPA document should identify all sites in the project corridor that are listed on the EPA inventory or that have the potential to harbor hazardous substances. When a project will affect lands with the potential to harbor hazardous substances, an appropriate survey should be conducted to confirm the presence or absence of hazardous substances, and the appropriate coordination with resource agency officials should be performed. The results of the survey and resource agency coordination should be summarized in the NEPA document. Assessment of the project corridor for the presence of hazardous sites is also required for CEs, and the results of the survey reports should be stored in the project file.

3.3.2.8 Historic, Cultural and Archaeological Resources (Section 106 Resources)

Although both Section 106 and Section 4(f) provide protection for sites listed on or eligible for the National Register of Historic Places (NRHP), the requirements of each are different and are described separately in this document.

3.3.2.8.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, numerous laws, regulations and policies govern activities affecting cultural, archaeological and historic properties.

The [National Historic Preservation Act](#) (NHPA) of 1966, as amended (16 USC 470 et seq.), requires Federal agencies to take into account the effects of a project on properties included in or eligible for inclusion in the NRHP. The law also requires Federal agencies to provide the Advisory Council on Historic Preservation (ACHP), a reasonable opportunity to comment on proposed projects. Section 110(f) of the law states that the agency shall, to the maximum extent possible, undertake planning and actions necessary to minimize harm to any national historic landmark.

The implementing regulations of the ACHP, Protection of Historic Properties ([36 CFR 800](#)), focus on the process of identifying historic properties and considering options to avoid or minimize adverse effects, including avoidance, rehabilitation, modified use, marketing and relocation.

Cultural, historic and archaeological issues should also be addressed in the context of documentation prepared to comply with the following additional laws:

- *Archaeological Resources Protection Act* of 1979,
- *American Indian Religious Freedom Act* (1978),
- *American Antiquities Act* (1906),
- *Economic Recovery Tax Act* (1981),
- *Native American Graves Protection and Repatriation Act* (1990),
- *Surface Transportation and Uniform Relocation Assistance Act* (1987), and
- *Tax Reform Act* (1986).

See [Appendix 3A.1.1.8](#) for more information on these laws.

3.3.2.8.2 Guidance

The following guidance on compliance with the requirements of Section 106 is available:

- The FHWA [Environmental Guidebook](#) includes a section with multiple links to policies and processes.
- The FHWA [Historic Preservation Program](#) website has links to laws and additional guidance documents.
- The [ACHP website](#) has training materials, guidance for Federal agencies, questions and answers and other documents. The ACHP also provides a flowchart on compliance with Section 106.

[Appendix 3A.1.1.8](#) provides additional guidance materials.

Projects sponsored through the Park Roads and Parkways Program must also comply with the following orders:

- [Director's Order 28](#), *Cultural Resources Management*.
- Director's Order 28A, *Archeology*.

3.3.2.8.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidance on analysis of historic and archaeological resources in an EIS document. This guidance is also applicable to EAs. In order to disclose potential impacts related to Section 106, in most instances, it is necessary to prepare a technical report and resource surveys during the conceptual studies and preliminary design phase of the environmental process, so that the Section 106 process and coordination efforts are fully disclosed in the NEPA document.

The Section 106 documents that are required under the *National Historic Preservation Act* also provide the basis for the required assessment of cultural resources, project alternatives and historic property impacts in the NEPA document. For the CE, this documentation should be retained in the project files. For an EA or EIS, the Section 106 concurrence documents, including letters of concurrence and any memorandums of agreement, are often appended to the NEPA document and the results of the coordination with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer are summarized in the document. However,

the locations of sites considered eligible for listing should not be revealed if disclosure may cause a significant invasion of privacy, may risk harm to the historic resources or may impede the use of a traditional religious site by practitioners.

3.3.2.9 Land Use

3.3.2.9.1 Applicable Laws, Regulations and Policies

Aside from the requirements of NEPA there are no major laws that govern activities affecting land use. However, [23 USC 109\(h\)](#), states that disruption of desirable community and regional growth is a major consideration in project decisions.

3.3.2.9.2 Guidance

It is important to review FLMA land use guidelines, forest plans, national park management plans, zoning information, local land use plans and transportation plans. These documents may contain pertinent information about the current and future proposed land use in a project area, and reviewing these plans will help ensure that the proposed project is in compliance with those plans.

[Appendix 3A.1.1.9](#) contains additional links to relevant guidance materials.

3.3.2.9.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of land use issues in an EIS document.

The guidance contained in the technical advisory is applicable for both EA and EIS projects. Most important, the CE project file, the EA or EIS should state whether or not the alternatives are consistent with the applicable land use and transportation plans for the area. If the project is not consistent with the applicable land use plan, the plan should be amended or the project should be modified. If a community impact assessment report is prepared, the contents should be summarized in the NEPA document.

3.3.2.9.4 Community Impact Assessment

If a transportation project would result in substantial effects on a community and its quality of life, a community impact assessment should be prepared. To address the community's concerns in transportation decision-making, the assessment should include all items of importance to people (e.g., impacts on mobility, safety, employment, relocation, isolation and other community issues).

[Community Impact Assessment: A Quick Reference for Transportation](#), Publication No. FHWA-PD-96-036 (September 1996) is useful guidance for transportation professionals. It identifies basic tools and information sources in parallel with the FHWA/NEPA project development process.

The FHWA and University of Southern Florida [Community Impact Assessment](#) website provides a wide range of topics, guidance and case studies.

[Appendix 3A.1.1.10](#) presents links to additional relevant guidance materials.

3.3.2.10 Noise

3.3.2.10.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern activities generating noise.

The *Federal-Aid Highway Act* of 1970 set forth the requirement for highway noise standards.

The *Noise Control Act* of 1972 ([42 USC 4901](#) et seq.) authorizes the establishment of Federal noise emission standards.

The FHWA provides [noise standards, policies and procedures](#) that apply to projects within the Federal-aid program.

The need for a noise study should be evaluated on a case-by-case basis. Generally, a noise study is required for a project constructing a roadway in a new location, for a project that significantly changes either the horizontal or vertical alignment of an existing highway or for a project that is expected to generate substantial noise impacts.

3.3.2.10.2 Guidance

Noise issues have received more attention in recent years spurring the development of the following guidance. While these documents provide valuable background on noise issues and the human environment, it should be noted that this guidance typically applies to Federal-aid highway projects in urban settings:

- The FHWA/Department of Transportation – [Highway Traffic Noise in the United States, Problem and Response](#).
- Numerous guidance materials are available in the noise section of the FHWA [Environmental Guidebook](#).

The updated [Traffic Noise Model](#) (TNM) released in April 2004 is an entirely new, state-of-the-art computer program used for predicting noise impacts in the vicinity of highways. It uses advances in personal computer hardware and software to improve upon the accuracy and ease of modeling highway noise, including the design of effective, cost-efficient highway noise barriers.

For projects with low-traffic volumes, the [TNM look-up tables](#) may be the only data needed to comply with noise requirements in the NEPA document.

Projects sponsored through the Park Roads and Parkways Program must also comply with [Director's Order 47](#), *Sound Preservation and Noise Management*.

[Appendix 3A.1.1.11](#) provides additional sources for relevant guidance materials.

3.3.2.10.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidance on the content requirements of an EIS relative to noise issues.

Noise can be an issue for new roadway projects and for projects in urban areas. FLH projects rarely result in permanent noise impacts; therefore, noise is seldom addressed in the NEPA documentation. A discussion of noise may be pertinent in the construction impacts section of the EA or EIS if the project area includes in-holdings of private lands with permanent residences. Public concerns and comments determine whether to address construction noise issues and mitigation measures in the NEPA document.

3.3.2.11 Property Acquisition and Relocation of Individuals, Farms and Businesses

3.3.2.11.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern activities requiring relocations.

The [Uniform Relocation Assistance and Real Property Acquisition Act](#) of 1970, amended in 1987, establishes a uniform policy for the fair and equitable treatment of individuals and businesses displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this Act is to ensure that such persons shall not suffer disproportionate adverse impact as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement.

The FHWA implementing regulations for the *Uniform Relocation Assistance and Real Property Acquisition Act* are contained in 49 CFR 24.

[23 USC 109\(h\)](#), states that injurious displacement of people, businesses or farms is a major consideration in project decisions.

3.3.2.11.2 Guidance

[Appendix 3A.1.1.13](#) provides additional sources of relevant guidance materials.

3.3.2.11.3 NEPA Documentation Requirements

The public services and utilities discussion generally focuses on changes in demand for services and utilities resulting from the proposed project and impacts on the ability of purveyors

to provide services or utilities. There may be some overlap in topics covered by public services and utilities and the social, economic and relocation portion of the environmental document.

The FHWA [Technical Advisory T6640.8A](#) provides guidance on analysis of relocation issues in an EIS. The information identified in this guidance should also be provided for an EA if relocations are an anticipated impact. The level of information in the EA and EIS should be commensurate with the scope of the project and the severity of the impact expected. If relocations are required, the NEPA document should include a statement that acquisition and relocation will be conducted in accordance with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act* of 1970 and that relocation resources are available to all residential and business relocates without discrimination.

Most FLH projects do not result in relocations. Acquisition of lands for highway right-of-way easements should be coordinated with the appropriate land management agency. Coordination efforts should be documented in the CE project file, EA or EIS.

For projects at the EIS level, relocation issues can be addressed in a community impact assessment report. See [Section 3.3.2.9.4](#) for more information.

3.3.2.12 Public Services and Utilities

3.3.2.12.1 Applicable Laws, Regulations and Policies

Aside from the requirements of NEPA, there are no major laws governing activities affecting public services and utilities.

23 CFR 64.5 describes the implementing regulations for adjustment and relocation of utility facilities on Federal-aid and FLH projects.

[23 USC 109\(h\)](#) states that public services are a major consideration in project decisions.

3.3.2.12.2 Guidance

[Appendix 3A.1.1.12](#) presents additional sources of relevant guidance materials.

3.3.2.12.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of impacts on public services and utilities in its discussion of social impacts. Public services usually include police, fire, emergency response, etc. Utilities include sewer, water supply and electricity. Within an EA or EIS, the public services and utilities discussion generally focuses on changes in demand for services and utilities resulting from the proposed project and impacts on the ability of purveyors to provide services or utilities. There may be some overlap in topics covered by public services and utilities and the social, economic and relocation portion of the NEPA document. The social analysis in a NEPA document may also address services, but from the

perspective of community cohesion (i.e., how the construction of a road would split a community in two, or would affect senior citizen access to an essential facility).

Transportation projects affect public services and utilities primarily during the construction period. Service interruptions (e.g., delays in police, fire, emergency services) and relocation of utility facilities should be disclosed in the CE project file, EA or EIS, along with measures to minimize these impacts, if necessary.

For projects at the EIS level, public service and utility issues can be addressed in a community impact assessment report. See [Section 3.3.2.9.4](#) for more information.

3.3.2.13 Recreation

3.3.2.13.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA (42 USC 4321), the laws and regulations discussed in the following sections govern activities affecting recreational resources.

For many projects, the most significant laws with direct application to FLH projects and recreational resources are Section 4(f) of the *USDOT Act* of 1966 and Section 6(f) of the *Land and Water Conservation Fund Act* of 1965. These laws and associated guidance and NEPA documentation requirements are discussed in [Section 3.3.2.14](#).

The following provides brief descriptions of the recreational programs regulated by NEPA:

1. [Bicycle and Pedestrian Program](#). 23 USC 217 authorizes the integration of bicycling and walking into the transportation mainstream. More importantly, it enhances the ability of communities to invest in projects that can improve the safety and practicality of bicycling and walking for everyday travel.
2. [Recreational Trails Program](#). The FHWA Recreational Trails Program makes Federal transportation funds available to the States to develop and maintain trail facilities for both nonmotorized and motorized recreational uses.
3. [National Scenic Byways Program](#). The National Scenic Byways Program was established through 23 USC 162. Under the program, certain roads are recognized as “national scenic byways” or “all-American roads” based on their archaeological, cultural, historic, natural, recreational and scenic qualities.

The FHWA interim policy for the National Scenic Byways Program sets forth the criteria for the designation of roads as national scenic byways or all-American roads based upon their scenic, historic, recreational, cultural, archeological or natural intrinsic qualities.

4. [Transportation Enhancement Activities](#). Transportation Enhancement (TE) activities offer communities funding opportunities to help expand transportation choices (e.g., safe bicycle and pedestrian facilities, scenic routes, beautification, other investments) that increase recreational opportunity and access. Communities may also use TE funds to contribute toward the revitalization of local and regional economies by restoring historic buildings, renovating streetscapes or providing transportation museums and visitor

centers. TE activities have been eligible for funding under the Surface Transportation Program since its inception under the *Intermodal Transportation Efficiency Act* of 1991.

3.3.2.13.2 Guidance

There is no FHWA guidance on the topic of recreation. FHWA guidance on Section 4(f) and Section 6(f) is provided in [Section 3.3.2.14.2](#). While the FHWA *Environmental Guidebook* does not contain a specific section addressing recreation, it does provide the following resources:

- [Bicycle and Pedestrian Issues](#),
- [Scenic Byways](#), and
- [Transportation Enhancements](#).

[FHWA Programs](#) include:

- FHWA partnerships with other Federal agencies;
- Access and the *Americans with Disabilities Act* (ADA);
- Pedestrian accommodations and safety;
- Physical activity, heritage and trail programs; and
- Recreational interests.

Projects sponsored through the Park Roads and Parkways Program also must comply with [Director's Order 77](#), Natural Resource Protection.

3.3.2.13.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) has no specific guidance on the contents of a recreation section in a NEPA document and provides only brief references to recreation in the sections on social impacts, water body modification and wildlife impacts, wild and scenic rivers and Section 4(f) evaluations. Most recreational resources and issues are addressed through Section 4(f), Section 6(f), or in the discussion of bicycles and pedestrians in the transportation section. However, a separate discussion of these resources may be warranted in the NEPA document if the project area provides access to (or is adjacent to) dispersed recreation areas (e.g., hiking, fishing), is located on a scenic byway or supports high levels of bicycle and pedestrian use.

Relevant information to be provided in the NEPA document includes proximity of dispersed recreation resources to the project area, access points to these resources in and outside the project area, the level of recreational use in these areas and the season of use for these areas. If the level of recreational use in an area is high, it may also be considered in the context of social and economic impacts.

The NEPA document should consider the potential for disturbance of dispersed recreation users during project construction and should identify expected interruptions in access to those recreational areas. If feasible, alternative access points or modifications to the construction schedule to accommodate recreational access should be considered to mitigate potential impacts.

3.3.2.14 Section 4(f) and Section 6(f)

Section 4(f) has been part of Federal law since the *Department of Transportation Act* of 1966, and applies only to agencies within the USDOT. The law pre-dates NEPA. Section 4(f) protects publicly-owned public parks, recreation areas, wildlife and waterfowl refuges and historic, cultural and archeological sites listed on or eligible for the National Register of Historic Places (NRHP). Although both Section 106 and Section 4(f) provide protection for sites listed on or eligible for the NRHP, the requirements of each are different.

While Section 4(f) and Section 6(f) have similar names, they are not at all related, originating from completely different laws. However, because Section 6(f) money can be used only in parks, recreation areas and wildlife refuges, Section 6(f) applies only to properties that also are protected under Section 4(f). Therefore, the Section 6(f) discussion is usually combined with the Section 4(f) evaluation. The manager of all Section 4(f) park, recreation area and wildlife refuge properties should be interviewed to determine if Section 6(f) money has been used on the property.

3.3.2.14.1 Laws, Regulations and Policies

The following laws, regulations and policies apply:

1. [Section 4\(f\)](#). Section 4(f) was created when the USDOT was formed in 1966. It was initially codified at 49 USC 1653(f) (Section 4(f) of the *USDOT Act* of 1966) and applies only to USDOT agencies. Later that year, [23 USC 138](#) was added with somewhat different language, which applied only to the highway program. In 1983, Section 1653(f) was reworded without substantive change and recodified at [49 USC 303](#). In their final forms, these statutes have no real practical distinction and are still commonly referred to as Section 4(f).

Section 4(f) states:

"The Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, States, or local significance as determined by the Federal, State, or local officials having Jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation areas, wildlife and waterfowl refuge or historic sites resulting from such use. In carrying out the national policy declared in this section, the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."

2. **Section 6(f) of the Land and Water Conservation Fund Act.** Section 6(f) of the *Land and Water Conservation Fund Act* of 1965 ([16 USC Chapter 1, Subchapter LXIX](#)) applies to all projects that affect recreational lands purchased or improved with land and water conservation State grant funds.

Section 6(f) prohibits the conversion of property acquired or developed with State grants to a nonrecreational purpose without NPS approval. NPS is required to ensure that replacement lands of equal value, location and usefulness are provided as a condition of such conversions, also known as *in-kind* replacement. Consequently, where conversions of Section 6(f) lands are proposed for highway projects, replacement lands are required.

The *Land and Water Conservation Fund Act* has specific requirements for Federal-aid and Federal lands projects. The Federal lands portion of the law (e.g., used to purchase land for national wildlife refuges) does not include the in-kind replacement provision.

3.3.2.14.2 Guidance

1. **Section 4(f).** The FHWA [Environmental Guidebook](#) includes a section with multiple policies and programmatic and nationwide evaluations.

The [FHWA Section 4\(f\) Policy Paper](#) provides an overview of the law, FHWA interpretation of its requirements, applicability to various types of resources and guidance on the key areas of the Section 4(f) evaluation.

2. **Section 6(f).** The following guidance is available:
 - NPS provides an overview of the [Land and Water Conservation Fund Program](#).
 - Title 36 CFR 59.3 describes the [conversion requirements](#) when a project sponsor affects Land and Water Conservation Fund lands.

[Appendix 3A.1.1.14](#) provides additional sources of relevant guidance materials.

According to [49 USC 303\(c\)](#) and [23 USC 138](#), Section 4(f) does not apply to “any project for a park road or parkway under Section 204” of Title 23. This exempts almost all NPS projects from compliance with Section 4(f).

The [FWS NEPA Reference Handbook](#) contains a checklist for Section 4(f) compliance as well as the *Handbook on Departmental Review of Section 4(f) Evaluations* (February 2002).

3.3.2.14.3 NEPA Documentation Requirements

According to NEPA, documentation is required for projects determined to be governed by Section 4(f) and Section 6(f). The following applies:

1. **Section 4(f).** The primary guidance for addressing Section 4(f) issues in a NEPA document is the [FHWA implementing regulations](#). The purpose of these procedures is to establish an administrative record of the basis for determining that there is no feasible

and prudent alternative, and to obtain informed input from knowledgeable sources on feasible and prudent alternatives and on measures to minimize harm.

Specifically, the evaluation of alternatives to avoid the use of Section 4(f) land and possible measures to minimize harm to these lands must be developed and presented in the EA or draft EIS, or as a separate document for projects classified for a CE. Uses of Section 4(f) land covered by a programmatic Section 4(f) evaluation (see [Section 3.3.2.14.5](#)) should be documented by the requirements for the specific programmatic Section 4(f) evaluation. The discussion in the final EIS, FONSI or separate Section 4(f) evaluation should specifically address the following:

- The reasons why the alternatives to avoid a Section 4(f) property are not feasible and prudent
 - How the preferred alternative results in the least harm to the 4(f) property compared to all feasible and prudent alternatives, and
 - All measures that will be taken to minimize harm to the Section 4(f) property.
2. **Section 6(f).** Approval of Section 6(f) conversion/replacement properties should be documented in a Section 4(f) evaluation and the NEPA document. [Appendix 3A.2](#) presents additional useful information on Section 6(f) documentation.

3.3.2.14.4 Section 4(f) Evaluation

When a project proposes to use resources protected by Section 4(f), a Section 4(f) evaluation must be prepared. While the law does not require preparation of any written document, the FHWA has developed procedures for preparation, circulation and coordination of Section 4(f) evaluation documents. The Section 4(f) evaluation must also undergo legal sufficiency review; soliciting this review early in the process is advised to avoid potential issues later. Typically, the Section 4(f) evaluation is contained in a separate section of EAs and EISs. For CEs (and occasionally for EAs and EISs), the Section 4(f) evaluation is a separate document.

The FHWA [Technical Advisory T6640.8A](#) provides guidance on preparing and processing Section 4(f) evaluations, including format and content. The FHWA [Section 4\(f\) Policy Paper](#) provides guidance on the key areas of a Section 4(f) evaluation, including alternative analysis, measures to minimize harm and mitigation, among others.

Section 6009(a) of SAFETEA-LU amended existing Section 4(f) legislation in 23 USC 138 and 49 USC 303 to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This is the first substantive revision of Section 4(f) legislation since passage of the U.S. Department of Transportation Act of 1966. This revision provides that when USDOT determines that a transportation use of Section 4(f) property (after consideration of any impact avoidance, minimization, and mitigation or enhancement measures) results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required, and the Section 4(f) evaluation process is complete. The impact criteria and associated determination requirements are explained in [Guidance for Determining De Minimis Impacts to Section 4\(f\) Resources](#).

3.3.2.14.5 Programmatic Section 4(f) Evaluation

For EAs and CEs, programmatic Section 4(f) evaluations provide a standardized way to make key determinations on projects having minor impacts on areas protected by Section 4(f). Programmatic evaluations cannot be used for an EIS. In order to qualify for the programmatic evaluations, the impacts on the Section 4(f) property should meet several requirements that are outlined in each evaluation. Programmatic evaluations are not required to be circulated to the Department of Interior for review. The five programmatic [Section 4\(f\) evaluations](#) are listed below:

- Independent walkway and bikeways construction projects (negative declaration);
- Historic bridges;
- Minor involvements with historic sites;
- Minor involvements with parks, recreation areas and waterfowl and wildlife refuges; and
- Net benefits 4(f) programmatic.

3.3.2.15 Socioeconomics and Environmental Justice

3.3.2.15.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern activities affecting the social, economic and demographic characteristics of a community.

Environmental justice is codified in [Executive Order 12898](#), *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*, requires Federal agencies to include environmental justice in their mission.

Title VI of the [Civil Rights Act](#) of 1964 is a Federal law that prohibits discrimination. The principles of environmental justice are an extension of Title VI of the *Civil Rights Act* of 1964 and the Civil Rights Restoration Act of 1984. Federal agencies are responsible for oversight of environmental justice compliance when a Federal action is involved for transportation projects.

[23 USC 109\(h\)](#) states that adverse employment impacts and tax and property value losses are a major consideration in project decisions.

3.3.2.15.2 Guidance

The following guidance materials are available:

- [FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations](#) is the order that provides specific policies and procedures addressing environmental justice.
- The FHWA [Environmental Guidebook](#) on Title VI and environmental justice presents sources for FHWA orders, memorandums, strategies (in the Code of Federal Regulations) and notices.

- The FHWA [Environmental Justice](#) website provides an overview of environmental justice, case studies and effective practices. The FHWA's effective practices CD-ROM provides guidance on addressing environmental justice in the NEPA process, along with practical examples of how environmental justice has been integrated into transportation programs, policies, plans and activities.

The FS guidance on social and economic issues is contained in the FS [Economic and Social Analysis Handbook](#) (FSH 1909.17).

The [FWS NEPA Reference Handbook](#) contains a checklist of social and economic impacts to be considered in the environmental document.

[Appendix 3A.1.1.15](#) contains additional links to relevant guidance materials.

3.3.2.15.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of social and economic impacts in an EIS.

Environmental justice should be considered and addressed in the NEPA document. The FHWA California Division has developed [interim guidance](#) for addressing environmental justice in EAs and EISs. In addition, see the [checklist](#) that clearly outlines requirements for addressing environmental justice issues in NEPA documents.

For projects requiring an EIS, social, economic, environmental justice, relocation and public service issues can be addressed in a community impact assessment report. Additional information on the content of a community impact assessment report is described in [Section 3.3.2.9.4](#).

3.3.2.16 Threatened and Endangered Species

3.3.2.16.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the *Endangered Species Act* (ESA) governs activities affecting Federally protected species.

Section 7 of the [Endangered Species Act](#) of 1973 (7 CFR 355 and 50 CFR 17-453) requires Federal agencies to ensure that their actions do not jeopardize the continued existence of any threatened or endangered species, and describes the consultation procedures and conservation obligations of Federal agencies. The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) regulates marine species, including anadromous fishes, listed under the ESA. The FWS regulates non marine plant and animal species, including inland fishes, listed under the ESA.

3.3.2.16.2 Guidance

The following guidance is available:

- The FHWA [Environmental Guidebook](#) also provides links to numerous guidance documents, including *Guidelines for the Fulfillment of Interagency Cooperation Under Section 7 of the Endangered Species Act* (July 1987).
- On February 18, 2005, the FHWA and the FWS issued a [Joint Agency Agreement](#) on the ESA formal consultation process, focusing on responsibilities of the agencies and timing and information requirements. The agreement also describes the processes for elevating a project under tight time constraints.
- The [Management of the Endangered Species Act \(ESA\) Environmental Analysis and Consultation Process](#) includes a description of the interaction of the NEPA process and ESA consultation.
- See the ESA streamlining guidance pertaining to [Programmatic Consultations](#) to help with implementation of TEA-21.
- The American Association of State Highway & Transportation Officials' [AASHTO Center for Environmental Excellence](#) provides numerous guidance documents.
- Procedures for conducting Section 7 consultations and conferences are described in the [Endangered Species Act Consultation Handbook](#). An overview of the formal and informal consultation processes is provided in Chapters 3 and 4 of the *Handbook*.

[Appendix 3A.1.1.16](#) presents additional links to relevant guidance materials.

Projects sponsored through the Park Roads and Parkways Program must also comply with [Director's Order 77-8](#), *Endangered Species*.

3.3.2.16.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidelines for addressing threatened or endangered species in an EIS. A potential impact on species or habitat protected by the ESA does not automatically require elevation of the NEPA documentation (CE, EA, EIS), which depends on the importance of the resources and the scope of the impacts. In general, if a biological assessment is prepared for a project, the NEPA document should include a summary of the biological assessment findings (see [Section 3.3.2.16.4](#)). Specifically, the following information should be provided:

- The species distribution, habitat needs and other biological requirements,
- The affected areas of the proposed project,
- Possible impacts on the species, including opinions of recognized experts on the species at issue,
- Measures to avoid or minimize adverse impacts, and
- Results of consultation with the FWS and/or the NOAA Fisheries.

If additional detail is needed in the environmental document, the biological assessment can be included as an appendix.

A discussion of noise impacts on protected species may be pertinent in the construction impacts section of the EA or EIS if endangered species are present in the project area.

3.3.2.16.4 *Endangered Species Act* Documentation Requirements

Biological assessments are written specifically to address potential impacts on species listed under the ESA. These reports differ from the biological evaluation reports developed for other species including FS sensitive species and State-listed species.

If a project will have no effect on Federally listed threatened, endangered, proposed or candidate species and designated or proposed critical habitats, consultation with the FWS or the NOAA Fisheries is not required. However, a *no-effect letter* can be written for the project. A *no-effect letter* is an abbreviated assessment documenting the absence of any impacts on species or habitats and is usually provided to the FWS or the NOAA Fisheries as a courtesy. (Unless specifically requested, a no concurrence letter may not be distributed by these agencies for projects that have submitted ESA documentation in the form of a no-effect letter.)

If a project may result in effects on listed species or habitats, a biological assessment is prepared. This document is submitted to the FWS or the NOAA Fisheries when consultation is initiated, whether informal or formal. Informal consultation occurs when the effect determination in the biological assessment *may affect, not likely to adversely affect*. If the FWS or the NOAA Fisheries agrees, the agency issues a *concurrence letter* and consultation is complete. If the effect determination in the biological assessment *may affect, likely to adversely affect*, then formal consultation is needed. If the FWS or the NOAA Fisheries agrees with the conclusions of the biological assessment and the proposed conservation measures, the agency issues a *biological opinion*, and consultation is complete.

The organization of biological assessments can vary. In general, the report should include these elements:

- Cover page, table of contents, executive summary;
- Project description – describe proposed action, project location and action area;
- Identification of all Federally listed and proposed species and critical habitat that may be affected;
- Description of each species, species status and habitat;
- Description of environmental baseline within action area – include information from resource agency databases, agency or local experts and site survey;
- Analysis and quantification of effects of the action – consider direct and indirect effects (associated with project construction and operation, as well as with interrelated or interdependent activities);
- Assessment of cumulative effects for projects that require formal consultation;

- Description of avoidance, minimization and mitigation agreements, if any;
- Summary of effect determinations; and
- References (include studies, species lists and agency correspondence).

3.3.2.17 Transportation and Traffic Impacts

3.3.2.17.1 Applicable Laws, Regulations and Policies

Aside from the requirements of NEPA, there are no laws directly governing transportation and traffic as an environmental resource.

There are numerous policies and procedures relating to the provision of pedestrian and bicycle accommodations as described in [23 U.S.C. 217](#) and [23 C.F.R. 652](#). See 23 C.F.R. 652.11 for planning considerations and 23 C.F.R. 652.13 for design and construction criteria.

Federal Aviation Administration regulations, 14 C.F.R. 77 (January 1975), include guidance relevant to design of road projects affecting navigable air space.

3.3.2.17.2 Guidance

The following guidance materials are available:

- The FHWA [Environmental Guidebook](#) (several guidance and policy documents on bicycle and pedestrian issues)
- The FHWA [Bicycle and Pedestrian Program](#) (additional publications and resources)
- The [Federal Aviation Administration Notice – Requirement Related to Highways](#).

[Appendix 3A.1.1.17](#) contains additional links to relevant guidance materials.

3.3.2.17.3 NEPA Documentation Requirements

It is assumed that the transportation analysis conducted for an environmental document conforms to standard transportation engineering standards such as those contained in the *Highway Capacity Manual*.

The FHWA Technical Advisory T6640.8A does not address transportation as an environmental resource to be analyzed in the environmental document. Guidance on defining the project's purpose and need suggests that traffic issues should be discussed as part of the purpose and need statement. A useful source of information for evaluating transportation effects of project alternatives is the results of the traffic characteristics data gathered during the information-gathering phase described in [Section 4.3](#). These are the data to support the purpose and need of the project.

Considerations relating to pedestrians and bicyclists are discussed in the FHWA [Technical Advisory T6640.8A](#). If a project has substantive bicycle and pedestrian issues, those may be addressed in this section or a separate section may be appropriate.

The construction impacts section of the EA or EIS should describe anticipated traffic delays, road closures and/or detour routes. Mitigation measures to minimize impacts on the traveling public during construction should be identified.

3.3.2.18 Visual Quality

3.3.2.18.1 Applicable Laws, Regulations and Policies

Aside from NEPA, there are no laws directly governing activities affecting visual quality. Although some regulations and policies (e.g., Scenic Byways Program (23 USC 162), *Highway Beautification Act* of 1965 (23 CFR 750)) influence transportation activities relative to visual quality, these regulations and policies are not particularly applicable to FLH programs, and they do not provide explicit information or guidance pertaining to visual quality.

Visual quality concerns should be addressed in the context of documentation prepared to comply with the *National Historic Preservation Act* of 1966 and the *Wild and Scenic Rivers Act*. For guidance on compliance with these laws, see Sections [3.3.2.8](#) and [3.3.2.21](#), respectively.

Visual impacts can be considered an adverse effect on a historic resource. See the implementing regulations for the *National Historic Preservation Act* ([36 CFR 800](#)).

The *Wild and Scenic Rivers Act* requires protection and enhancement of the values that qualify the river to be designated for protection.

Each FLMA has requirements related to its own defined visual quality objectives, which can be more restrictive than the Federal regulations cited above.

3.3.2.18.2 Guidance

The following additional guidance is available:

- [Visual Prioritization Process—Users Manual](#), Report No. FHWA-FLP-93-007, is a guide to conducting visual quality assessments.
- The FHWA outlines recommended methods in [Visual Impact Assessment for Highway Projects](#).
- Each FLMA has established visual quality standards, typically contained in the land management plan.

[Appendix 3A.1.1.18](#) provides additional links to relevant guidance materials.

3.3.2.18.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides limited guidance on analysis of visual elements in an EIS. The guidance provided in the technical advisory is applicable to both an EA and an EIS and should be commensurate with the scope of the project. *Environmental Impact Statement: Visual Impact Assessment* is useful for defining the types of issues that should be addressed in both an EA and an EIS.

However, if the project uses the *Visual Prioritization Process Users Manual* to guide the analysis of visual impacts in the project corridor, the NEPA document should summarize the results of this analysis.

The most important NEPA requirement pertaining to visual quality is consistency with the visual standards identified in the FLMA land management plan. The CE project file should document compliance with the visual standards of the land management plan and any design features or mitigation measures required. This statement should also be provided in the EA or EIS.

3.3.2.19 Water Resources

3.3.2.19.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern activities affecting water resources (e.g., water quality, surface waters, ground water).

The [Clean Water Act](#) (CWA) of 1972 (33 USC 1251) regulates all sources of water pollution and prohibits the discharge of pollutants to waters from non-permitted sources. The CWA covers surface waters, wetlands and ground water. Several sections of the CWA (303(d), 305(b), 401, 402 and 404) have implications for permitting activities in surface waters.

The [Safe Drinking Water Act](#) (SDWA) of 1974 (42 USC Chapter 6A), sets national primary drinking water standards, regulates underground injection of fluids and designates sole source aquifers. Amendments in 1986 and 1996 provide for water operator training, public information and source water protection as components of the SDWA.

Section 9 of the [Rivers and Harbors Act](#) of 1899 (33 USC 401) prohibits the construction of any bridge, dam, dike or causeway over or in navigable waterways of the United States without congressional approval. Administration of Section 9 has been delegated to the U.S. Coast Guard. Section 10 prohibits work in navigable waters without a permit from the U.S. Army Corps of Engineers (USACE).

The *Fish and Wildlife Coordination Act* (16 USC 661-667(e)) authorizes the FWS, NOAA Fisheries and State agencies to investigate all proposed Federal and non-Federal actions (needing a Federal permit or license) that would impound, divert, deepen or otherwise control or modify a stream or other body of water, and to make mitigation or enhancement recommendations. The primary goal of this statute is to incorporate wildlife conservation with water resource development programs. The requirements of the law are addressed in [Section 3.3.2.22.1](#).

3.3.2.19.2 Guidance

The following guidance materials are available:

- The FHWA [Environmental Guidebook](#) section on the Safe Drinking Water Act provides links to the laws, regulations and policies governing surface waters. The *Guidebook* section on the SDWA provides online sources to the laws, regulations, policies and the EPA guidance on compliance.
- The FHWA [Environmental Guidebook](#) section on stormwater and the CWA provides links to the laws, regulations and policies governing surface waters. The *Guidebook* section on stormwater provides online guidance on stormwater analysis.
- AASHTO provides additional guidance on [NPDES permitting requirements](#) under CWA Section 402 and the establishment of *total maximum daily loads* (TMDLs) under CWA Section 303.
- The EPA maintains a list of designated [sole-source aquifers](#) along with guidance for analysis and reporting.
- For additional information on required water resource permits, see [Section 3.3.3.1](#) through 3.3.3.5.

[Appendix 3A.1.1.19](#) provides additional sources to relevant guidance materials.

Projects sponsored through the Park Roads and Parkways Program must also comply with [Director's Order 77](#), *Natural Resource Protection*.

3.3.2.19.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidance on the analysis of water quality issues in an EIS. Generally, the NEPA document should characterize water resources in a watershed context that includes surface water, ground water, wellhead protection areas, source water protection areas, soils, topographic features affecting basin hydrology, existing water quality conditions and land use patterns affecting runoff conditions. The NEPA document should identify roadway runoff or other nonpoint source pollution that may have an adverse impact on sensitive water resources (e.g., water supply reservoirs, ground water recharge areas, high-quality streams).

When a proposed project is located in a sole source aquifer, early coordination with the EPA is required to identify potential impacts. If the project will affect the aquifer, then the design should be developed to the satisfaction of the EPA that it will not contaminate the aquifer. The NEPA document should record coordination activities with the EPA and identify their position on the impacts of the various alternatives. The CE project file should include documentation of the coordination efforts with the EPA and the results of the coordination. The NEPA decision documents (i.e., the EA/FONSI or final EIS/record of decision [ROD]) should demonstrate that any concerns identified by the EPA related to the preferred alternative have been addressed.

When a proposed project encroaches on a wellhead protection area (as identified by a State under approval by the EPA), the NEPA document should identify the area, the potential impacts

and proposed mitigation measures. The CE project file should document that the project complies with the approved State wellhead protection plan. The NEPA decision document (the EA/FONSI or final EIS/ROD) should document that the project complies with the approved State wellhead protection plan.

3.3.2.20 Wetlands

3.3.2.20.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA (42 USC 4321), the following laws and regulations govern activities in wetlands.

Protection of Wetlands, [Executive Order 11990](#) of 1977 (EO 11990) requires Federal agencies to minimize the loss or degradation of wetlands and enhance their natural value.

The [Clean Water Act](#) (Sections 401 – 404) regulates the discharge, dredging or placing of fill material in waters of the United States, including wetlands. Section 401 requires applicants for permits for activities resulting in a discharge to seek certification for compliance with State water quality standards and other aquatic protection laws.

[Section 404\(b\)\(1\)](#) (40 CFR 230) provides guidelines for a permit review process that requires a sequencing of analysis of alternatives to avoid and minimize wetlands impacts as much as practical. Established by the EPA, these guidelines are the substantive criteria used in evaluating discharges of dredged and fill material into wetland and non-wetland waters of the United States under the CWA, Section 404, and are applicable to all Section 404 permit decisions.

The USACE is required to conduct a 404 (b)(1) review when considering Section 404 permit applications in order to determine the least environmentally damaging practicable alternative.

3.3.2.20.2 Guidance

The following guidance materials are available:

- See the FHWA [Environmental Guidebook](#) and FHWA policies and guidance on [wetlands](#) and mitigation.
- AASHTO provides additional guidance on [wetland issues](#), including FHWA guidance on recent court decisions related to wetlands.
- For additional information on required wetland permits, see [Section 3.3.3.1](#).

[Appendix 3A.1.1.20](#) presents additional sources to relevant guidance materials.

Projects sponsored through the Park Roads and Parkways Program must also comply with [Director's Order 77-1](#), *Wetland Protection*.

3.3.2.20.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) gives guidelines for addressing wetland impacts in an EIS. This guidance is also applicable to CEs and EAs.

The NEPA document in general should include a summary of the relevant wetland information and evaluations. This information is often derived from the resource surveys or wetland delineation report prepared during the activities comprising the conceptual studies and preliminary design phase. The level of detail should be in proportion to the magnitude of the anticipated impacts and the type of NEPA document produced (i.e., CE, EA, EIS). In addition, the NEPA document should identify measures taken to avoid and minimize impacts; summarize the mitigation commitments that were made with the resource agencies; and, if necessary, identify plans to compensate for unavoidable wetland impacts.

If the preferred alternative is located in wetlands, the CE, FONSI, final EIS and ROD must contain the wetland finding required by EO 11990. This is usually contained in a separate section titled Only Practicable Alternative Finding or Wetland Finding, which should be supported by the following information:

- A reference to EO 11990,
- Justification for concluding that there are no practical alternatives to the proposed action,
- An explanation of how the proposed action includes all practicable measures to minimize harm to wetlands, and
- A concluding statement expressing the following:

Based upon the above considerations, it is determined that there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use.

3.3.2.20.4 Wetland Delineation Report

For all projects that might affect wetlands, a Wetland Delineation Report is prepared in accordance with the USACE [Wetlands Delineation Manual](#) (1987).

A wetland delineation identifies and demarcates wetlands that may be under USACE jurisdiction for purposes of the CWA, Section 404. The wetland delineation should be performed by a qualified biologist. State or local wetland delineation procedures may differ from the USACE procedures required for Federal projects.

A wetland delineation report includes the results of the wetland delineation and an analysis of impacts in terms of the expected loss of wetland functions and values. Proposed mitigation measures or compensation actions are also included in the report. There is no required format for the technical report, although the wetland delineation must be performed in accordance with the USACE 1987 Manual.

3.3.2.20.5 Conceptual Wetland Mitigation Plan

When impacts on wetlands cannot be avoided or sufficiently minimized, compensatory mitigation is required. Wetland compensation may involve the creation of a wetland where one does not currently exist, or wetland restoration at a site where wetland functions have been degraded. The proposed compensatory mitigation measures are detailed in a conceptual wetland mitigation plan, which is commonly appended to the NEPA document.

On December 24, 2002, the EPA and the USACE released the [National Wetlands Mitigation Action Plan](#). Concurrently, the USACE published the [Regulatory Guidance Letter \(RGL\) 02-2, Guidance on Compensatory Mitigation Projects for Aquatic Resources Under the USACE Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899](#), which supersedes RGL 01-1 of the same title. This source provides guidance on identifying suitable sites for mitigation and identifies the following required elements of the wetland mitigation plan:

- Baseline information,
- Goals and objectives,
- Financial assurances,
- Site selection criteria,
- Work plan,
- Performance standards,
- Contingency plan,
- Monitoring, and
- A long-term management program.

3.3.2.20.6 Section 404(b)(1) Showing (Evaluation)

Projects requiring an individual Section 404 permit typically require preparation of a [404\(b\)\(1\)](#) (also called a 404(b)(1) evaluation), which generally follows the format of the EPA guidelines. See the additional EPA guidance on the [level of analysis required](#).

3.3.2.21 Wild and Scenic Rivers

3.3.2.21.1 Applicable Laws, Regulations and Policies

Wild and scenic rivers should be addressed in the context of documentation prepared to comply with the *USDOT Act* of 1966, Section 4(f), described in [Section 3.3.2.14](#).

Often, regulatory agencies require documentation of compliance with the [Wild and Scenic Rivers Act](#) (167 USC 1271) before issuing a permit or finalizing the consultation process for Federally listed species.

3.3.2.21.2 Guidance

The FHWA [Environmental Guidebook](#) includes the laws, regulations and policies pertaining to wild and scenic rivers. Of particular interest is the FHWA's *Policy Guidance for Wild and Scenic Rivers*, which describes how to integrate agency responsibilities under the Wild and Scenic Rivers Act within the NEPA process.

[Appendix 3A.1.1.21](#) presents additional sources to relevant guidance materials.

Projects sponsored through the Park Roads and Parkways Program must also comply with [Director's Order 46A](#), *Wild and Scenic Rivers Within the National Park System*.

3.3.2.21.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidance on contents of the NEPA document regarding wild and scenic rivers.

For a CE, keep a record of coordination activities with the river managing agencies and consultation results in the project file. For an E A/FONSI or EIS, report coordination activities with the river managing agencies and consultation results in the NEPA document.

3.3.2.22 Wildlife, Fish and Vegetation

3.3.2.22.1 Applicable Laws, Regulations and Policies

In addition to the requirements of NEPA, the following laws, regulations and policies govern activities affecting wildlife, fish, vegetation and essential fish habitats defined under the *Magnuson-Stevens Act*. Threatened and endangered species are addressed in [Section 3.3.2.16](#):

1. **Wildlife and Fish.** The [Fish and Wildlife Coordination Act](#) of 1958 (16 USC 661) authorizes the FWS, NOAA Fisheries and State agencies to investigate all proposed Federal and non-Federal actions (needing a Federal permit or license) that would impound, divert, deepen or otherwise control or modify a stream or other body of water, and to make mitigation or enhancement recommendations. The primary goal of this law is to incorporate wildlife conservation with water resource development programs.

The [Migratory Bird Treaty Act](#) of 1918 (16 USC 703–712), administered by the FWS, regulates activities affecting migratory birds, with the exception of game birds during established hunting seasons. This law is particularly applicable if birds are actively nesting on bridges, culverts or signs in the project area.

Responsibilities of Federal Agencies to Protect Migratory Birds, [EO 13186](#), January 10, 2001, requires the FHWA to enter into a MOU with the FWS on protecting a wide range of migratory bird species. The MOU is not yet finalized.

The primary goal of the [National Forest Management Act](#) of 1976 (16 USC 1600–1614) is to maintain multiple use and species diversity on Federal forest lands. The statute applies directly to lands administered by the FS, but also provides direction for Bureau of Land Management (BLM) land management plans. The BLM and the FS have integrated NEPA requirements within their land management regulations.

The [Magnuson-Stevens Act](#) is the 1996 amendment to the Fishery Conservation and Management Act of 1976 (i.e., the Magnuson Act). The law, administered by the NOAA Fisheries, emphasizes sustainability of the nation's fisheries and creates a new habitat conservation approach. The protected habitat is called essential fish habitat. Federal agencies should consult with the NOAA Fisheries on all activities or proposed activities authorized, funded or undertaken by the agency that may adversely affect essential fish habitat.

Other laws requiring the consideration of wildlife and fish issues include the following:

- Tribal laws (vary by tribe);
 - The [Bald and Golden Eagle Protection Act](#) (16 USC 668–668d).
 - The [Marine Mammal Protection Act](#) of 1972 (16 USC 1361–1407).
 - The [Anadromous Fish Conservation Act](#) of 1965 (16 USC 757a–757g).
2. **Vegetation.** The [Noxious Weed Act](#) of 1975 (PL 93-629) established a Federal program to control the spread of invasive plant species. Amendments to the law in 1990 (PL 101-624) identify additional requirements for Federal land management agencies to develop and fund a plant management program, implement cooperative agreements with States regarding undesirable plants on agency lands and establish integrated management systems to control undesirable plants targeted by the cooperative agreements.

Invasive Species ([EO 13112](#)) requires Federal agencies to work to prevent and control the introduction and spread of invasive species.

3.3.2.22.2 Guidance

The FHWA [Environmental Guidebook](#) includes the laws, regulations and policies pertaining to wildlife, habitat, and ecosystems.

The FHWA [roadside vegetation management program](#) provides policy and guidance information. Of particular interest is FHWA's guidance on compliance with EO 13112 and Section 6006 of SAFETEA-LU guidance on control of noxious weeds.

[Appendix 3A.1.1.22](#) presents additional sources to relevant guidance materials.

Projects sponsored through the Park Roads and Parkways Program also must comply with [Director's Order 77](#), *Natural Resource Protection*.

Practitioners need to consider many issues that are rising in importance relative to transportation and traffic impacts on wildlife. For example, wildlife mortality and habitat

connectivity are related to traffic volumes, speeds, road width and road-related barriers. The FHWA provides information on [wildlife and highways](#).

3.3.2.22.3 NEPA Documentation Requirements

The FHWA [Technical Advisory T6640.8A](#) provides guidelines for documenting fish and wildlife impacts in an EIS.

The EA or EIS should contain exhibits and discussions identifying the location and extent of wildlife or fish habitat and vegetation. Impacts on fish and wildlife resulting from the loss, degradation or modification of aquatic or terrestrial habitats should also be discussed. The results of coordination with appropriate Federal, State and local agencies should be documented in the EA or EIS; for example, coordination with the FWS under the *Fish and Wildlife Coordination Act* of 1958.

A discussion of noise may be pertinent in the construction impacts section of the EA or EIS if the project would affect species of special concern (especially those protected under the *Endangered Species Act* or those designated in the Federal Land Management Agency (FLMA) land management plan as sensitive).

The NEPA document should also document project compliance with the goals and standards of the FLMA land management plan for managing populations of wildlife and fish, and controlling the spread of noxious weeds. In addition, the results of the biological evaluation should be summarized in the NEPA document.

The essential fish habitat assessment, which may be prepared as a separate document, provides sufficient information pertaining to Federally managed fisheries and their associated habitats and should be included or summarized in the NEPA document. If the determination of effect for essential fish habitat is *adverse effect*, the NEPA document should summarize any conservation commitments made with the regulatory agency.

The required information on invasive species to be provided in the NEPA document is outlined in the FHWA [Environmental Guidebook](#) for roadside vegetation. This guidance states that until the national vegetation management plan specified in the executive order is completed, NEPA analyses should rely on each State's noxious weed list to identify the invasive plants to address and the measures to be implemented to minimize their harm. The guidance also States that the NEPA document should include identification of any invasive terrestrial or aquatic animal or plant species that could do harm to native habitats within the project study area and identify the potential impact of the disturbances caused by construction on the spread of invasive species. Finally, the analysis should describe any preventive or eradication measures to be taken.

3.3.2.22.4 Magnuson-Stevens Act Documentation Requirements

Federal agencies consult with the NOAA Fisheries to ensure compliance with the *Magnuson-Stevens Act* and its requirements regarding essential fish habitat. The analysis of essential fish habitat should include:

- A brief introductory paragraph describing why addressing essential fish habitat is required;
- A definition of the essential fish habitat designation for the fisheries potentially affected by the project;
- An identification of the fish species likely to occur in the project area and a brief description of fish use of the project action area; significant prey species should also be considered;
- A brief statement of potential impacts on essential fish habitat; and
- A determination of effect for essential fish habitat (either *no effect* or *adverse effect*).

If the determination is *adverse effect*, [NOAA Fisheries](#) will provide essential fish habitat conservation recommendations to the Federal agency that submitted the environmental documentation. The Federal action agency should then provide a detailed written response within 30 days after receiving them or at least ten days prior to final approval of the action.

3.3.2.22.5 Evaluation for Sensitive Species on Federal Lands

Any ground-disturbing activities on Federal Lands may need to consider potential impacts on various sensitive species, including FS sensitive species, FS management indicator species or BLM sensitive species, as designated in the land management plan of that Federal agency (e.g., the FS, the BLM), and State-listed species whose populations are rare or in decline in the State in which the Federal Lands are located. Impacts on these species are addressed in a biological evaluation report. This report can be combined with the biological assessment report generated to assess potential project impacts on threatened and endangered species or it can be combined with the general wildlife and fish technical report. The main objectives of the biological evaluation are to identify and reduce adverse impacts, increase mitigation opportunities for sensitive species, to ensure that the FS /BLM actions do not decrease the viability of native or desired non-native plant or animal species and to ensure that actions will not lead to the Federal listing of species. For States maintaining a list of State-sensitive species, the biological evaluation should also include a discussion of these species.

A biological evaluation should include the following:

- Identification of all FS, BLM and State-listed sensitive species and Federally listed and proposed species and their habitat potentially affected by the proposed activity,
- Identification and description of habitat within the area needed to meet FS /BLM objectives for sensitive species,
- Analysis of the direct, indirect and cumulative effects of the proposed action, including mitigation, on species or habitat essential to meet FS/BLM objectives,
- Determination for each sensitive species of either “no impact,” “beneficial impact,” “may have impact on individuals but not likely to cause a trend toward Federal listing or loss of viability” or “likely to result in a trend toward Federal listing or loss of viability,”

- Discussion of the process and rationale for the impact determination, including documentation of any contacts with other agencies or data sources whose information was used in the determination, and
- Recommendations for reducing adverse impacts and beneficial mitigation measures.

No FS or BLM guidance is available for FS/BLM biological evaluation requirements. Therefore, the land management agency should be consulted to determine how best to meet its requirements.

3.3.3 COMMONLY REQUIRED PERMITS

This section identifies the major permits required for Federal transportation projects, describes the permit process and provides links to guidance. The checklist provided in the [FHWA Summary of Environmental Legislation Affecting Transportation](#) gives a good overview of potential permit requirements.

 Refer to [EFLHD – [CFLHD](#) – WFLHD] Division Supplements for more information.

3.3.3.1 Section 404 Permit

3.3.3.1.1 Clean Water Act (CWA)

[Section 404 of the CWA](#) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. The Section 404 permit is required for work in streams, tidal waters, wetlands or lakes.

3.3.3.1.2 Issuing Agency

The USACE has the authority to issue permits for activities involving the discharge of dredge and fill materials into waters of the United States, including wetlands.

3.3.3.1.3 Permit Process

The USACE is organized into [eight divisions](#) supported by numerous districts. Each division or district may use a different permit application or have its own process for filing permits and should be consulted for additional information. Generally, a standard form [ENG 4345a](#) is used to apply for Section 404 permits. The form includes guidance for completing the application and preparing project drawings. Some States have combined permit application forms for securing local, State and Federal permits that can be substituted for the standard form ENG 4345a. Therefore, the permits required should be identified prior to determining which permit application is appropriate for the project.

FLH projects are likely to require a [nationwide permit](#) or an individual permit from the USACE. The nationwide permit program authorizes specific activities in areas under USACE jurisdiction, usually through an expedited review process.

An individual Section 404 permit is usually required when a project cannot meet the conditions of a nationwide permit (e.g., with substantial impacts on wetlands). Projects requiring an individual permit typically require the preparation of a Section 404(b)(1) as described in [Section 3.3.2.20.6](#).

For all Section 404 permits, additional coordination may be required for projects on tribal reservation lands and during the application review process, the USACE may request comment from other Federal and State agencies.

Compliance with several major laws is required prior to issuance of a Section 404 permit. These laws include the following:

- Section 307 of the *Coastal Zone Management Act* of 1972 (see [Section 3.3.2.2](#)),
- Section 106 of the *National Historic Preservation Act* of 1966 (see [Section 3.3.2.8](#)),
- *Endangered Species Act* of 1973 (see [Section 3.3.2.16](#)), and
- *Wild and Scenic Rivers Act* (see [Section 3.3.2.21](#)).

The USACE district office covering the project area should be contacted to determine its preferred process for securing the required permits.

3.3.3.1.4 Additional Guidance

Information pertaining specifically to Section 404 of the *Clean Water Act* and Federal-aid highway projects is available in [Applying the 404 Permit Process to Federal-Aid Highway Projects](#), also known as the Red Book.

3.3.3.2 Section 401 Certification

3.3.3.2.1 Clean Water Act (CWA)

[Section 401 of the CWA](#), which requires certification that discharges of dredged or fill material into waters of the United States comply with water quality standards.

3.3.3.2.2 Issuing Agency

Under Section 401, the USACE, the EPA or designated States and Tribes can review and approve, condition, or deny all Federal permits or licenses that might result in a discharge to State or Tribal waters, including wetlands.

3.3.3.2.3 Permit Process

Certification procedures vary by State based on local water quality standards and are usually integrated into a combined permit review process. General water quality standards and contact information are [available by state](#).

3.3.3.2.4 Additional Guidance

No additional guidance is identified at this time.

3.3.3.3 National Pollutant Discharge Elimination System (NPDES) Permits

3.3.3.3.1 *Clean Water Act (CWA)*

Section 402 of the CWA requires that an NPDES permit be obtained for all discharges to waters of the United States from construction sites and water management facilities. Although highways have not been classified as industrial sites, highway construction has been classified as an industrial activity. An NPDES construction permit is required for all construction activities identified in the NPDES general permit for stormwater discharges from construction activities. Construction activities, including other land-disturbing activities that disturb one acre or more, are regulated under the NPDES stormwater program.

3.3.3.3.2 Issuing Agency

The EPA administers the NPDES program. This is often done by delegating stormwater permitting responsibilities to State agencies. State requirements for NPDES permits vary by State. Several States have [authority to issue NPDES permits](#). In States where the EPA retains permitting responsibilities, NPDES permit applications are submitted directly to the EPA. In general, NPDES permits on tribal lands remain the responsibility of the EPA, although in some cases the Tribes have authority.

3.3.3.3.3 Permit Process

For the construction general permit, the EPA has established an electronic application process ([eNOI](#)).

To complete this electronic application form, the following activities should be completed. After each activity, navigate to the website noted for a description of the procedures for that activity:

- Read the construction [General Permit](#).
- Develop a [Stormwater Pollution Prevention Plan](#) (SWPPP).
- Complete an [Endangered Species Certification](#) for the project site.
- Determine whether stormwater from the site will reach a water body with an established [TMDL](#) for any listed pollutant. If the water body has an established pollutant TMDL, ensure the project site is in compliance with that TMDL.
- Know the site's [latitude and longitude](#).

In addition, [permit applications and forms](#) are available for download.

For State-issued NPDES permits, authorized State agencies should be contacted directly to determine permit application requirements. See the [interactive online map](#).

In an emergency situation, contact the EPA or the authorized State agency to determine its preferred process for securing the required permits.

3.3.3.3.4 Additional Guidance

The EPA provides an overview of the [stormwater program for a construction general permit](#).

3.3.3.4 Section 10 Permit

3.3.3.4.1 *Rivers and Harbors Act*

[Section 10 of the Rivers and Harbors Act](#) of 1899 regulates activities in navigable waters of the United States. Activities subject to this regulation include obstruction, dredging, alteration or improvement of any navigable water, and building or installing structures within these waters. Navigable waters of the United States are defined in 33 CFR 329.

3.3.3.4.2 Issuing Agency

The USACE issues permits for activities in navigable waters.

3.3.3.4.3 Permit Process

Typically, a standard form [ENG 4345a](#) is used to apply for USACE *Rivers and Harbors Act* Section 10 permits. This same form can be used to apply for a CWA Section 404 permit. Some States have combined permit applications for securing local, State and Federal permits that can be substituted for the standard form ENG 4345a. Therefore, the permits required should be identified prior to determining which permit application is appropriate for the project.

The USACE may request comment from other Federal and State agencies.

In an emergency situation, contact the USACE division office covering the project area to determine its preferred process for securing the required permits.

3.3.3.4.4 Additional Guidance

The [USACE district offices](#) issuing this permit offer additional permit information.

3.3.3.5 Section 9 Permit

3.3.3.5.1 *Rivers and Harbors Act*

Under [Section 9 of the Rivers and Harbors Act](#) of 1899, the *General Bridge Act* of 1946 and other statutes, a permit is required for bridges or causeways in or over navigable waters of the United States, and for causeway construction in all tidal waters of the United States. Lighted structures in water that are used for navigational purposes also require this permit.

3.3.3.5.2 Issuing Agency

The U S C oast G uard (USCG) i s r esponsible f or adm inistering the *Rivers and Harbors Act* Section 9 permit.

3.3.3.5.3 Permit Process

The US Coast Guard provides [permit applications and general information on bridge permits](#).

In an em ergency situation, contact the US Coast Guard to determine its preferred process for securing the required permits.

3.3.3.5.4 Additional Guidance

The USCG/FHWA [Memorandum of Understanding on Implementing NEPA](#), N 6640.22, July 17, 1981, provides additional guidance on coordinating permits for highway projects over navigable waters.

3.3.3.6 Federal Land Management Agency Permits

The FS pr ovides the m ost detai led gui dance for per mits am ong al l FLM As. The FS requirements are described below. Other FLMA s may also have permit requirements and the project team member should be consulted to determine whether any permits are required for the FLH activities on their lands.

3.3.3.6.1 Trigger

A special use permit may be issued to the FLH by the FS for preliminary engineering activities (e.g., geotechnical investigations, resource surveys) that are performed prior to completion of the project's NEPA documentation. A special use permit may also be issued for the use of gravel pits, borrow pits, waste sites, stone quarries or other areas or facilities used to support construction activities, if such sites are not identified and evaluated as part of the project's NEPA documentation. All project-related uses and impacts should be identified and disclosed in the project's NEPA document to the fullest extent possible. If it is later determined that a site on FS land is required for use that was not originally disclosed in the NEPA document, a special use permit may be issued prior to advertisement to address the impacts and associated mitigation for use of the site.

All issues regarding special use permits should be coordinated through the FS SEE team representative.

3.3.3.6.2 Issuing Agency

These permits are issued by the FS.

3.3.3.6.3 Permit Process

The FS provides general information on the [FS permit process](#). For transportation and utility systems on Federal lands in Alaska, [Standard Form 299](#) can be used to apply for special use permits. This form may also be accepted for transportation projects in other regions; however, local or regional offices should be contacted first to see if they have specific application requirements.

3.3.3.6.4 Additional Guidance

The [FS regional offices](#) provide contact information and a directory of National forests.

3.3.3.7 Threatened and Endangered Species Permits

Personnel who survey, handle or collect listed species may require permits from the [FWS](#) or [NOAA Fisheries](#). Take permits may also be issued through a biological opinion from the FWS or NOAA Fisheries if a project is expected to result in the *take* of a listed species.

State and Tribal fish and wildlife agencies may also require permits for handling or collecting plants, animals or fish. The respective agencies should be contacted prior to initiating any activities that may require the handling or collection of plants, animals or fish.

3.3.3.8 Tribal Permits

Many Tribes require permits for work in tribal reservation areas that could affect cultural, historic or archeological resources, as well as water, fish, wildlife, habitat, air quality, etc. Occasionally, a Tribe is also authorized to administer Federal permits (e.g., NPDES permits, CWA Section 401 certification). Therefore, tribal agency websites and personnel should be contacted to identify the tribal permits that apply to FLH projects.

3.3.3.9 State Permits

Coordination with State permitting agencies is required when the State is authorized to administer Federal permits (e.g., NPDES permits, CWA Section 401 certification). Otherwise, the Federal government cannot be regulated by State or local agencies. However, this does not preclude the need to coordinate with State regulatory agencies on proposed activities.

Also, some States have combined permit application forms for securing local, State and Federal permits. Therefore, State agencies should be contacted to identify the State permits that apply to FLH projects.

3.4 ENVIRONMENTAL PROCESS

NEPA directs Federal agencies to conduct environmental reviews to consider the potential impacts on the environment that could result from their proposed actions. Because NEPA requires the agency to consider impacts on all aspects of the environment, NEPA review serves as the overarching process under which all other environmental reviews required by other environmental laws take place. Consequently, the NEPA process is intended to be a comprehensive and a coordinated project review conducted by an interagency and interdisciplinary team, and the public to ensure that all environmental concerns and issues have been identified and are adequately addressed.

This section introduces the role of environmental streamlining in the environmental process and describes the FLH environmental process for projects in which FLH is the lead agency.

■ Refer to [EFLHD – CFLHD – [WFLHD](#)] Division Supplements for more information.

3.4.1 ROLE OF ENVIRONMENTAL STREAMLINING IN THE ENVIRONMENTAL PROCESS

Efficient and effective coordination of multiple environmental reviews, analyses, and permitting actions under the overarching law of NEPA is essential in meeting the environmental streamlining mandate for highway and transit projects. The FHWA's strategic approach to environmental streamlining is the environmental stewardship and streamlining FHWA's *vital few goal*. See detailed discussion in [Section 3.3.1.2.3](#).

The FHWA's [streamlining/stewardship program](#) demonstrates the agency's commitment to streamlining. The agency is continually setting and revising expectations, measures and methods for advancing an improved and efficient environmental review process and for demonstrating environmental stewardship. The program also provides information on streamlining initiatives from various State departments of transportation.

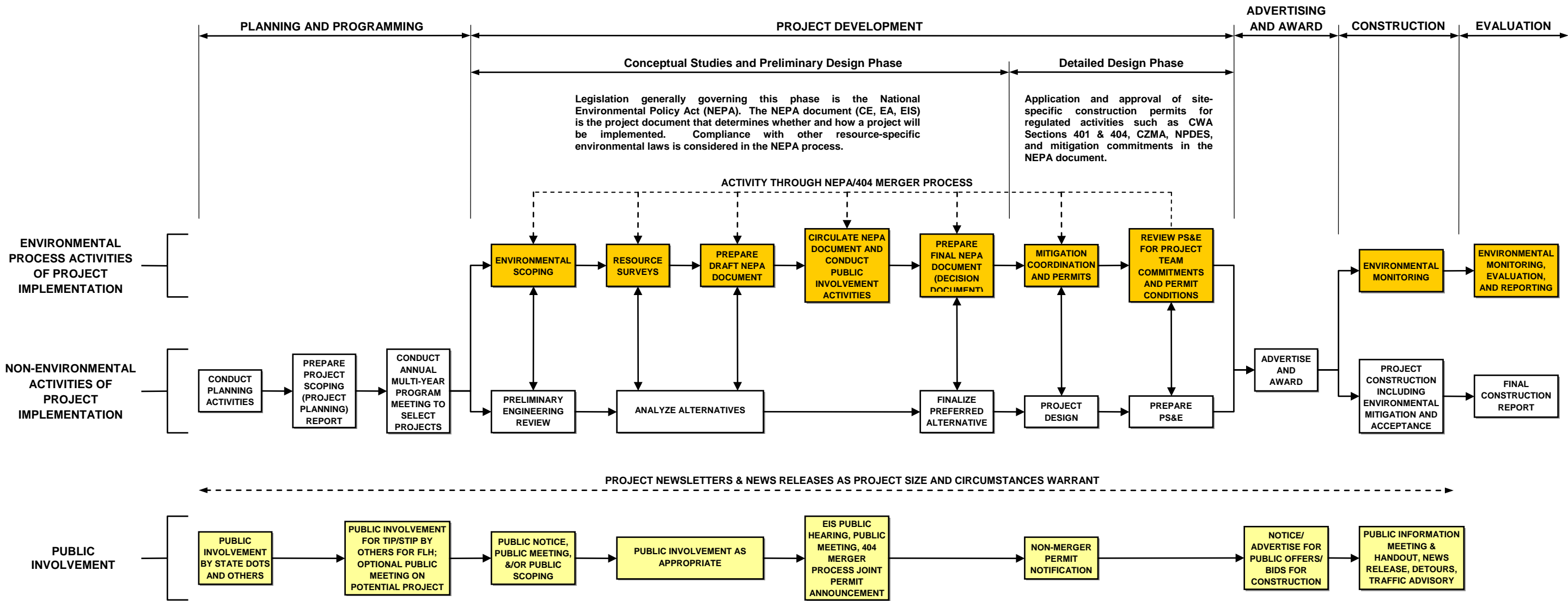
3.4.2 FEDERAL LANDS HIGHWAY ENVIRONMENTAL PROCESS

When the FLH serves as the lead agency, projects are developed and delivered through a sequence of activities as shown in [Exhibit 3.4 –A](#). The flowchart identifies five distinct processes, which are explained in the subsections indicated:

- Planning and Programming ([Section 3.4.2.1](#)),
- Project Development ([Section 3.4.2.2](#)),
- Advertising and Award ([Section 3.4.2.3](#)),
- Construction ([Section 3.4.2.4](#)), and
- Evaluation ([Section 3.4.2.5](#)).

Although environmental tasks occur in each of these five processes, the majority of FLH responsibilities arise during the project development process. Environmental tasks are discussed in the subsections below. The elements of each environmental task vary according

Exhibit 3.4–A FLH ENVIRONMENTAL PROCESS



ABBREVIATIONS:

CE	Categorical Exclusion
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DOTs	Departments of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
FLH	Federal Lands Highway
FONSI	Finding of No Significant Impact
NPDES	National Pollutant Discharge Elimination System
PS&E	Plans, Specifications, and Estimates
ROD	Record of Decision
STIP	State Transportation Improvement Program
TIP	Transportation Improvement Program

LEGEND

Activity	Environmental Process Activities of Project Implementation
Activity	Non-Environmental Activities of Project Implementation
Activity	Public Involvement

TASKS

- Task 1: Review the project scoping (project planning) report
- Task 2: Establish project team and conduct initial meeting
- Task 3: Develop mailing list
- Task 4: Send project notice to public agencies
- Task 5: Conduct public scoping meetings
- Task 6: Publish Notice of Intent in Federal Register (EIS only)
- Task 7: Develop and refine the Purpose and Need and the alternatives, and identify major concerns

TASKS

- Task 1: Determine resource survey needs
- Task 2: Send introductory letters to resource agencies
- Task 3: Obtain access permission onto public and private property
- Task 4: Initiate and complete surveys
- Task 5: Review survey data and finalize survey
- Task 6: Coordinate survey results with analysis of alternatives

TASKS

- Task 1: Complete resource analysis
- Task 2: Analyze and refine alternatives
- Task 3: Develop conceptual mitigation
- Task 4: Write draft NEPA document
- Task 5: Coordinate document with project team

TASKS

- Task 1: Public notice
- Task 2: Copy and distribute NEPA document
- Task 3: Conduct public involvement

TASKS

- Task 1: Review and respond to public comments
- Task 2: Finalize preferred alternative(s)
- Task 3: Prepare and approve the CE
- Task 4: Prepare EA or final EIS
- Task 5: Prepare, review and approve FONSI or ROD
- Task 6: Copy and circulate public notice and NEPA document(s)

TASKS

- Task 1: Develop final mitigation plans or measures
- Task 2: Coordinate and collaborate with internal and external customers/partners
- Task 3: Develop, submit and coordinate permit package

TASKS

- Task 1: Prepare final mitigation

TASKS

- Task 1: Monitor construction mitigation
- Task 2: Document and report (if short-term)

TASKS

- Task 1: Monitor after completion of construction (extended monitoring)
- Task 2: Arrange or contract for extended monitoring
- Task 3: Document and report monitoring to regulatory agency
- Task 4: Evaluate for future projects
- Task 5: Post-construction collaborative review

to the type and magnitude of the proposed project and its anticipated social, economic and environmental effects and issues.

All of the activities outlined in the following sections are intended to streamline the environmental review process by involving resource agencies early in project planning and development. In addition, public involvement activities are conducted during each process to further ensure that stakeholder concerns are identified and adequately addressed.

3.4.2.1 Planning and Programming Process

As depicted in [Exhibit 3.4–B](#), the planning and programming process consists of three major non-environmental activities:

- Conduct planning activities ([Section 3.4.2.1.1](#)),
- Prepare project scoping report ([Section 3.4.2.1.2](#)), and
- Conduct annual multi-year program meeting to select projects ([Section 3.4.2.1.3](#)).

[Chapter 2](#) describes the planning and programming process in detail. The environmental tasks that may be required during these activities are described in the following subsections.

3.4.2.1.1 Conduct Planning Activities

Typically, no environmental tasks occur during this activity, except for environmental staff occasionally providing input on issues as needed. [Chapter 2](#) describes the activities encompassed in the transportation planning process.

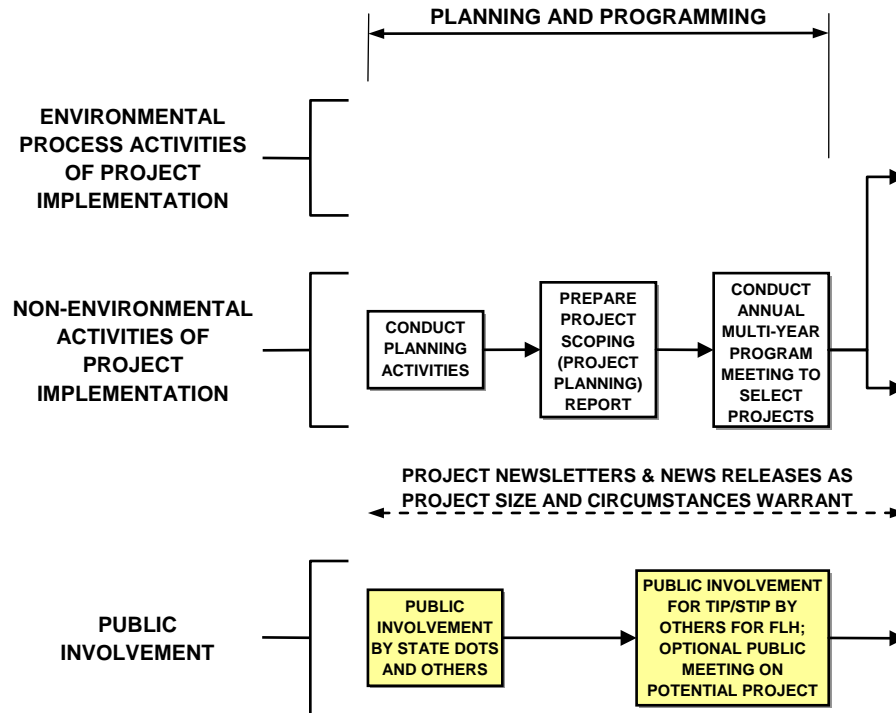
3.4.2.1.2 Prepare Project Scoping (Project Planning) Report

Preliminary environmental information should be gathered for inclusion in the project scoping report. See [Section 4.5.2](#). This type of information may be gathered through record searches, contacting environmental agencies and conducting interagency meetings or field reviews. The preliminary environmental information may consist of the following:

- Initial project NEPA class of action (i.e., Class I—EIS, Class II—CE, Class III—EA). [Section 3.5.1](#) describes the NEPA environmental class of action system in greater detail. Additional information is also included in the 23 CFR 771.115 of the [FHWA implementing regulations](#).
- Tentative schedule for completing the environment compliance requirements;
- Tentative project costs for environmental compliance and mitigation activities;
- Draft purpose and need statement (see [The Importance of Purpose and Need in Environmental Documents](#));
- Preliminary list of readily identifiable alternatives (see [Development and Evaluation of Alternatives](#));
- Potential environmental concerns or benefits associated with the project;

- Existing survey data; and
- Consistency with local, State or Federal land management plans.

Exhibit 3.4–B PLANNING AND PROGRAMMING PROCESS



3.4.2.1.3 Conduct Annual Multi-Year Program Meeting to Select Projects

The environmental staff may attend these meetings to provide information regarding the status of programmed projects and the feasibility, from an environmental standpoint, of programming other projects.

3.4.2.2 Project Development Process

The majority of the environmental review and compliance activities occur during the project development process. During this process, additional engineering and environmental data are developed through engineering analyses, environmental resource surveys and impact studies. In addition, interagency coordination and public involvement activities are conducted to obtain input on project development and the environmental processes. The appropriate NEPA documents and supporting information are prepared during this process, and project decisions are recorded, including selection of the alternative to be implemented. The project team oversees and guides these environmental activities.

Early in the project development process, the roles, expectations and schedules for involvement by those agencies, particularly cooperating agencies, participating in the project development, should be agreed upon and recorded in a project agreement as described in [Section 3.2.3.1](#).

The project development process consists of two phases:

- The conceptual studies and preliminary design phase, and
- The detailed design phase.

3.4.2.2.1 Conceptual Studies and Preliminary Design Phase

The conceptual studies and preliminary design phase consists of five environmental activities:

- Determine the scope of the environmental review (scoping process),
- Conduct resource surveys,
- Prepare draft environmental document,
- Circulate draft environmental document and conduct public involvement activities, and
- Prepare final environmental document.

Each of these activities is described briefly in the following sections and is graphically illustrated in [Exhibit 3.4–C](#).

1. **Environmental Scoping**

Prior to initiating the tasks comprising this activity, it is important to review the project agreement to develop a clear understanding of the agency roles, points of contact and other procedures and agreements. A preliminary engineering review is conducted concurrently with the environmental scoping activity as a part of the project development process. This engineering review should be consulted throughout the environmental scoping activity and the other activities in the conceptual studies and preliminary design phase.

Environmental scoping activities are formally undertaken in this phase, building on the information and input obtained during the planning and programming process. The environmental scoping activity consists of the following seven major tasks as graphically illustrated in [Exhibit 3.4–D](#).

a. ***Task 1: Review the project scoping (project planning) report***

The environmental staff reviews all pertinent information on the environmental issues and concerns of the proposed project and project area as identified during the earlier planning and programming process, including project scoping reports.

b. ***Task 2: Establish project team and conduct initial meeting***

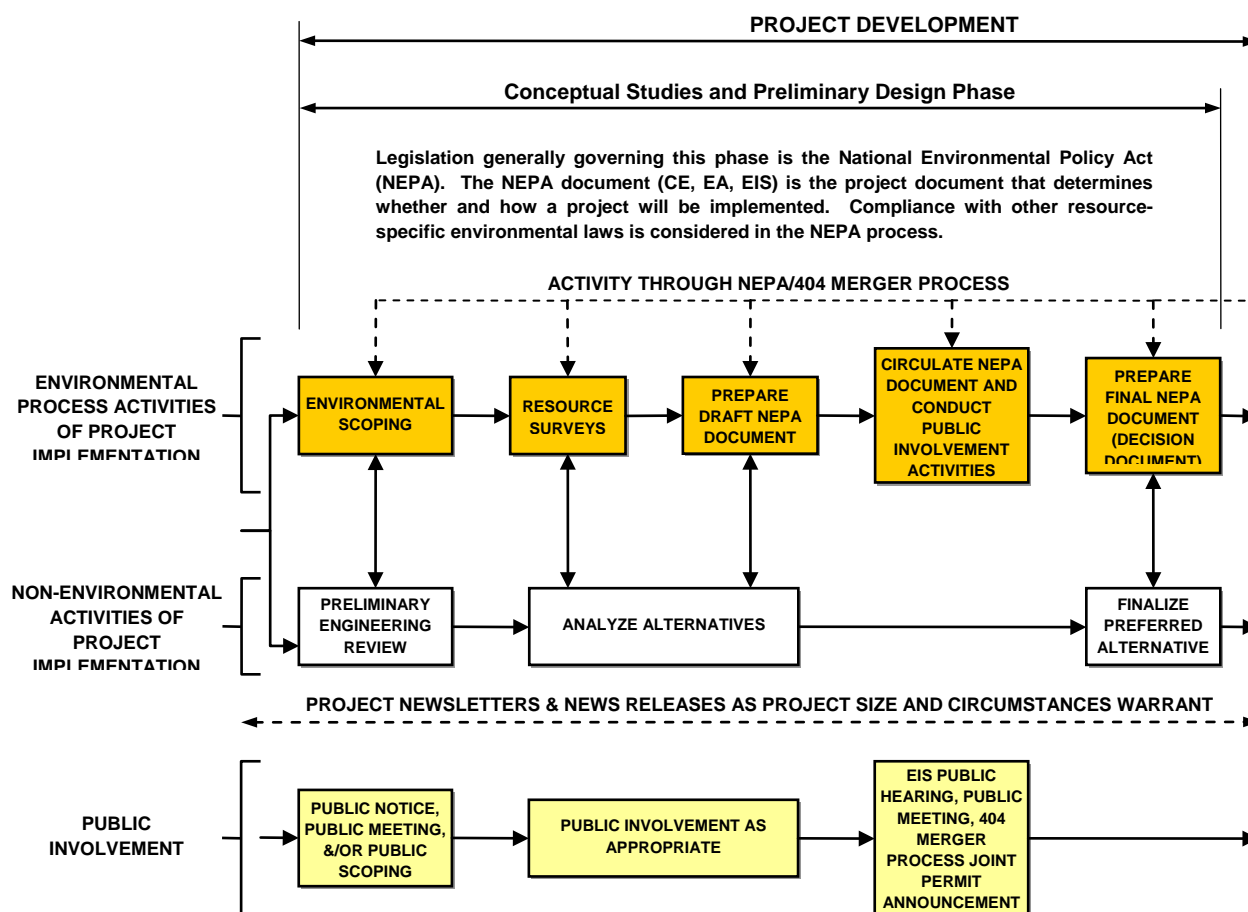
Depending on the scope of the project, the interagency/interdisciplinary team (the project team) may consist of representatives just from the program agencies or membership may be extended to representatives from resource and regulatory agencies, NEPA cooperating agencies and local governments. Only the program agencies are required to have members on this team. The project team is the decision-making body that acts on behalf of the member agencies to coordinate and share project activities and reach a consensus on major project decisions.

The first meeting should be conducted as early as possible during the conceptual studies and preliminary design phase to ensure that agency concerns and suggestions are taken into account before the project design progresses too far.

The initial team meeting should be conducted in conjunction with a field review of the project site. The following tasks should be accomplished at the first meeting:

- Review and discuss, as needed, the project agreement and each agency's roles and responsibilities,
- Discuss any project changes and developments since completion of the planning and programming process,

Exhibit 3.4–C PROJECT DEVELOPMENT PROCESS, CONCEPTUAL STUDIES AND PRELIMINARY DESIGN PHASE



TASKS

- Task 1: Review the project scoping (project planning) report
- Task 2: Establish project team and conduct initial meeting
- Task 3: Develop mailing list
- Task 4: Send project notice to public agencies
- Task 5: Conduct public scoping meetings
- Task 6: Publish Notice of Intent in Federal Register (EIS only)
- Task 7: Develop and refine the Purpose and Need and the alternatives, and identify major concerns

TASKS

- Task 1: Determine resource survey needs
- Task 2: Send introductory letters to resource agencies
- Task 3: Obtain access permission onto public and private property
- Task 4: Initiate and complete surveys
- Task 5: Review survey data and finalize survey
- Task 6: Coordinate survey results with analysis of alternatives

TASKS

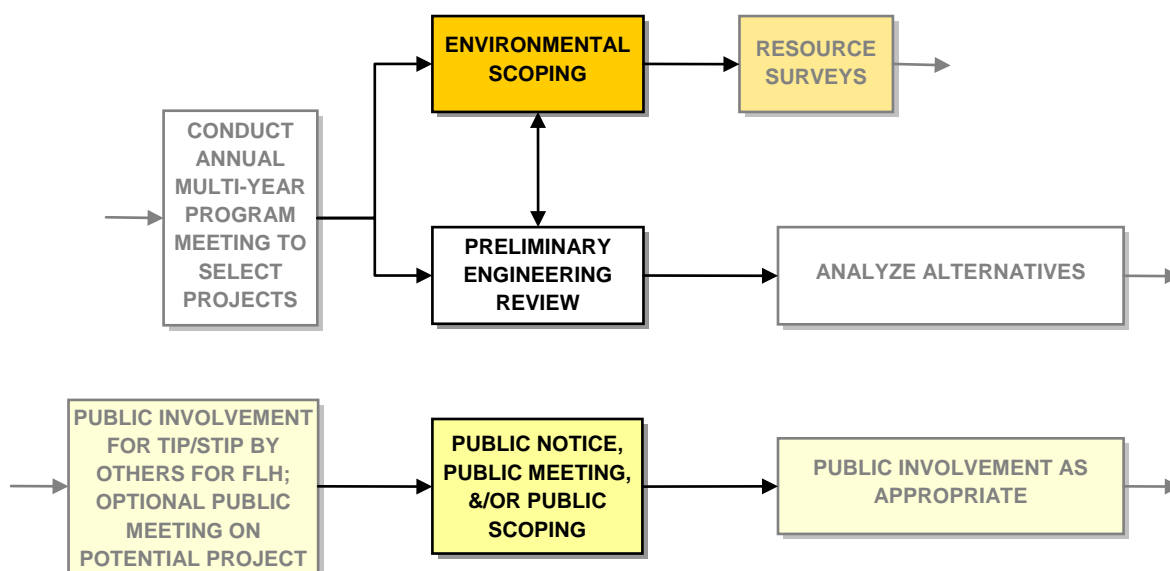
- Task 1: Complete resource analysis
- Task 2: Analyze and refine alternatives
- Task 3: Develop conceptual mitigation
- Task 4: Write draft NEPA document
- Task 5: Coordinate document with project team

TASKS

- Task 1: Public notice
- Task 2: Copy and distribute NEPA document
- Task 3: Conduct public involvement

TASKS

- Task 1: Review and respond to public comments
- Task 2: Finalize preferred alternative(s)
- Task 3: Prepare and approve the CE
- Task 4: Prepare EA or final EIS
- Task 5: Prepare, review and approve FONSI or ROD
- Task 6: Copy and circulate public notice and NEPA document(s)

Exhibit 3.4–D ENVIRONMENTAL SCOPING**TASKS**

Task 1: Review the project scoping (project planning) report

Task 2: Establish project team and conduct initial meeting

Task 3: Develop mailing list

Task 4: Send project notice to public agencies

Task 5: Conduct public scoping meetings

Task 6: Publish Notice of Intent in Federal Register (EIS only)

Task 7: Develop and refine the Purpose and Need and the alternatives, and identify major concerns

- Develop a tentative project schedule,
- Draft a project purpose and need statement to be included in the environmental document,
- Review the preliminary list of alternatives in the project scoping report, and revise as needed, and
- Set a tentative time for the next team meeting.

In the event that the project team consists only of the program agencies, then the team should arrange to meet with other Federal, State and Local resources and regulatory agencies as early as possible to inspect the project area on site and obtain feedback to guide further environmental surveys, studies, analyses and project development activities.

c. ***Task 3: Develop mailing list***

The environmental staff should obtain existing mailing lists from the FLM A and amend them to include the parties associated with the project, including local property owners. The project mailing list should be updated as the public involvement process progresses and additional interested parties are identified. The mailing list is used to send project notices, newsletters and other communications to the interested public and agencies.

d. **Task 4: Send project notice to public agencies**

Generally, a project notice is sent to the resource and regulatory agencies describing the proposed project and soliciting their input on the project. The primary purpose at this stage is to notify the agencies that project development work is beginning and that this process will include identifying a range of alternatives to be considered and the issues to be addressed, as well as the type of environmental document to be developed, among other tasks. For an EIS, the resource and regulatory agencies may also be asked to provide input on the project purpose and need. The notice may also alert the agencies to upcoming project team meetings to discuss the project.

e. **Task 5: Conduct public scoping meetings**

A public scoping meeting is usually held in or near the project area. The key objectives of the scoping meeting are the following:

- Provide an agency contact person or website for the public to obtain further information on the project;
- Describe the expected future project development activities;
- Outline the project schedule;
- Identify future opportunities for the public to obtain more information and provide comments (e.g., public meetings or hearings);
- Obtain public comments;
- Gather information from the public that will assist the FLH staff in analyzing and addressing the social, economic and environmental impacts of the project;
- Describe the purpose and need for the project; and
- Present preliminary alternatives identified in the project scoping report.

As this phase proceeds, it is important to keep the local public and other interested parties apprised of project development and to solicit and address the public's concerns. Effective public involvement is a key to successful project development. A public involvement plan may be prepared to guide these public involvement activities, which should be consistent with and build on the efforts made during the earlier planning and programming process. Public involvement can be accomplished with a variety of techniques, depending on the type and magnitude of the project, the issues involved and the interest and background of the public.

Additional guidance on public involvement and the scoping process is available from both the FHWA and the CEQ:

- [Public Involvement Techniques for Transportation Decision-Making.](#)
- [Public Involvement and its Role in Project Development.](#)
- [CEQ Scoping Guidance.](#)

Guidance from State transportation agencies on public involvement is also provided in [Appendices 3A.1](#) and [3A.2](#).

f. ***Task 6: Publish Notice of Intent in Federal Register (EIS only)***

For Class I actions, an EIS is prepared, requiring the publication of a Notice of Intent (NOI) in the *Federal Register* to alert other agencies, interest groups and the public of proposed scoping activities, and the plan to prepare an EIS. The NOI is prepared by the FLH environmental staff and is published and distributed as directed in 23 C.F.R. 771.123 and in the FHWA Technical Advisory T6640.8A. The content and format of the notice is provided in explicit detail in the FHWA [Technical Advisory T6640.8A](#), along with examples. Shortly after the NOI is published in the *Federal Register*, appropriate agencies should be formally invited to participate as cooperating agencies or participating agencies. Section 6002 of SAFETEA-LU supplements the existing FHWA and CEQ implementing regulations for NEPA and describes the roles and responsibilities of the lead, participating and cooperating agencies. The [SAFETEA-LU Environmental Review Process Final Guidance](#) is available and provides guidance on the environmental review process required by Section 6002 of SAFETEA-LU.

g. ***Task 7: Develop and refine the Purpose and Need and the alternatives, and identify major concerns***

Based on the preliminary environmental information gathered during the scoping process, the environmental staff, in coordination with the project team, develops and refines the purpose and need statement for the project. For EIS projects, cooperating and participating agencies and the public must also be given an opportunity to provide input on the purpose and need. For these larger, more complex projects, it is recommended that the environmental staff obtain written approval of the project purpose and need from each member of the project team. The purpose and need statement may continue to undergo minor refinements as the NEPA process continues. If any major changes are made to the project scope, thereby affecting the purpose and need, written approvals should be obtained from the project team members.

Using the information gathered during the scoping process, the project team should review the alternatives identified in the project scoping report and determine whether these alternatives are still feasible. A range of reasonable alternatives addressing the project purpose and need should be identified. Alternatives found to be unreasonable should be recorded, along with the reasons for that finding. For EIS projects, cooperating and participating agencies and the public must be given an opportunity to provide input on the range of alternatives and in determining the methods and level of detail for the analysis of alternatives. For larger, more complex projects, it is recommended that the environmental staff obtain written approval from each project team member for the range of alternatives to be considered.

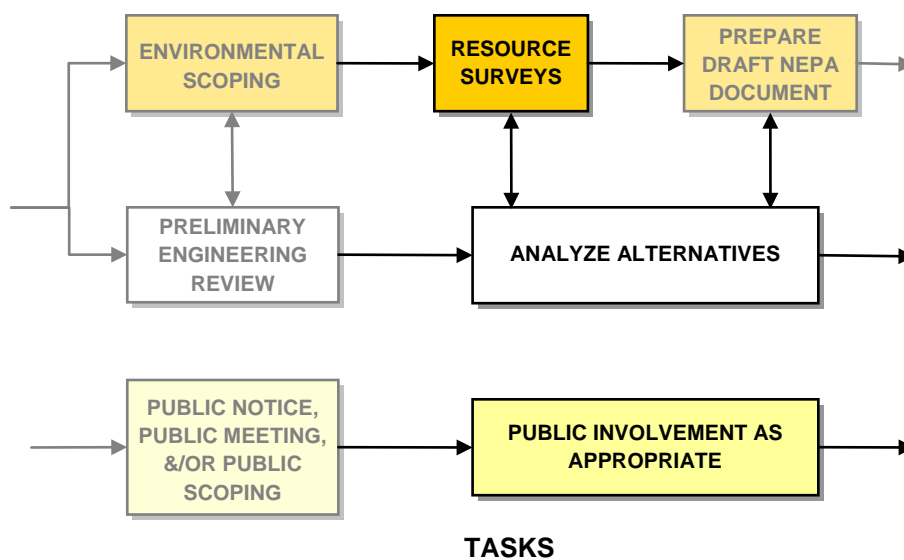
Using the information in the project scoping report and the information gathered during the scoping process, the project team identifies the social, economic and

environmental issues and concerns associated with the project. For EIS projects, participating agencies and the public must also be given an opportunity to identify issues of concern regarding the project's potential environmental or socioeconomic impacts.

2. Resource Surveys

A list of environmental resources to be considered during this activity is provided in [Section 3.3.2](#). The resource surveys activity consists of the following six tasks as illustrated in [Exhibit 3.4-E](#):

Exhibit 3.4-E RESOURCE SURVEYS



TASKS

- Task 1: Determine resource survey needs
- Task 2: Send introductory letters to resource agencies
- Task 3: Obtain access permission onto public and private property
- Task 4: Initiate and complete surveys
- Task 5: Review survey data and finalize survey
- Task 6: Coordinate survey results with analysis of alternatives

a. **Task 1: Determine resource survey needs**

The tasks performed under the environment scoping activity aid in identifying the social, economic and environmental issues and concerns that should be addressed in the environmental documents and help determine which environmental resource surveys need to be conducted in order to comply with all applicable Federal, State and Local requirements. The project area and preliminary design alternatives should be thoroughly reviewed to identify the potentially affected resources and the scope of the required surveys.

b. **Task 2: Send introductory letters to resource agencies**

By the time this activity is initiated, the resource and regulatory agencies should already be aware of the project. If a project notice was not sent during the environmental scoping phase, it should be sent now. The resource and regulatory agencies and other interested agencies and groups should be aware

of and involved in the development of the proposed project, the alternatives under consideration, the environmental resource surveys, environmental analysis and environmental documentation.

Resource and regulatory agency involvement in the resource surveys may include providing comments and advice on the area of potential effects, the survey data required to be collected, conducting these surveys and analyses or portions of them, or providing data in support of the resource surveys. Experience has shown that proactive interagency involvement is critical to secure the various agencies' trust and ensure successful project development.

c. ***Task 3: Obtain access permission onto public and private property***

In order to conduct the resource surveys, coordination with property owners and tenants on or adjacent to the proposed project right-of-way is necessary to obtain access permission onto public and private property. Prior to initiating resource surveys, property owners and tenants should be made aware of when field staff will be in the area collecting data. Notification may be provided through a bulk mailing or telephone calls to property owners.

d. ***Task 4: Initiate and complete surveys***

Resource surveys may be conducted by staff specialists or experts engaged by the partner agencies to assess existing environmental conditions; estimate the effects of the proposed project on the resources; and identify mitigation measures suitable to avoid or minimize the impacts. Base maps of the preliminary alternatives should be made available to ensure adequate data collection in the field and accurate estimates of project impacts. Existing literature and data provided by resource and regulatory agencies should be reviewed, preferably before the resource surveys are conducted and incorporated into the resource survey results. Resource or partner agencies should also provide input on the appropriate methods of data collection.

[Section 3.3.2](#) identifies the environmental resources considered in the NEPA analysis and describes the information required to support NEPA documentation.

e. ***Task 5: Review survey data and finalize survey***

The project team should review the resource survey results to become familiar with the type and location of resources in the project area. Previously undocumented resources or potential issues should be reviewed to determine if additional data collection is required.

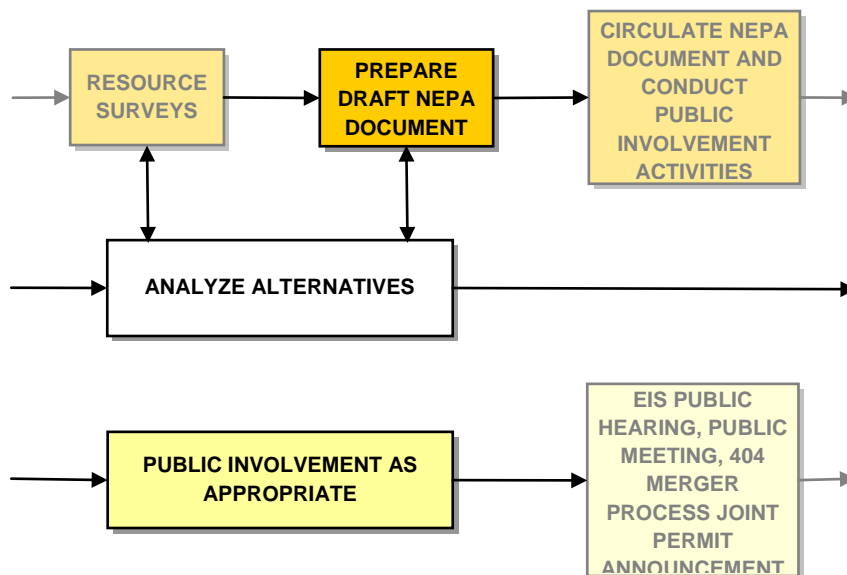
f. ***Task 6: Coordinate survey results with analysis of alternatives***

The project team should review the results of the resource studies and determine the significance of environmental impacts resulting from the proposed alternatives. This analysis should be based on the results of the resource surveys and input from the resource and regulatory agencies and the public. If data gaps are identified or additional information is needed to draw a firm conclusion about significance, additional data should be collected.

3. Prepare Draft NEPA Document

As the scoping process and environmental studies proceed, the preliminary NEPA class of action of the project made earlier in this phase should be confirmed (or updated) and implemented. [Section 3.5.1](#) describes the NEPA class of action system. Preparation of the draft NEPA document consists of the following five tasks illustrated in [Exhibit 3.4–F](#):

Exhibit 3.4–F PREPARE DRAFT NEPA DOCUMENT



TASKS

- Task 1: Complete resource analysis
- Task 2: Analyze and refine alternatives
- Task 3: Develop conceptual mitigation
- Task 4: Write draft NEPA document
- Task 5: Coordinate document with project team

a. ***Task 1: Complete resource analysis***

If data gaps have been identified or additional information is needed to draw a firm conclusion about significance, additional data should be collected so that firm conclusions about significance can be made.

b. ***Task 2: Analyze and refine alternatives***

The results of the resource surveys should be coordinated with the ongoing project engineering and environmental analyses to refine the project alternatives. If the required NEPA document is an EA, it may discuss the preferred alternative and any other alternatives considered; or if a preferred alternative has not been identified, it may present alternatives under consideration. An EA may address only one action alternative (or “build alternative”) and is not required to evaluate in detail all reasonable alternatives for the project.

If the required NEPA document is an EIS, the draft EIS should discuss all reasonable alternatives and also should summarize those alternatives eliminated

from detailed study. If, based on early coordination and environmental studies, a preferred alternative has been identified, it should be so stated in the draft EIS.

c. ***Task 3: Develop conceptual mitigation***

Once the alternatives are refined and the analysis of impacts has begun, compensatory mitigation requirements can be better defined. Mitigation is defined in Section 15.08.20 of the [CEQR regulations](#). Development of the mitigation concepts should be coordinated with the program agencies and the appropriate resource and regulatory agencies. Mitigation for unavoidable adverse impacts should be identified in the NEPA document and incorporated into the project action [23 CFR 771.105(d)]. An EIS should consider mitigation of impacts whether or not the impacts are significant (see [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#)). The conditions for funding mitigation measures are identified in the [FHWA implementing regulations](#), 23 CFR 771.105(d).

Preliminary design work for some types of proposed mitigations should be performed at this time to ensure that the mitigation plan is feasible, has a reasonable chance for long-term success, and is acceptable to the regulatory agencies.

It is [FHWA Policy](#) to seek opportunities to go beyond traditional mitigation efforts and to implement enhancement measures into transportation projects.

Enhancement measures should be considered and incorporated into the project at this stage. These types of enhancements can help to build strong relationships with affected communities. They should be coordinated with the program agencies and the public to determine their suitability for projects in the planning stage.

d. ***Task 4: Write draft NEPA document***

The results of the scoping process, the resource surveys and the engineering and environmental analyses are summarized and documented in the appropriate NEPA document for the project (i.e., CE, EA, draft EIS), which is prepared during this activity. Additional supporting documents are also prepared as needed to comply with all applicable environmental requirements. These may include a Section 4(f) evaluation, an ESA biological assessment, a CWA Section 404(b)(1) analysis, and others.

Guidance on the content of these documents is provided in [Section 3.3.2](#).

At a minimum, the CE (i.e., Class II actions) describes the proposed action, the surrounding area and any specific areas of concern (e.g., wetlands, Section 4(f), relocations), and any other Federal actions required for the project. Once a project has been approved as a CE, final design activities may begin (23 CFR 771.113). Additional guidance on the contents and format of the CE are provided in [Section 3.5.2.1](#).

The EA (i.e., Class III actions) addresses the purpose and need for the project; the preferred alternative under consideration and those dismissed from further consideration; and the social, economic and environmental impacts of the project. Additional guidance on the contents and organization of the EA are provided in [Section 3.5.2.2](#).

The draft EIS (Class I actions) addresses the purpose and need for the project; all reasonable alternatives under consideration and those dismissed from further consideration, the preferred alternative if one has been selected; and the social, economic and environmental impacts of each alternative. The NEPA document should demonstrate the project's compliance with all applicable regulatory requirements, and should balance the benefits gained in meeting the purpose and need against the adverse impacts and costs of each alternative, taking into account the proposed mitigation measures. Guidance on the format and content of the EIS is provided in [Section 3.4.2.2](#).

e. ***Task 5: Coordinate document with project team***

Once the environmental staff is satisfied with the preliminary NEPA document, it should be distributed to the project team members for a thorough review. Team members' comments on the document are often best resolved in a full team meeting with open communication.

If the document is a draft EIS, it should be reviewed and approved by the cooperating agencies after the project team comments are incorporated.

4. **Circulate NEPA Document and Conduct Public Involvement Activities**

Once the draft NEPA document is approved by the project team, it is distributed to other agencies and the public, as identified on the mailing list and in accordance with the CEQ and FHWA implementing regulations. Circulation of the draft NEPA document is accomplished through the following three tasks as illustrated in [Exhibit 3.4-G](#):

a. ***Task 1: Public notice***

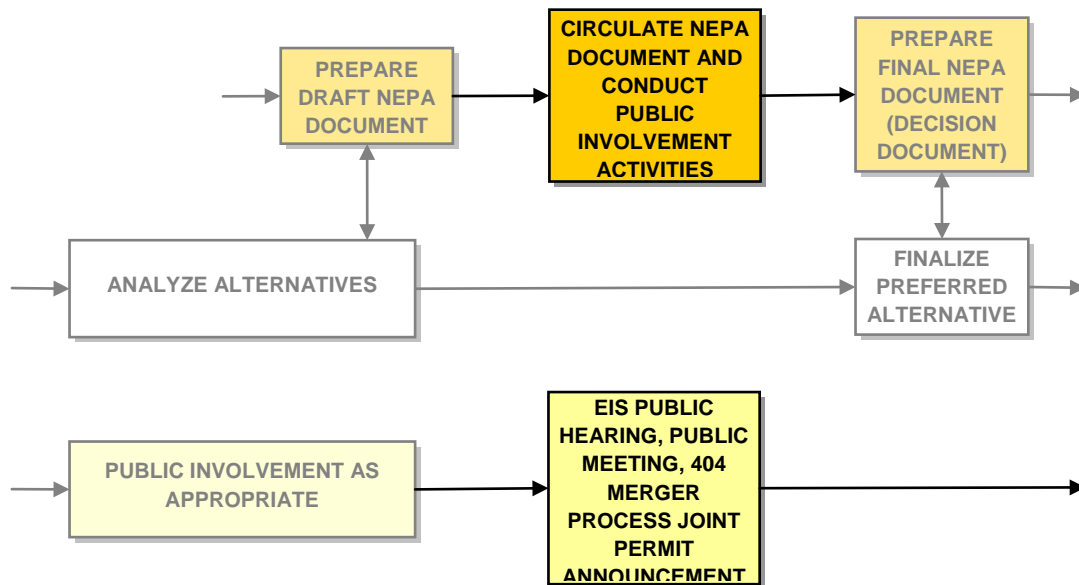
If the document is a CE, it is typically circulated and reviewed only within the FLH and the other partner agencies, although it may be announced and circulated to others if desired or requested.

The publication of an EA or draft EIS and any scheduled public meetings or hearings are usually announced with a public notice in the local general-circulation newspaper(s). In addition, notices are sent to the mailing list of interested citizens, agencies and stakeholder groups.

The EA or draft EIS public notice should contain the name of the project (and road), the project number, names of the lead and cooperating agencies, the project termini, a brief statement of the project purpose and need, a description of the planned activities and a map of the project area. The notice should explain the status of the project in the environmental review process and should invite public comments regarding the environmental analysis, permits and approvals.

Contact information should be included for those who wish to comment or request further information.

Exhibit 3.4–G CIRCULATE NEPA DOCUMENT



TASKS

Task 1: Public notice

Task 2: Copy and distribute NEPA document

Task 3: Conduct public involvement

A copy of the draft EIS is filed with the EPA. The EPA publishes a notice of availability in the *Federal Register*. The draft EIS should be distributed no later than the time the document is filed with the EPA for *Federal Register* publication and should allow for a minimum 45-day review period.

b. **Task 2: Copy and distribute NEPA document**

By the time the public notice is published, the EA or draft EIS should have been distributed to the parties on the mailing list. Copies of the document are also made available for review at convenient locations. The extent of distribution is determined by the NEPA class of action, size and scope of the project, public interest and the number of parties on the mailing list.

The distribution requirements for an EA or draft EIS are described in the FHWA [Technical Advisory T6640.8A](#). The FHWA [Environmental Guidebook](#), environmental documentation section, provides guidance on filing an EIS.

c. **Task 3: Conduct public involvement**

Although not required, after an EA is circulated, a public meeting is typically scheduled in conjunction with a 30-day public comment period on the document.

After a draft EIS is circulated, a minimum 45-day public comment period is required. Within this time period, a public hearing is required to obtain additional comments on the project and the document. Public meetings may be scheduled in addition to a public hearing.

Procedures for conducting public meetings and hearings are explained in the FHWA guidance, [Public Involvement Techniques for Transportation Decision-Making](#). In addition, the [FHWA implementing regulations](#) provide procedures for conducting public meetings and hearings.

The interagency agreements discussed in [Section 3.2.2](#) may include provisions for conducting jointly sponsored public meetings and hearings when appropriate.

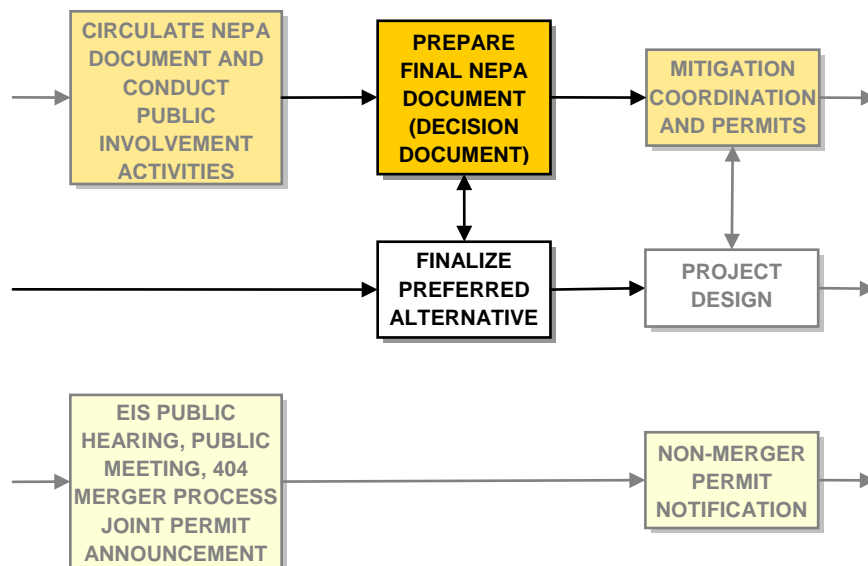
5. **Prepare Final NEPA Document (Decision Document)**

Preparation of a decision document (i.e., EA/FONSI, final EIS/ROD) consists of six tasks as illustrated in [Exhibit 3.4–H](#):

a. **Task 1: Review and respond to public comments**

Based on the circulation of the initial NEPA document and the oral or written comments received from the agencies and the public, the environmental staff reviews and responds to the comments, incorporates any necessary changes in the project and the document and prepares the decision document.

Exhibit 3.4–H PREPARE FINAL NEPA DOCUMENT



TASKS

- Task 1: Review and respond to public comments
- Task 2: Finalize preferred alternative(s)
- Task 3: Prepare and approve the CE
- Task 4: Prepare EA or final EIS
- Task 5: Prepare, review and approve FONSI or ROD
- Task 6: Copy and circulate public notice and NEPA document(s)

For EAs and EISs, the environmental staff coordinates with the other program agencies and the project's cooperating agencies to address the comments received. The comments should be included in the final environmental document along with the responses. There is no prescribed method for responding to comments or presenting changes in the decision document.

b. ***Task 2: Finalize preferred alternative(s)***

Typically, the EA or draft EIS identifies the preferred alternative for the project. Once the comments on the EA or draft EIS are addressed, the environmental staff coordinates with the project team and the cooperating agencies to identify any additional changes to the preferred alternative, or to determine whether selection of a new preferred alternative is warranted.

If the draft EIS does not identify a preferred alternative, then the preferred alternative should be identified as the alternative that best meets the project purpose and need while taking into account and balancing all of the social, economic, and environmental impacts and costs. The preferred alternative should be one that was fully studied in the draft EIS, or a combination of alternatives that were fully studied. If an alternative that was not fully studied is selected based on comments or new information, then preparation and circulation of a supplemental draft EIS may be required before the project can proceed to the decision document stage.

c. ***Task 3: Prepare and approve the CE***

Approved CEs are usually distributed only within the FLH and the partner agencies, although they may be announced and distributed to others if desired or requested. A notice of the CE approval and project status should be provided to interested parties. If a Section 4(f) approval is required for a project processed as a CE, the project may not proceed until notice of the approval has been issued (23 CFR 771.135(l)). The approval process for the CE is identified in [Section 3.5.3](#).

d. ***Task 4: Prepare EA or final EIS***

For an EA or a final EIS, once the preferred alternative is selected, the final document is approved by the FLH and published. The content and format of the EA and the final EIS are described in [Sections 3.5.2.2](#) and [3.5.2.3.2](#), respectively.

Once the environmental staff is satisfied with the EA or final EIS, copies of the document are distributed to the project team for a thorough review. If the document is a final EIS, it is also reviewed and approved by the project cooperating agencies after the project team is satisfied with the document.

e. ***Task 5: Prepare, review and approve FONSI or ROD***

For EAs (i.e., Class III actions), the decision document is a FONSI. Prior to preparing the FONSI and following the public availability period and receipt of comments on the EA, the action should be reviewed to determine the

significance of impacts. If, after completing the process, it is evident that there are no significant impacts associated with the project, a FONSI may be prepared. If, at any point in the process of preparing or processing an EA, it is discovered that the project would result in any significant impacts to the environment, then a draft EIS should be prepared.

The FONSI describes the action to be implemented, including the preliminary design features, environmental commitments and mitigation measures. The FONSI also explains why the action will not result in significant impacts. The FONSI should summarize the factors considered in the determination and may include responses to public comments on the EA.

For an EIS (i.e., Class I action), the decision document is a final EIS and ROD, which can be issued no sooner than the later of the following two dates:

- 90 days after publication of the notice of availability of the draft EIS, or
- 30 days after the final EIS is published.

The ROD identifies the alternative to be implemented, provides the rationale for this decision and summarizes the measures incorporated into the project to avoid or minimize environmental harm.

Once the FLH staff is satisfied with the FONSI or ROD, the document is circulated to the project team for review and approval. Subsequently, it is circulated to the cooperating agencies for review.

The FLH approval of the FONSI or ROD also constitutes approval to begin the detailed design phase of the project. The FHWA regulations require that the final environmental document for the project be approved before final design or other major project activities (e.g., property acquisition) can advance (23 CFR 771.113). If a Section 4(f) approval is required for a project processed as a FONSI, the project may not proceed until notice of the approval has been issued (23 CFR 771.135(l)).

Information on the content and format of FONSI and RODs is available in Sections [3.5.2.2.2](#) and [3.5.2.3.3](#), respectively. The approval process for the FONSI and the ROD is outlined in [Section 3.5.3](#).

f. ***Task 6: Copy and circulate public notice and NEPA document(s)***

Formal distribution of a FONSI is not required, but the notice of availability of the FONSI should be sent to Federal, State and local government agencies likely to have an interest in the project. The notice of availability should include all relevant project details, with contact information for requesting a copy of the FONSI. Alternatively, availability of a FONSI may be announced by public notice to the local newspaper(s) and the mailing list, and copies are made available at convenient locations for public review. The distribution requirements for the EA and FONSI are described in the FHWA [Technical Advisory T6640.8A](#).

Availability of a final EIS is announced by public notice to the local newspaper(s) and the mailing list. Copies are circulated and made available at convenient locations for public review. A notice of availability of the final EIS is published by the EPA in the *Federal Register*.

For a final EIS, the notice should announce the project decision and the availability of the ROD. The ROD can be issued no sooner than 30 days after the approved final EIS is made available.

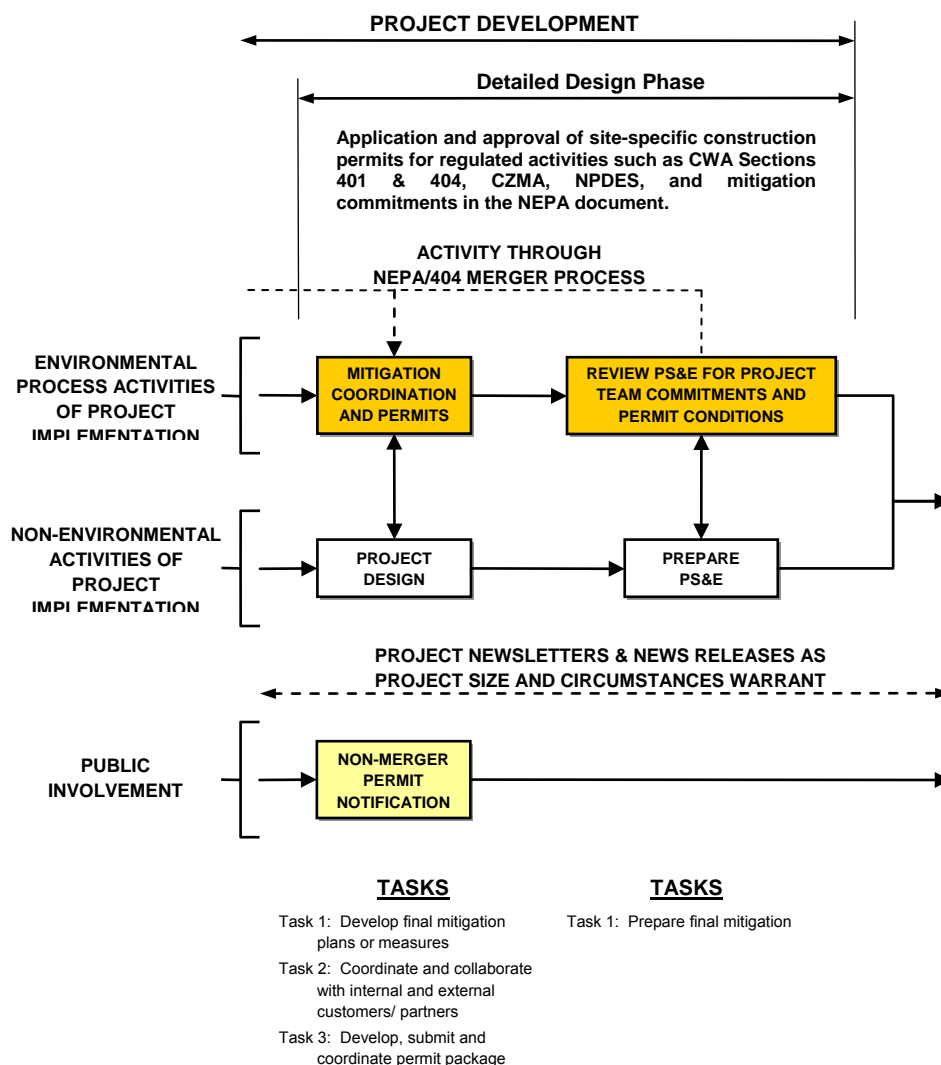
The distribution requirements for the final EIS and ROD are described in the FHWA Technical Advisory T6640.8A. Guidance for filing EISs is also available in the FHWA [Environmental Guidebook](#), environmental documentation section.

Section 6002(a) of SAFETEA-LU (also referred to as 23 USC 139(l) Limitation on Claims Notices) includes a new provision creating a maximum statute of limitations period of 180 days after publication of a notice in the Federal Register announcing that the permit, license or approval is final pursuant to the law under which the agency action is taken. If a notice is not filed in the Federal Register, then the applicable limitation on claims is a period of 6 years (28 USC 2401). This new provision may be used for any highway project, regardless of the class of action. However, it is likely justified only for EIS and EA projects. [FHWA Guidance on the Limitation of Claims Notices](#) gives additional information on its application in the NEPA process, including suggested language for inclusion in the NEPA documents.

3.4.2.2.2 Detailed Design Phase

This phase, illustrated in [Exhibit 3.4-1](#), involves the refinement of the project design (e.g., specific structural features, right-of-way plans, construction permit conditions, construction materials, methods and scheduling, and the plans, specifications, and estimates [PS&E]). The final environmental mitigation measures are also coordinated and incorporated, as appropriate, into the final design and PS&E. During the detailed design phase, the project team continues to seek to avoid, minimize and mitigate the adverse impacts of the selected alternative. The project team continues to oversee and guide the environmental process through this phase.

The detailed design measures, mitigation measures and permit requirements are expected to be consistent with the surveys, analyses and coordination conducted in the earlier phases and to build on them. Barring any substantial changes to the project, the project's final environmental document (i.e., CE, FONSI, final EIS/ROD) and its environmental commitments are expected to be valid and to be reflected in the project final design and PS&E. The environmental staff should confirm the validity of the environmental document before proceeding with each major project approval (i.e., final design, right-of-way, PS&E approval, construction). If a change occurs in the project that may substantially change the associated project impacts, or if considerable time has elapsed since the environmental document was approved or reviewed for validity, the environmental staff should conduct a written reevaluation of the document and supplement it if necessary.

Exhibit 3.4-I PROJECT DEVELOPMENT PROCESS, DETAILED DESIGN PHASE

The [FHWA implementing regulations](#) identify when a reevaluation or supplement is required. The format and content of a reevaluation and supplemental EIS are described in Sections [3.5.2.4](#) and [3.5.2.5](#), respectively.

The two activities and related tasks encompassed in the detailed design phase are described as follows:

1. **Mitigation Coordination and Permits**

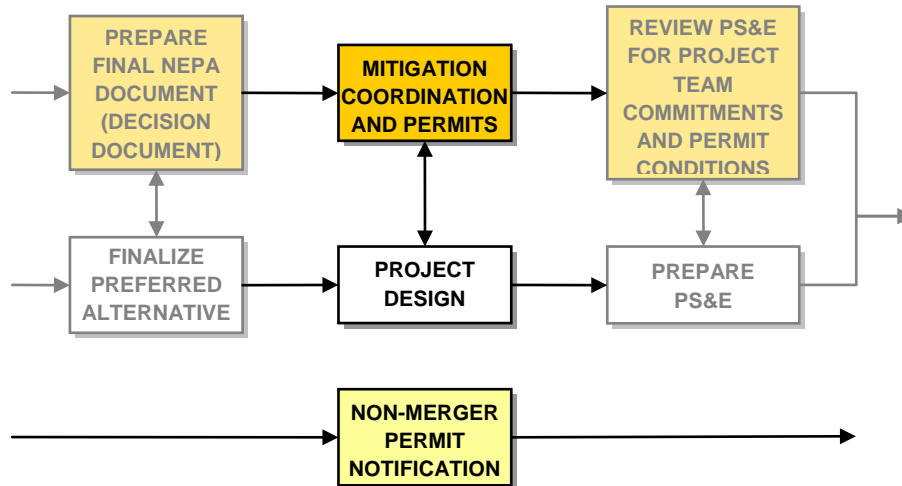
The mitigation coordination and permit activity consists of three tasks as illustrated in [Exhibit 3.4-J](#) and described below.

a. **Task 1: Develop final mitigation plans or measures**

Refinement of the project final mitigation measures is conducted in close coordination with partner agencies and the resource and regulatory agencies. Wetlands, streams, vegetation and cultural resources are common areas for which project-level mitigation measures are prepared. These measures may

include design documents, contractor specifications and/or permit conditions and other commitments. Design documents are often reviewed with the partner, resource and regulatory agencies and the environmental staff to obtain input on design features, mitigation requirements and permit conditions. The standard operating procedures for interagency agreements and cooperating agencies emphasize the full coordination and involvement of these agencies in development of the mitigation measures and permit application.

Exhibit 3.4–J MITIGATION



TASKS

Task 1: Develop final mitigation plans or measures

Task 2: Coordinate and collaborate with internal and external customers/ partners

Task 3: Develop, submit and coordinate permit package

b. ***Task 2: Coordinate and collaborate with internal and external customers/ partners***

As the detailed design phase proceeds, the local public and other interested parties should be advised of the project status and any important changes or developments. This may be accomplished through a project notice to the local newspaper(s) and the mailing list, or other appropriate techniques (e.g., a project newsletter, website). For some large, complex or sensitive projects, a public meeting may be held to inform the public on the design process, present the project design and solicit comments. Also during this phase, development of plans for the project right-of-way and property acquisition requires close coordination with property owners and tenants within, adjacent to, and near the project right-of-way. Finally, the mitigation commitments identified in the NEPA document and permits need to be communicated and incorporated into the PS&E package.

c. ***Task 3: Develop, submit and coordinate permit package***

The environmental staff gathers data from all sources (e.g., design documents, program agencies, NEPA documents, resource surveys) to complete the

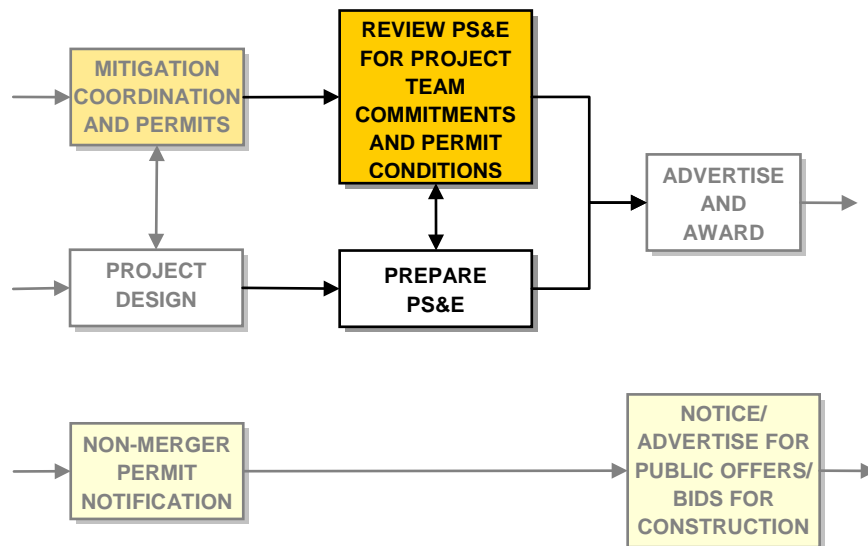
required permit applications. It is wise to verify with each agency the correct permit applications and instructions. Incorrect or missing information will delay the permit process. Each permit application is signed, and applicable application fees should be paid when the permit is submitted.

Permits have variable life spans. Ideally, the permits are valid for the duration of the project. If this is not feasible, the issuing agency should be contacted to ensure a clear understanding and process for extending the permit, if necessary.

2. Review PS&E for Project Team Commitments and Permit Conditions

During this activity illustrated in [Exhibit 3.4–K](#), the environmental staff, project team and others review the PS&E package to ensure that the proposed action has not changed since the NEPA approval stage, and that the environmental mitigation measures, commitments and permit conditions are incorporated into the PS&E package as addressed in the environmental document and as coordinated with the regulatory agencies. Any items that are lacking or deficient are identified by these reviewers, who specify the conditions that need to be addressed or completed. The final, complete PS&E package is reviewed by the responsible environmental official to verify that the project is ready for advertisement. This activity consists of one task:

Exhibit 3.4–K REVIEW PS&E



TASKS

Task 1: Prepare final mitigation

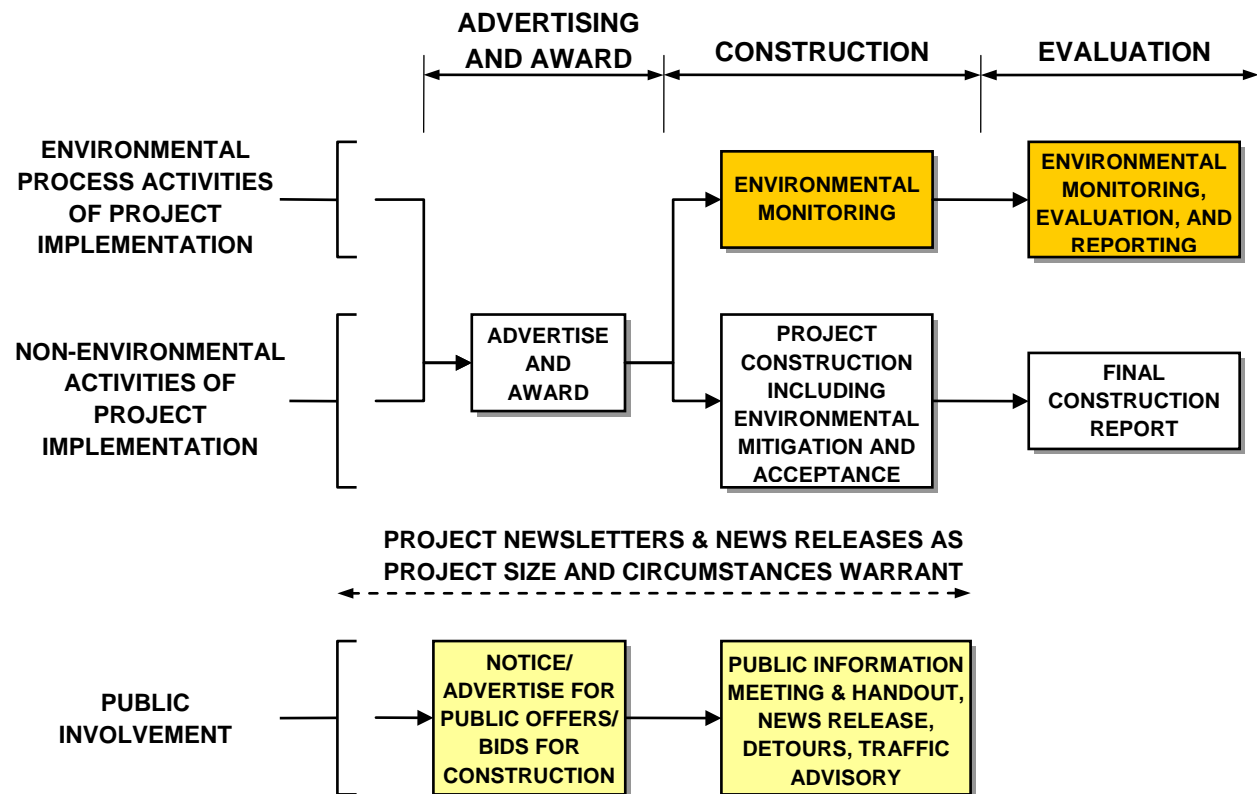
a. **Task 1: Prepare final mitigation**

The final mitigation plan should be completed under this activity and should be ready prior to advertising and award. The plan may be included in the highway contract or developed as a separate contract, or implemented by a program agency.

3.4.2.3 Advertising and Award Process

The advertising and award process is generally not affected by environmental procedures. All environmental documents and other information that would be useful to the contract management staffs should be compiled during this process. In addition, if a project faces complex environmental issues, a meeting with the construction staff may be scheduled to communicate those complexities and the commitments that have been made. The advertising and award process is shown in [Exhibit 3.4-L](#).

Exhibit 3.4-L ADVERTISING AND AWARD, CONSTRUCTION AND EVALUATION PROCESSES



TASKS

- Task 1: Monitor construction mitigation
- Task 2: Document and report (if short-term)

TASKS

- Task 1: Monitor after completion of construction (extended monitoring)
- Task 2: Arrange or contract for extended monitoring
- Task 3: Document and report monitoring to regulatory agency
- Task 4: Evaluate for future projects
- Task 5: Post-construction collaborative review

3.4.2.4 Construction Process

During this process, the project is constructed according to the final design in the PS&E including the environmental commitments, mitigation measures and permit conditions. Construction is expected to be consistent with the determinations and commitments of the environmental document and earlier environmental coordination. If project changes occur during construction that affect earlier environmental coordination, determinations or commitments, these changes are to be coordinated with the environmental staff, the partner agencies and the resource and regulatory agencies, as appropriate. The construction staff is expected to use all practical means to minimize adverse social, economic and environmental impacts during construction.

The construction process consists of one primary activity, environmental monitoring as shown in [Exhibit 3.4-L](#). The project mitigation plan and environmental permits may specify that environmental monitoring and reporting be carried out during construction activities. The environmental staff may also selectively monitor project construction for environmental compliance. The environmental monitoring activity consists of the two tasks:

1. ***Task 1: Monitor construction mitigation***

The purpose of monitoring during construction may vary with the project. Resources that are commonly monitored during construction include wetlands, erosion control, water quality and revegetation. Most often, monitoring is required to ensure that environmental mitigation measures and commitments are implemented as intended. For example, the contractor is required to ensure that the best management practices (BMPs) and measures identified in the stormwater pollution and prevention plan (required under the NPDES permit, described in [Section 3.3.3.3](#)) are properly installed and functioning. Sometimes monitoring is required to ensure that construction follows the appropriate sequence or achieves the design requirements (e.g., topographic elevation, slope position, skew). Monitoring is arranged by the environmental staff and is conducted by FLH, other agencies or their consultants.

2. ***Task 2: Document and report (if short-term)***

Reporting in some form (i.e., reports, forms, memos) may be required during construction, depending on commitments with the regulatory agencies. Documentation during the construction period is most likely to be required when construction involves important or sensitive environmental features or conditions, or when new or innovative design or mitigation measures are used. Reporting is often provided by those conducting the monitoring. The report is then forwarded to the environmental staff, who circulates it to the construction engineer, engineering staff, partner agencies, resource and regulatory agencies, project team and others as appropriate.

3.4.2.5 Evaluation Process

The completed construction project is evaluated for proper implementation of environmental measures and assessment of the effectiveness of these measures. The evaluation process consists of environmental monitoring, evaluation and reporting as shown in [Exhibit 3.4-L](#).

Once construction is complete, the construction engineer formally accepts the completed project from the contractor and verifies that environmental mitigation measures and commitments have been constructed and are operating as intended. The construction personnel also summarize the implementation and effectiveness of these measures in the final project construction report.

The purposes and processes for carrying out post-construction monitoring, evaluation and reporting are similar to those discussed above for the construction process. The environmental staff arranges for monitoring, evaluation and reporting in coordination with the resource and regulatory agencies, the interagency/interdisciplinary team, the maintaining agency and others as appropriate. The environmental monitoring, evaluation and reporting activity consists of five tasks:

1. ***Task 1: Monitor after completion of construction (extended monitoring)***

The project mitigation plan and environmental permits may specify that environmental monitoring and evaluation be carried out after construction activities are complete. Long-term monitoring is likely to be required when compensatory wetland mitigation is required or when the project includes a new or innovative design or mitigation measures (e.g., wildlife crossing structures, slope stabilization, stormwater treatment or control). Revegetated areas or exposed slopes may also be monitored after construction is complete.

The purpose of monitoring varies with the project. Most often monitoring is conducted to ensure that environmental mitigation measures and commitments adequately offset the impacts of the project.

2. ***Task 2: Arrange or contract for extended monitoring***

Long-term monitoring is arranged by the environmental staff and may be conducted by FLH, other agencies or their consultants.

3. ***Task 3: Document and report monitoring to regulatory agency***

The results of long-term monitoring are documented in a report to the regulatory agency, often prepared by those conducting the monitoring. The report is then forwarded to the environmental staff, who circulates it to the construction engineer, engineering staff, program agencies, resource and regulatory agencies, the project team and others as appropriate. If the mitigation efforts are unsuccessful, additional mitigation measures may be required.

4. ***Task 4: Evaluate for future projects***

The results of the post-construction monitoring should be evaluated to inform future projects. Monitoring and evaluation serve a further purpose when the lessons learned are applied to future projects.

5. ***Task 5: Post-construction collaborative review***

A post-construction review should be performed with the design team, construction staff and other technical personnel to gain an understanding of the successes and failures of the mitigation efforts. It is important to evaluate the performance of both the

construction-process mitigation measures and the permanent mitigation measures. The follow-up review may include an onsite visit by FLH staff, program agencies and resource and regulatory agencies.

3.5 NEPA DOCUMENTATION

This section describes the FHWA NEPA class of action system and identifies the required NEPA documentation for each class of action. In addition, guidance is provided on contents of the documentation. The process for producing NEPA documents when FLH is the lead agency is discussed in [Section 3.4.2](#). If FLH is not designated as the lead agency for NEPA compliance, the division engineer determines when FLH incurs a NEPA responsibility and identifies the appropriate documentation to address that responsibility.

The most useful resource for specific information on the contents of NEPA documents is the FHWA [Technical Advisory T6640.8A](#).

[Appendix 3A.2](#) lists additional online sources from State transportation agencies that provide information on each NEPA document type and the required contents.

3.5.1 NEPA CLASS OF ACTION

There are three classes of actions that prescribe the level of NEPA documentation required:

- Class I Action—Requires an EIS.
- Class II Action—Requires a CE.
- Class III Action—Requires an EA.

An action is defined as “a highway or transit project proposed for FHWA or FTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds [23 CFR 771.107(b)]”. The [FHWA implementing regulations](#) describing the classes of actions and providing examples are discussed in the following sections.

3.5.1.1 Class I Action (EIS)

A Class I action is an action that significantly affects the environment and requires an EIS (23 CFR 771.115(a)). The following are examples of actions that normally require an EIS:

- A new controlled access freeway;
- A highway project of four or more lanes on a new location;
- New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit); and/or
- New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

An EIS is required for any action that has a significant environmental impact. “Significantly” as used in NEPA requires considerations of both context and intensity and is defined in the [CEQ](#)

[regulations](#). An EIS may also be prepared for other reasons, including significant public controversy with widespread and/or conflicting opinions by recognized experts.

3.5.1.2 Class II Action (CE)

Categorical exclusion refers to actions that do not individually and cumulatively have a significant effect on the human environment (23 CFR 771.115(b)). These actions are excluded from the requirement to prepare an EA or EIS. The FHWA [Technical Advisory T6640.8 A](#) provides additional guidance for determining whether a project qualifies for a CE.

The [FHWA implementing regulations](#) include a list of projects that generally meet the criteria for a CE.

CEs are divided into two groups based on a proposed action's potential for impacts. The first group of actions, known as the C list (23 CFR 771.117(c)), includes 20 types of actions that normally do not cause significant environmental impacts. The second group, known as the D list (23 CFR 771.117(d)), consists of actions having a higher potential for impacts than the first group but still meeting the criteria for a CE.

All projects considered for a CE must undergo an "unusual circumstances" review as defined in 23 CFR 771.117(b). If a project involves one or more of these unusual circumstances, resource studies should be conducted to determine whether the CE classification is appropriate. As defined in 23 CFR 771.117(b), unusual circumstances include the following:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the *USDOT Act* or Section 106 of the *National Historic Preservation Act*, and
- Inconsistencies with any Federal, State or Local law, requirement or administrative determination relating to the environmental aspects of the action.

3.5.1.3 Class III Action (EA)

A Class III action is an action in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required (23 CFR 771.115 (c)).

3.5.2 NEPA DOCUMENT CONTENTS

This section describes the content requirements for each NEPA document type. NEPA documents should be logical, thorough and concise, with all impact conclusions self-evident based on the contents of the document itself and associated appendices, if any. Although there is a general list of items that each document should contain, each document should be customized to the conditions and circumstances of the project. Therefore, only the important issues (as identified by the project team in consultation with resource agencies and the public,

and based on the results of resource surveys) should be thoroughly analyzed, with less attention given to issues that the project team and the public determine to be of less concern.

The primary reference for the content and format of all NEPA document types is the FHWA [Technical Advisory T6640.8A](#).

Another useful guidance document on NEPA document contents and the NEPA process is the [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#).

See [Section 3.3.1](#) for more information on States with NEPA-equivalent laws.

When the FLH serves as a joint lead agency, the NEPA document may have additional content requirements to meet the needs of the other Federal lead agencies. See [Section 3.3.1.2.7](#) for more information on partner agency guidance on preparing NEPA documents.

3.5.2.1 Categorical Exclusion (Class II Action)

If an action is on the C list, the action is automatically classified for a CE, and except where unusual circumstances exist, the project does not require further approvals or documentation to comply with NEPA. However, other environmental laws (e.g., NHPA, ESA, CWA) may still apply and documentation necessary to comply with those laws is not nullified by classifying a project as a CE.

If an action is on the D list, or is not on either list but might qualify for a CE, additional information and documentation is needed to determine whether the CE classification is appropriate. Typically, D list projects have a higher potential for impacts than C list projects but still meet the criteria for a CE.

It is standard procedure to prepare a CE document for all CE projects, regardless of their status on the C list or D list. The FHWA [Technical Advisory T6640.8A](#) provides guidance on the level of documentation appropriate for the type of action and extent of impacts, and emphasizes that different levels of information and environmental studies may be required to approve the CE. The CE project files should include justification for classifying the project as a CE as well as records of coordination and compliance with the various environmental regulations described in [Section 3.3.2](#).

There is no standard format or outline for CE content and format.

3.5.2.2 Environmental Assessment (Class III Action)

The documentation for Class III actions includes the EA and the FONSI. The contents of each document are discussed in the following sections. The process and timing for preparation and submittal of each of these documents are discussed in [Section 3.4.2](#).

3.5.2.2.1 Environmental Assessment

See the [FHWA implementing regulations](#) on EAs. The EA should briefly address all relevant environmental resources or features but should fully address those environmental resources that would be potentially affected by the project. The EA should also be a concise document and should not contain long descriptions of detailed information which may have been gathered or analyses which may have been conducted for the proposed action. See [NEPA Documentation: Environmental Assessment](#) for the definition of and purpose for an EA, as well as a brief overview of the content and process.

The FHWA [Technical Advisory T6640.8A](#) suggests an outline for the EA and describes the information to be included for each item in the outline. The technical advisory States that the discussion of impacts should include enough analysis to adequately identify the expected impacts and appropriate mitigation measures. In addition, it is appropriate to include a summary of mitigation commitments in a separate section of the EA.

In addition to the guidance on the purpose and need for the action and project alternatives provided in the FHWA Technical Advisory T6640.8A, see [The Importance of Purpose and Need in Environmental Documents](#) and [Development and Evaluation of Alternatives](#).

See question 36a in the [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#), which asks "How long and detailed must an EA be?"

If a Section 4(f) evaluation is required for the project, it is typically included as part of the EA. Pertinent information in the EA may be summarized in the Section 4(f) evaluation to avoid repetition. Additional guidance on documentation requirements for the Section 4(f) evaluation in the EA is contained in the FHWA implementing regulations.

The FHWA [Environmental Guidebook](#), *Indirect and Cumulative Impacts* contains several links to useful guidance on the consideration of indirect and cumulative impacts in the NEPA document.

The EA appendix materials may include a Section 404(b)(1) evaluation, a biological assessment, a biological opinion, a conceptual wetland mitigation plan, or documentation of compliance with Section 106 or other executive orders. The format and content of these documents are discussed in [Section 3.3.2](#).

The FHWA Technical Advisory T6640.8A also provides guidance on the contents of a revised EA, issued after the public availability period. The key elements of EA revisions include:

- Documentation of changes in the proposed action or mitigation measures resulting from comments received during the public availability period.
- Statements of findings, agreements, or determinations for the project.
- Summary of pertinent comments on the EA and appropriate responses to the comments.

3.5.2.2.2 Finding of No Significant Impact

See the [FHWA implementing regulations](#) on FONSI.

After reviewing the public comments on the EA, responses to the comments are prepared and, if appropriate, a finding is made that the project would have no significant impacts. The responses to comments, the amending of the EA as needed and the FONSI all require approval and concurrence from the appropriate project team members.

The FONSI is a separate, brief document attached to the EA. The FONSI is a decision document that sets forth and supports the FHWA's conclusions that the proposed action has no significant impacts. For further information, see the [CEQ regulations](#) definition of FONSI. Section 6002(a) of SAFETEA-LU (also referred to as 23 USC 139(l) Limitation on Claims Notices) includes a provision creating a maximum statute of limitations period of 180 days, versus 6 years as identified in 28 USC 2401. Refer to [FHWA Guidance on the Limitation of Claims Notices](#) for application of this new provision in the NEPA process.

In addition to documenting compliance with NEPA, the EA and FONSI should also document compliance with other applicable environmental laws, executive orders and related requirements. If full compliance with these other requirements is not possible at the time the FONSI is prepared and signed, the EA and FONSI should summarize the consultation that has occurred thus far, and describe when and how the requirements will be met. If use of a Section 4(f) evaluation is required for a project, the FONSI must specifically address the reasons why the alternatives to avoid a Section 4(f) property are not feasible and prudent, and all measures to be taken to minimize harm to the Section 4(f) property. Additional guidance on the documentation requirements for the Section 4(f) evaluation in the FONSI is contained in the FHWA implementing regulations.

If it is determined that based on the information contained in the EA, the project may have significant impacts, then the project is upgraded to a Class I action requiring the preparation of an EIS.

3.5.2.3 Environmental Impact Statement (Class I Action)

See [Section 3.5.1.1](#) for guidance on determining whether a project meets the criteria for an EIS.

Documentation for Class I actions are the draft EIS, final EIS and ROD. The contents of each of these documents are discussed below. The process and timing for their preparation and submittal are discussed in [Section 3.4.2](#).

3.5.2.3.1 Draft Environmental Impact Statement (Draft EIS)

The primary reference for draft EIS organization and content is the FHWA Technical Advisory T6640.8A. Also, see the [FHWA implementing regulations](#) on the draft EIS. The implementing regulations describe the draft EIS process and the FHWA responsibilities in preparing and circulating the document. A concise overview of the content and process for an EIS is available at [NEPA Documentation: Environmental Impact Statement](#).

The [CEQ regulations](#) provide only general guidance on the recommended format for EISs. The regulations state that the agency shall use an EIS format that encourages good analysis and clear presentation of the alternatives, including the proposed action. The regulations contain a

standard EIS for matters that should be followed unless the agency determines that there is a compelling reason to do otherwise.

The California Division of the FHWA developed a [checklist for draft NEPA documents](#). The checklist is based on FHWA Technical Advisory T6640.8A, but provides a useful and concise list of the information that should be provided in a draft EIS. Some FLH Divisions have developed their own checklists.

The FHWA [Technical Advisory T6640.8A](#) provides a suggested outline for the draft EIS. The advisory contains considerable detail regarding the content for each item and therefore is not repeated here. The technical advisory suggests that the draft EIS should provide a single description of the project area and should document all socially, economically and environmentally sensitive features in the proposed impact area. The summary of existing conditions should be limited to information which will have a bearing on possible impacts, mitigation measures and selection of an alternative. The discussion should be commensurate with the importance of the impact and less important information should be summarized or referenced. The technical advisory also suggests impacts and mitigation measures should be discussed in the environmental consequences section of the draft EIS. It is appropriate to include a summary of mitigation commitments in a separate section of the EIS.

[Section 3.3.2](#) provides additional guidance on the required NEPA documentation for the environmental resources addressed in the draft EIS.

If a Section 4(f) evaluation is required for the project, it is typically included as part of the draft EIS. Pertinent information in the EIS may be summarized in the Section 4(f) evaluation to avoid repetition. Additional guidance on the documentation requirements for the Section 4(f) evaluation in the final EIS is contained in the FHWA implementing regulations and the Technical Advisory T6640.8A.

The appendix materials to the draft EIS may include a Section 404(b)(1) evaluation, a Section 106 Memorandum of Agreement, a biological assessment, a biological opinion, a conceptual wetland mitigation plan or documentation of compliance with Section 106 or other executive orders. The format and content of these documents are discussed in [Section 3.3.2](#).

3.5.2.3.2 Final Environmental Impact Statement (Final EIS)

See the [FHWA implementing regulations](#) for information on the final EIS. The regulations describe the final EIS approval and circulation process.

The California Division of the FHWA also developed a [checklist for final NEPA documents](#).

The FHWA [Technical Advisory T6640.8A](#) provides guidance on content for each of the three options for preparing a final EIS (i.e., traditional approach, condensed final EIS, abbreviated version of a final EIS).

The final EIS, particularly the discussion of the preferred alternative, may warrant additional information and more detail on expected impacts as well as firm mitigation commitments. The

final EIS must address public comments received on the draft EIS. The [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#) provides guidance on how the comments should be addressed in the final EIS.

If a Section 4(f) evaluation is required for a project, the final EIS must specifically address the reasons why the alternatives that avoid use of a Section 4(f) property are not feasible and prudent, and all measures that will be taken to minimize harm to the Section 4(f) property. Additional guidance on requirements for the Section 4(f) evaluation in the final EIS is contained in the FHWA implementing regulations.

Procedures for Considering Environmental Impacts, [DOT Order 5610.ID](#), provides additional guidance on the content, approval and circulation of the final EIS.

3.5.2.3.3 Record of Decision (ROD)

See the [FHWA implementing regulations](#) for information on RODs. The regulations describe the timing and purpose of the ROD and identify the conditions requiring a revised ROD.

The ROD identifies the selected project alternative, explains the reasons for the decision, summarizes any mitigation measures incorporated into the project, and documents any required Section 4(f) approval. The ROD must explain the basis for the project decision as completely as possible, based on the information contained in the EIS (40 CFR 1505.2).

The FHWA [Technical Advisory T6640.8A](#) identifies the following key items that must be addressed in the ROD:

- Decision;
- Alternatives;
- Section 4(f) evaluation;
- Measures to minimize harm;
- Monitoring or enforcement program; and
- Comments on final EIS.

The [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#) provides guidance on the content of the ROD as well as required provisions pertaining to mitigation and monitoring.

The ROD should also include a statement of concurrence from the partner agencies.

Section 6002(a) of SAFETEA-LU (also referred to as 23 USC 139(l) Limitation on Claims Notices) includes a provision creating a maximum statute of limitations period of 180 days, versus 6 years as identified in 28 USC 2401. Refer to [FHWA Guidance on the Limitation of Claims Notices](#) for application of this new provision in the NEPA process.

3.5.2.4 Reevaluations

Prior to finalizing the decision document, letting a contract, or approving a project that has been shelved for a period of time, the NEPA document should be reviewed to ensure that the scope

of the project is still covered by the document, the resource surveys are still current, and that the identified impacts and related mitigation are still accurate.

The [FHWA implementing regulations](#) pertaining to reevaluations (23 CFR 771.129) describe the conditions under which a reevaluation is conducted. These conditions are:

1. **Draft EIS Evaluation.** A written evaluation of the draft EIS shall be prepared if an acceptable final EIS is not submitted to the FHWA within three years after the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.
2. **Final EIS Evaluation.** A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement or the last major FHWA approval or grant.
3. **Approval.** After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the FHWA prior to requesting any major approvals or grants, in order to establish whether the approved environmental document or CE designation remains valid for the requested FHWA action. These consultations will be documented when determined necessary by the FHWA.

No additional guidance is provided on the reevaluation of CEs or EAs.

The FHWA [Technical Advisory T6640.8A](#) identifies the criteria requiring a reevaluation and discusses the contents of reevaluations for draft and final EISs.

3.5.2.5 Supplemental Environmental Impact Statement

The [CEQ regulations](#) describe the conditions for preparing a supplemental EIS. *Procedures for Considering Environmental Impacts*, [DOT Order 5610.ID](#) provides additional guidance on when a supplemental EIS is required. Generally, the supplemental EIS is required whenever there are changes, new information, or further developments on a project that result in significant environmental impacts not identified in the most recently distributed draft or final EIS.

When there are changes, new information or further developments on a project, these new data must first be reviewed to determine if they would result in significant environmental impacts not previously identified. If it is determined that the changes would not result in significant environmental impacts, that determination should be documented. For a draft EIS, this documentation could be a discussion in the final EIS. After final EIS approval, this documentation would take the form of notation to the files describing any appropriate environmental studies and analyses.

The [FHWA implementing regulations](#) on supplemental EISs are contained in 23 CFR 771.130. The regulations describe the circumstances for preparing a supplemental EIS and its format and content.

The FHWA [Technical Advisory T6640.8A](#) discusses the format and content of supplemental draft and final EISs.

3.5.2.6 Use of Consultant Logo

Consultant logos are not displayed on FHWA-approved NEPA documents. Consultant identification is allowed only in the list of contributors and preparers.

3.5.3 INTERNAL DOCUMENT APPROVALS

Part I, Delegations of Authority, Chapter 6 Federal Lands of the *FHWA Delegations and Organization Manual*, [FHWA Order M1100.1A](#) provides detailed guidance on internal document approvals. The appendix at the end of Part I, Delegations, Chapter 6, Federal Lands provides a clear summary of delegations for NEPA documents and Section 4(f) approvals.

3.6 TRACKING AND REPORTING

3.6.1 ENVIRONMENTAL DOCUMENT TRACKING SYSTEM

An environmental document tracking system (EDTS) is used to track time required to complete EA and EIS documents and track reasons for delays.

The tracking system database itself is accessible only through the FHWA StaffNet site and only by staff registered to use the system. The program provides a help menu to assist with navigating the system. See a [description of the tracking system](#) and a contact source for more information about the database.

Each FLH Division is expected to record and periodically update key information on the progress of every active EA and EIS project. The environmental team leader in each FLH Division is responsible to ensure that information in the system is complete and current.

3.6.2 WETLAND IMPACT AND MITIGATION REPORTING

A goal of the FHWA 1998 National Strategic Plan is to protect and enhance the environment and communities affected by highway transportation. The strategic objectives of this goal are to reduce highway-related pollution and to protect and enhance ecosystems. To assess annual progress toward these objectives, the FHWA staff measures performance on indicators of air quality improvement and wetland mitigation based on data collected each year through the division offices. These data should be compiled for each project at the division level and retained in a central location so that they can be easily and accurately reported when requested.

This subsection addresses the wetland impact and mitigation reporting requirements only. The performance data gathered on wetland mitigation are used to judge agency performance against a strategic objective of achieving a 50 per cent increase in wetland acreage within ten years.

Each FLH Division reports its wetland information to the environmental discipline leader, who compiles it and submits a single FLH response to the FHWA Headquarters.

The [annual performance measure reports](#) are also available.

3.6.3 ENDANGERED SPECIES ACT COMPLIANCE COSTS

Each year the FWS, through the FHWA Headquarters, asks for a report of the total annual costs associated with ESA compliance for FHWA projects. Therefore, each FLH Division is responsible for tracking these compliance costs (including formal and informal consultation) for

its projects. These data should be compiled for each project at the division level and retained in a central location so that they can be easily and accurately reported when requested.

3.6.4 SECTION 4(F) *DE MINIMIS* FINDINGS

Section 6009(c) of SAFETEA-LU requires the USDOT to conduct a study and issue a report on the implementation of the new Section 4(f) *de minimis* provisions. The study will include evaluation of 1) the implementation processes developed and the resulting efficiencies; 2) the post-construction effectiveness of any impact mitigation and avoidance commitments adopted as part of the projects; and 3) the number of projects determined to have *de minimis* impacts, including information on the location, size, and cost of the projects. The initial study and report will address the first three years of implementation. The FHWA Division offices are required to maintain a record of the projects for which *de minimis* findings are made and track the progress of those projects in order to facilitate the future evaluation of the post-construction effectiveness of any commitments of mitigation made as part of the *de minimis* finding. Additional guidance and information regarding the required study and report will be provided in the future.

3.6.5 ENVIRONMENTAL COMMITMENTS

A key component of environmental stewardship is follow-through on project-level environmental commitments. Each FLH Division is responsible for developing procedures for documenting, communicating and tracking implementation of environmental commitments. Ideally, this documentation should also include information on the success of these commitments in achieving their ultimate goals (i.e., whether the commitment adequately mitigated the anticipated impact).

3.6.6 OTHER TRACKING

Division Supplements may include information on division-specific tracking requirements.

 Refer to [EFLHD – CFLHD – WFLHD] Division Supplements for more information.
