

Planning and Environmental Linkages – Questions and Answers

November 2, 2016

Background

The Federal Highway Administration (FHWA) developed these questions and answers to provide information and guidance on the implementation of Planning and Environmental Linkages (PEL). As additional questions are generated, this document will periodically be updated with additional questions and answers.

In this guidance, questions and answers 1-4, 6, and 7(a) apply only to actions conducted pursuant to the authorities in 23 U.S.C. 168 as amended by the FAST Act (commonly known as “statutory PEL”). The remaining questions and answers pertain to general matters applicable to all Planning and Environmental Linkages actions.

Question 1: What are Planning and Environment Linkages?

Answer 1: Planning and Environment Linkages (PEL) represent a collaborative and integrated approach to transportation decision-making that consider benefits and impacts of proposed transportation system improvements to the environment, community, and economy during the transportation planning process. PEL uses the information, analysis, or products developed during planning to inform the environmental review process,¹ including the National Environmental Policy Act of 1969 (NEPA).

PEL could be applied to undertake a multimodal, systems-level, corridor, or subarea planning study. The use of PEL is not required but is encouraged by FHWA and FTA. Potential benefits of the PEL process include: improved sharing of information, elimination of duplicative efforts in planning and NEPA processes, improved communication and stronger relationships, early consultation and collaboration among stakeholders to identify potential impacts, accelerated project delivery, better environmental outcomes, timely permit decisions, and mutually beneficial outcomes. Please visit the [PEL webpage](#) for more information.

The FHWA and FTA planning regulations have included provisions on PEL practices and authorities since 2007.² Congress enacted a new authority³ for PEL in 2012 in MAP-21 and amended it in 2015 through the FAST Act. That authority, 23 U.S.C. 168 (Section 168), provides a process by which the following agencies may adopt or incorporate by reference a planning

¹ 23 U.S.C. 139(a)(3).

² See 23 CFR 450.212 and 450.318.

³ 23 U.S.C. 168(b)(1)(A) and associated regulations at 23 CFR 450.212(d) and 450.318(e).

product to use during the environmental review process, to the maximum extent practicable and appropriate:⁴

(A) The lead agency⁵ for a project, with respect to an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) The cooperating agency with responsibility under Federal law, with respect to the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969, if consistent with that law.

This statutory authority does not limit the continued use of PEL pursuant to other legal authorities, including the provisions at 23 CFR 450.212 and 450.318.

Question 2: What types of planning products may be used in the environmental review process under Section 168?

Answer 2: The term “planning product” is defined in statute as a decision, analysis, study, or other documented information that is the result of an evaluation or decision-making process carried out by a metropolitan planning organization, State, or transit agency, as appropriate, during metropolitan or statewide transportation planning under sections 134 or 135, respectively.⁶

There are two types of planning products: planning decisions and planning analyses. Examples of each are provided below.

Examples of planning decisions include:⁷

- a) Information on whether tolling, private financial assistance, or other special financial measures are necessary to implement the project.
- b) A decision with respect to general travel corridor or modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility.
- c) The purpose and the need for the proposed action.
- d) Preliminary screening of alternatives and elimination of unreasonable alternatives.
- e) A basic description of the environmental setting.
- f) A decision with respect to methodologies for analysis.

⁴ 23 U.S.C. 168(b)(1). The FHWA and FTA planning rule discusses this statutory authority at 23 CFR 450.212(d) and 450.318(e).

⁵ Pursuant to 23 U.S.C. 168(a)(2), the term “lead agency” is defined by 23 U.S.C. 139(a)(4) as the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency.

⁶ 23 U.S.C. 168(a)(3).

⁷ 23 U.S.C. 168(c)(1).

- g) An identification of programmatic level mitigation for potential impacts of a project, including a programmatic mitigation plan developed in accordance with 23 U.S.C. 169⁸ that the relevant agency determines are most effectively addressed at a national or regional scale, including:
 - i) Measures to avoid, minimize, and mitigate impacts at a national or regional scale of proposed transportation investments on environmental resources, including regional ecosystem and water resources.
 - ii) Potential mitigation activities, locations, and investments.

Examples of planning analyses include:⁹

- a) Travel demands.
- b) Regional development and growth.
- c) Local land use, growth management, and development.
- d) Population and employment.
- e) Natural and built environmental conditions.
- f) Environmental resources and environmentally sensitive areas.
- g) Potential environmental effects, including the identification of resources of concern and potential direct, indirect, and cumulative effects on those resources to both the natural and human environment.
- h) Mitigation needs for a proposed project, or for programmatic level mitigation, for potential effects that the lead agency determines are most effectively addressed at a regional or national program level.

Question 3: What conditions must be met to use planning products in the environmental review process pursuant to Section 168?

Answer 3: To use a planning product in the environmental review process pursuant to Section 168, the conditions below¹⁰ must be met.

- a) During the planning process:
 - i) The planning product was developed through a planning process conducted pursuant to applicable Federal law.
 - ii) The planning product was developed in consultation with the appropriate Federal and State resource agencies and Indian tribes.
 - iii) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

⁸ Implementing regulations for section 169 appear at 23 CFR 450.214 and 450.320. Separate and specific requirements apply to programmatic mitigation developed under Section 169, but the use of the framework in Section 169 is not required for all programmatic mitigation efforts – the framework is optional.

⁹ 23 U.S.C. 168(c)(2).

¹⁰ 23 U.S.C. 168(d).

- iv) The planning process included public notice that the resulting planning products may be adopted during a subsequent environmental review process in accordance with Section 168.

- b) During the environmental review process: under the Section 168 PEL authority, during the environmental review process, the relevant agency (either the lead agency or cooperating agency) must:
 - i) Make the planning documents available for public review and comment by members of the general public and Federal, State, local, and tribal governments that may have an interest in the proposed project.
 - ii) Provide notice of the intention of the relevant agency to adopt or incorporate by reference the planning product.
 - iii) Consider any resulting comments.

To ensure that the planning product is appropriate for use pursuant to Section 168, several other conditions must also be met:

- a) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.
- b) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.
- c) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.
- d) The planning product is appropriate for adoption or incorporation by reference and use in the environmental review process for the project and is incorporated in accordance with, and is sufficient to meet the requirements of NEPA and 40 CFR 1502.21 (as in effect on December 1, 2015).
- e) The planning product was approved within the 5 year period ending on the date on which the information is adopted or incorporated by reference.

In order to proceed under PEL authority, the relevant agency, the lead agency, and any cooperating agency (if that cooperating agency must issue a permit for or approve of the project based upon the Section 168 planning product) must concur that all conditions in Answer 3 are met.¹¹

Question 4: What are the Section 168 requirements for public involvement?

Answer 4: The public has valuable insight about the needs of the community and the performance of the transportation system. Early and ongoing public participation can contribute significantly to the decision making process for transportation system

¹¹ 23 U.S.C. 168(d).

improvements. Community members intimately know their region's transportation issues and challenges and are invested in seeing short and long-term improvements come to fruition. Federal statutes, regulations, and guidance provide general guidelines for public involvement. Section 168 has specific public involvement requirements relating to availability of documents and opportunities for notice and comment.¹² Transportation agencies have great flexibility in developing specific public involvement and public participation activities during the PEL process. An agency may choose a mixture of outreach techniques, meetings, hearings, and/or combinations of each. Techniques for each situation may differ, depending on things like demographics and the specific impacts of a project, but the general approach to developing a public involvement and participation plan should contain elements that are relevant to communities and that meet the requirements in Section 168. When developing public involvement plans, transportation agencies should also consider incorporating measures that satisfy public involvement requirements and objectives in other laws and orders, such as NEPA and environmental justice.¹³

Question 5: What are the generally-applicable requirements for public involvement in the transportation planning process?

Answer 5: During the transportation planning process¹⁴ the following requirements apply:

- The MPO shall use a documented participation plan that defines a process for providing the public and interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.¹⁵
- The MPO's participation plan describes explicit procedures, strategies, and desired outcomes for providing adequate public notice of public participation activities and time for public review and comment at key decision points.¹⁶
- The MPO's participation plan describes explicit procedures, strategies, and desired outcomes for making public information (technical information and meeting notices) available in electronically accessible formats and means.¹⁷
- The MPO's participation plan describes explicit procedures strategies, and desired outcomes for holding any public meetings at convenient and accessible locations and times.¹⁸
- The MPO's participation plan describes explicit procedures, strategies, and desired outcomes for providing timely notice and reasonable access to information about transportation issues and processes.¹⁹

¹² 23 U.S.C. 168(d)(4 and 5).

¹³ See E.O. 12898, USDOT Order 5610.2(a), and FHWA Order 6640.23A.

¹⁴ 23 USC 134 (Metropolitan transportation planning) and 135 (Statewide and nonmetropolitan transportation planning).

¹⁵ 23 CFR 450.316(a).

¹⁶ 23 CFR 450.316 (a)(1)(i).

¹⁷ 23 CFR 450.316(a)(1)(iv).

¹⁸ 23 CFR 450.316(a)(1)(v).

- The MPO’s participation plan describes explicit procedures, strategies, and desired outcomes for employing visualization techniques to describe metropolitan transportation plans and TIPs.²⁰
- The State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points in the statewide transportation planning processes.²¹
- The State’s public involvement process shall establish early and continuous public involvement opportunities that provide timely information about transportation.²²
- The State’s public involvement process shall, to the maximum extent practicable, make public information available in electronically accessible format and means, as appropriate to afford reasonable opportunity for consideration of public information.²³
- The State’s public involvement process shall, to the maximum extent practicable, ensure that public meetings are held at convenient and accessible locations and times.²⁴
- The State’s public involvement process shall provide adequate public notice of public involvement activities and time for public review and comment at key decision points²⁵.
- The State’s public involvement process shall, to the maximum extent practicable, use visualization techniques to describe the proposed long-range statewide transportation plan and supporting studies.²⁶
- Each State and MPO shall demonstrate explicit consideration and response to input received on the long-range plans, STIP, and TIP.²⁷
- Each State and MPO shall seek out and consider the needs of those traditionally underserved by existing transportation systems, such as low income and minority households, who may face challenges accessing employment and other services.²⁸
- Each State and MPO shall periodically review the effectiveness of the procedures and strategies contained in the public involvement process or public participation plan to ensure a full and open participation process.

¹⁹ 23 CFR 450.316(a)(1)(ii).

²⁰ 23 CFR 450.316(a)(1)(iii).

²¹ 23 CFR 450.210(a).

²² 23 CFR 450.210(a)(1)(i).

²³ 23 CFR 450.210(a)(1)(vi).

²⁴ 23 CFR 450.210(a)(1)(iv).

²⁵ 23 CFR 450.210(a)(1)(iii).

²⁶ 23 CFR 450.210(a)(1)(v).

²⁷ 23 CFR 450.210(a)(1)(vii) and 450.316(a)(1)(vi).

²⁸ 23 CFR 450.210(a)(1)(viii) and 450.316(a)(1)(vii).

Question 6: What are the generally-applicable requirements for public involvement during the environmental review process?

Answer 6: Every State is required to have a FHWA approved public involvement (PI)/public hearing program procedures.²⁹ The PI procedures lay out how the state will proceed to implement Federal-aid highway projects based on the nature of the project and potential impacts. The outreach techniques must meet the minimum requirements under NEPA.

For an Environmental Impact Statement (EIS), the lead agency must develop a Coordination Plan for participation and comment of the public and agencies throughout the environmental review process.³⁰ The Coordination Plan is typically established during scoping. The lead agency must include public participation in defining the purpose and need and in determining the range of reasonable alternatives.³¹ Agency participation is also required when the lead agency is determining the methodology that will be used to establish a reasonable range of alternatives.³² This is usually done during scoping and in the review of the Draft EIS, however, there is no specific timeframe. The public is notified of the initiation of the environmental review process through a “notice of intent” published in the Federal Register. This notice sometimes solicits public input on purpose and need, through scoping, and on the range of alternatives. Once a Draft EIS is developed, it must be made available for the public and agencies to review and comment.³³ Whenever a public hearing is held, the Draft must be made available both 15 days prior to a public hearing and at that hearing.³⁴ The Draft EIS should be made available for comment for a minimum of 45 and no more than 60 days.³⁵ A Final EIS must respond to all substantive public comments on the Draft EIS.³⁶ The lead agency must combine the Final EIS and ROD into a single document, to the maximum extent practicable.³⁷ However, in certain circumstances,³⁸ the Final EIS and ROD may be issued separately. If issued separately, the Final EIS cannot proceed to the ROD prior to completion of a 30 day review period.³⁹ This 30 day period is generally not a period to solicit further public comments. For a combined Final EIS/ROD, there is no 30 day review period.

²⁹ 23 CFR 771.111(h)(1).

³⁰ 23 U.S.C. 139(g)(1).

³¹ 23 U.S.C. 139(f)(1).

³² 23 U.S.C. 139(f)(4)(a).

³³ 23 U.S.C. 139(g)(2).

³⁴ 23 CFR 771.123(h).

³⁵ 23 CFR 771.123(i) (“Unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A).”).

³⁶ 23 CFR 771.125.

³⁷ 23 U.S.C. 139(n)(2).

³⁸ A combined document is not required if: (1) the Final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action. 23 U.S.C. 139(n)(2)(A-B).

³⁹ 23 CFR 771.127.

For an Environmental Assessment (EA), public involvement and outreach is required per the provisions in 23 CFR 771.119 and should be consistent with the State’s public involvement procedures. Categorical Exclusions (CEs), governed by 23 CFR 771.117, may also warrant public outreach and public information activities depending on the nature of the CE and its impacts. An opportunity for a public hearing may also be required.

Question 7(a): What is the requirement for public involvement during Section 168 PEL?

Answer 7(a): For the PEL process under 23 U.S.C. 168, the planning process shall include public notice that the planning products may be adopted during a subsequent environmental review process.⁴⁰ During the environmental review process, the relevant agency⁴¹ shall make the planning documents available for public review and comment to members of the general public and Federal, State, local, and tribal governments that might have an interest in the proposed project.⁴²

These requirements are in addition to public involvement requirements generally applicable to transportation planning and the environmental review process.

Question 7(b): What is the requirement for public involvement in order for the planning information to be incorporated directly or by reference into subsequent NEPA documents under other authorities for PEL (23 CFR 450.212 and 450.318)?

Answer 7(b): The other PEL authorities under 23 CFR 450.212((a)-(c)) and 450.318((a)-(d)) require involvement of interested State, local, Tribal, and Federal agencies; public review; a reasonable opportunity to comment during the statewide transportation planning process or the metropolitan transportation planning process and development of the corridor or subarea planning study; documentation of the relevant decisions in a form suitable for review during NEPA scoping; and FHWA review, as appropriate. These requirements for public involvement are normally satisfied through generally applicable public involvement requirements of the transportation planning process.

Question 8: What are the requirements for Title VI⁴³ in PEL?

Answer 8: There are no specific requirements for Title VI in PEL, however, Title VI requirements considered in planning and environmental review include:

⁴⁰ 23 USC 168(d)(4).

⁴¹ 23 U.S.C. 168(a)(6) (“The relevant agency is the lead agency with respect to an EIS, EA, CE or other document prepared under NEPA or, if applicable, the cooperating agency with responsibility under Federal law for completion of any environmental permit, approval, review, or study required for a project under and Federal law other than NEPA. The relevant agency shall provide notice of its intention to adopt or incorporate by reference the planning product, and shall consider any resulting comments.”).

⁴² 23 USC 168(d)(4).

⁴³ Title VI of the Civil Rights Act of 1964 (as amended, 42 U.S.C. 2000d et. seq.).

- No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.⁴⁴
- The public involvement provides for participation for persons who, as a result of national origin, are limited in their English proficiency.⁴⁵

Question 9: What are the requirements for Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act in PEL?

Answer 9: There are no specific requirements for the ADA and Section 504 in PEL, however, the ADA and Section 504 requirements considered in planning and environmental review include:

- No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.⁴⁶
- The public involvement process has requirements to ensure that information is accessible to all.⁴⁷

Question 10: What are the requirements for Environmental Justice⁴⁸ (EJ) in PEL?

Answer 10: There are no specific or unique requirements for EJ in PEL; however, there are requirements for EJ considered in planning and in environmental review. In particular, Federal agencies use the NEPA process to evaluate and address EJ concerns. Presidential Executive Order (EO) 12898 directs Federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. An EJ impacts analysis should identify and address disproportionately high and adverse effects of the agency's programs, policies, and activities on minority and low-income populations to achieve an equitable distribution of benefits and burdens. The FHWA and FTA provide examples of good practice and training that States, MPOs, and operators of

⁴⁴ 42 U.S.C. 2000d.

⁴⁵ Executive Order (EO) 13166, Improving Access To Services For Persons With Limited English Proficiency (August 11, 2000); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, U.S. Department of Justice, 67 FR 41455 (June 18, 2002); *Lau v. Nichols*, 414 U.S. 563 (1974).

⁴⁶ 28 CFR 35.130(a); *see also* 49 CFR 27.7(a) ("No qualified person with a disability shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation.").

⁴⁷ *See* 28 CFR 35.160; 49 CFR 27.7(c).

⁴⁸ Environmental Justice (EJ) EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 16, 1994.

public transportation can use to guide their practices, including information that demonstrates actions that have historically and negatively impacted EJ communities and contribute to current conditions. This includes the full and fair participation by all potentially affected communities in the transportation decision-making process. An EJ analysis should include historic EJ considerations as part of the cumulative impacts analysis required by NEPA.⁴⁹ Historic EJ considerations means considering transportation decisions or projects that had disproportionately high and adverse effects on low income and minority communities.⁵⁰ The FHWA and FTA do not prescribe specifically how a State, MPO, or operator of public transportation conducts its analysis of EJ. That is left to the specific agencies to decide based on their needs and situations. Please visit the [EJ website](#) for more information, including examples of notable practices and case studies.

The FHWA and FTA note that, as stated in section 6-609 of the EO, the EO does not create substantive rights. However, FHWA and FTA encourage States, MPOs, and operators of public transportation to incorporate EJ principles into the planning processes and documents. The FHWA and FTA consider EJ when making future funding or other approval decisions on a project basis, as required by EO 12898.

Question 11: What are the requirements for fiscal constraint in PEL?

Answer 11: PEL studies, including corridor/feasibility studies, do not need to be individually listed in either the fiscally constrained metropolitan transportation plan or long-range statewide transportation plan and can start at any time. However, the study must be in the Unified Planning Work Program (UPWP) or State Planning and Research (SPR) work program when funded with Metropolitan Planning (PL)/SPR funds.⁵¹ Studies such as PEL can also be funded with Surface Transportation Program Block Grant (STPBG) funds and may be included in the STIP/TIP when funded with STPBG funds or in the UPWP. A PEL study may also help agencies find solutions to address an area or corridor's needs before including the project in the long range transportation plan and transportation improvement program or initiating NEPA. Because of the lack of detailed information about the project, cost estimates for fiscal constraint for planning and environmental review phases may not be fully substantiated. PEL corridor and subarea studies can better identify and address transportation and environmental needs early in the planning process (before fiscal constraint requirements apply).⁵² The PEL study can support prioritization of projects for inclusion into the transportation planning

⁴⁹ 40 CFR 1508.7.

⁵⁰ See also Guidance on the Consideration of Past Actions in Cumulative Impact Analysis, Memo from James Connaughton, Chair, CEQ to Heads of Federal Agencies (June 24, 2005) (incorporating legal precedents established by the courts, and noting that CEQ regulations do not require an exhaustive listing of all past actions, even if they are available or can be obtained).

⁵¹ 23 CFR § 450.216(g)(3); Transportation Planning Requirements and Their Relationship to NEPA Approvals, February 9, 2011 http://www.fhwa.dot.gov/planning/tpr_and_nepa/tprandnepasupplement.cfm.

⁵² Guidance on Using Corridor and Subarea Planning to Inform NEPA, FHWA (April 5, 2011), https://www.environment.fhwa.dot.gov/integ/corridor_nepa_guidance.pdf.

process. Fiscal constraint has remained a key component of transportation plan and program development since enactment of the Intermodal Surface Transportation Efficiency Act in 1991.⁵³ In accordance with FHWA policy, funding for the NEPA document (EIS, EA, or CE) with FHWA funds must be included in the STIP and TIP⁵⁴ prior to FHWA authorization for NEPA. The FHWA cannot sign a final NEPA document (approve a ROD, EA, or CE) unless the project is included in an adopted, fiscally-constrained, metropolitan transportation plan.⁵⁵ Additionally, one subsequent project phase must be programmed into the STIP/TIP.⁵⁶ For projects outside of metropolitan areas, FHWA cannot sign a final NEPA document (approve a ROD, EA, or CE) unless the project is consistent with the long-range statewide transportation plan, and a least one subsequent project phase is programmed into the STIP. The long-range statewide transportation plan does not have to be fiscally constrained.

Question 12: How may States and MPOs develop programmatic mitigation plans as part of the transportation planning process to support PEL?

Answer 12: The States and MPOs may develop a programmatic mitigation plan as part of the statewide and the metropolitan transportation planning processes. They may develop a programmatic mitigation plan on a regional, ecosystem, or statewide scale, and it may either encompass multiple environmental resources within a defined geographic area or focus on a specific resource. Section 169 of Title 23, U.S. Code, provides an optional framework, whereby States and MPOs may identify environmental resources early in the planning process. As a result, they could potentially minimize or avoid impacts to these resources. Programmatic planning has the potential to streamline project development and protect environmental resources. The Federal agency responsible for environmental review must give substantial weight to the recommendations in a programmatic mitigation plan developed in accordance with 23 U.S.C. 169 when carrying out its responsibilities under the NEPA or other Federal environmental law.⁵⁷ The State or MPO shall determine the scope of the plan, as appropriate, in consultation with the agency or agencies with jurisdiction over the affected resources being addressed in the mitigation plan.⁵⁸ Nothing in Section 169 or in the FHWA/FTA planning

⁵³ Financial Planning and Fiscal Constraint for Transportation Plans and Programs Questions & Answers, FHWA (April 17, 2009), http://www.fhwa.dot.gov/planning/guidfinconstr_qa.cfm.

⁵⁴ 23 CFR 450.218(g) and 450.326(e).

⁵⁵ 23 CFR 771.113(a)(3).

⁵⁶ “If this requirement is not satisfied, there is no ‘action’ within the meaning of 23 CFR §§ 771.107(b)-(c) and 771.109(a)(1) for FHWA decision under NEPA.” Transportation Planning Requirements and Their Relationship to NEPA Approvals (supplement to January 28, 2008 ‘Transportation Planning Requirements and Their Relationship to NEPA Process Completion’), FHWA (last updated April 7, 2011), http://www.fhwa.dot.gov/planning/tpr_and_nepa/tprandnepasupplement.cfm. “However, in the unusual instances where no subsequent phase of the Project falls within the STIP/TIP timeframe, then a description of the Project must be included in the STIP/TIP for informational purposes and identified as being beyond the horizon of the STIP/TIP.” *Id.*

⁵⁷ 23 U.S.C. 169(f).

⁵⁸ 23 U.S.C. 169(b)(4).

regulation requires use of this framework for programmatic mitigation efforts, and other methods for programmatic mitigation outside of this framework continue to remain available.

APPENDIX A

A. The History of PEL

In 2005, FHWA and FTA issued joint guidance encouraging stronger linkages between the transportation planning and NEPA processes. In 2007, FHWA and FTA issued final transportation planning regulations, which specifically addressed the integration of transportation planning and the NEPA processes. The 2005 guidance, the 2007 planning regulations, and Appendix A to the planning regulations did not impose new requirements and emphasized that implementation was optional. To aid agencies in incorporating PEL principles into their planning and environment review processes, FHWA introduced the PEL Questionnaire.

In recent legislation (MAP-21), Congress refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environmental and other factors, and a Federal role that oversees the transportation planning process but defers to State and local decision-making to the maximum extent possible consistent with applicable laws. Congress has continued to refine this process (i.e.: FAST Act) in an effort to strengthen the transportation planning process as the foundation for project decisions, to emphasize public involvement and consideration of environmental/other factors, and to clarify the Federal role in overseeing the transportation planning process.

PEL Timeline:

- The Safe, Accountable, Flexible, Efficient Transportation Efficiency Act: A Legacy for Users (SAFETEA-LU), which was enacted in August 2005, Congress (codified in 23 U.S.C. 134 and 135) required increased consideration of the environment in both statewide and metropolitan planning.
- The FHWA and FTA issued final transportation planning regulations in February 2007 implementing the changes in SAFETEA-LU that included new provisions (not required by SAFETEA-LU) that specifically addressed the integration of transportation planning and the NEPA processes.
- To aid agencies in incorporating PEL principles into their planning and environment review processes, in 2011, FHWA introduced the PEL Questionnaire.
- The Moving Ahead for Progress in the 21st Century Act (MAP-21) added a new authority for carrying out PEL in July 2012.
- This authority was amended in Fixing America's Surface Transportation Act (FAST Act) in December 2015.
- This amended provision was incorporated into the joint May 27, 2016 FHWA/FTA final planning regulations by reference.

B. Provisions that Support and/or Authorize the Use of PEL

There are many policies and authorities that encourage the use of PEL. The State and/or the MPO have the discretion to select the authorities that they will use to implement PEL. The authorities for PEL include:

- 40 CFR parts 1500 – 1508 (from the Council on Environmental Quality [CEQ]): Indicate that Federal agencies shall reduce delay by integrating the NEPA process into early planning (§§1501.2 and 1500.2).
- 23 CFR 771.111(a)(2): Recognizes that the information and results produced by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with CEQ regulations (40 CFR 1502.21) and the planning regulations (23 CFR 450.212 and 450.318).
- 23 U.S.C. 134 and 135: A discussion of Environmental mitigation activities and potential areas to carry out these activities must be included in the statewide long-range transportation plan and metropolitan transportation plan (MTP).
- 23 U.S.C. 139(f)(4)(E): Subject to statutory requirements, creates a “reduction of duplication” to the maximum extent practicable, between the evaluation of alternatives under NEPA and the evaluation of alternatives in the metropolitan transportation planning process or the State environmental review process.
- 23 U.S.C. 168: Subject to statutory requirements, allows the adoption or incorporation by reference and use of a planning product in subsequent environmental review process.
- 23 U.S.C. 169: Subject to statutory requirements, gives substantial weight to recommendations in the programmatic mitigation plans that may be developed as part of the planning process.
- 23 CFR 450.212 and 450.318: Provide a PEL approach developed based on NEPA regulations, guidance, and case law, and continue to implement the results of planning studies in the environmental review process. These provisions also reference the statutory authority to adopt or incorporate by reference and use of planning products in subsequent environmental review process under 23 U.S.C. 168.
- 23 CFR 450 Appendix A: Addresses specific linkages between the transportation planning and environmental review processes. This encourages and supports planning as the foundation for highway and transit project decisions.

C. Examples of Public Participation Techniques from PEL Studies and Guidance Documents

The following examples demonstrate incorporation of Public Participation techniques into studies that employ a Planning and Environment Linkages (PEL) approach (for State and MPO specific examples, see the list starting on page 16 through page 17). These documents were identified from among the case studies referenced on [FHWA’s PEL Website](#), including several referenced in the recent [State of the Practice Review of PEL Implementation in Corridor Planning](#). The April 5, 2011 FHWA [Guidance on Using Corridor and Subarea Planning to Inform NEPA](#) also discusses PEL and public participation.

Categories of Outreach

The examples below include a variety of strategies and techniques that can be grouped roughly into three categories: Data Collection, Events, and Strategies. The approach taken to public involvement can include a combination of these elements and should be tailored to the specific needs of the project and the community. For example, in some communities, translation may be necessary, or the project team may need to go to the community and stakeholders rather than invite members of the public to attend events.

Events:

- Public Meetings and Hearings
 - To convene members of the public and stakeholders to share information, hear comments, or make decisions
- Public Workshops or Design Charrettes
 - To convene members of the public and stakeholders to share information and provide tools and activities to gather more detailed input (e.g. information about existing conditions, feedback on specific design concepts, etc.)

Data Collection:

- Online or In-Person Surveys
 - To collect answers to specific questions, vote on alternatives, and/or provide open-ended comments
- Electronic Voting
 - Another method to collect feedback at public meetings or workshops (typically for preference surveys or voting on binary yes/no questions)
- Intercept Surveys
 - To collect feedback from community members in the field, including business owners along a corridor, people traveling along or across a corridor (typically active transportation users – people riding transit and bicycles or walking) and other stakeholders who might not otherwise attend public events
- Personal Interviews
 - Another method to collect feedback from stakeholders who may not be able to attend public events (business owners, institutional or religious facility staff, community members with impairments)

Strategies:

- Multi-Part Outreach
 - To engage the community at key milestones throughout the project, e.g.: early outreach to determine community values, subsequent outreach to gather determine preferences among potential alternatives, and presentation of the preferred concept
- Community Advisory Committee (CAC) or Stakeholder or Community Task Force
 - To provide continuity and thoughtful representation of community and stakeholder perspectives throughout the course of a project

- Documentation of Stakeholder Feedback
 - To ensure transparency and demonstrate that community feedback has been heard, and in some cases demonstrate how it has influenced the project

Examples of State DOT and MPO PEL Public Participation Practices

[Yarmouth Road Report \(2012\) Massachusetts](#)

The Yarmouth Road project team established a stakeholder Task Force with representation government, business, transportation providers, local residents, and other stakeholders. The over 20 meetings and hearings meetings held during the course of the project were open to the public. In support of specific outreach to the public, the study solicited input through two online questionnaires. The first questionnaire posed questions to gather respondents' views around transportation needs and priorities early in the process. The second questionnaire was posted later in the process to gather specific input on the various alternatives developed, and help identify a preferred alternative.

[Town of Camp Verde Business Corridor Study \(2013\) Arizona](#)

The Town of Camp Verde Business Corridor Study project team held meetings to solicit input and documented stakeholder feedback in various categories including traffic flow, critical issues, development, and corridor enhancements. Four stakeholder meetings and two public meetings were held. The project included two phases of outreach: the first phase focused on gathering feedback from the community about perceived problems related to transportation and other needs; the second phase focused on developing solutions to address those problems.

[US Route 19 Corridor Study \(2011\) Pennsylvania](#)

The US Route 19 Corridor Study project team convened a Project Advisory Committee as well as a Stakeholder Committee, representing State Police, School District, and local businesses. The public was given an opportunity to review the materials collected through outreach and data gathering stages, and public meetings were designed to foster community educational. To encourage better community engagement, accessible meeting locations were chosen and hands-on mapping exercises were used to allow community members to provide more interactive feedback. The study incorporated information from over 50 personal interviews, online and intercept surveys of over 200 people, and two public meetings.

[Woodville Highway South Corridor Study \(2011\) Florida](#)

The Woodville Highway South Corridor Study project team focused outreach on creating an engaging and interactive public participation process. The centerpiece of the study's public participation strategy was a 4 day interactive design charrette. Through facilitation, presentations and small-group table exercises, participants defined a vision for the corridor including identifying community values and developing a number of potential alternative strategies for the corridor.

[US 50 West PEL Study \(2012\) Colorado](#)

The US 50 West PEL Study project team hosted community work sessions and provided comment forms to record public feedback on the project. In addition to inviting participants to come to meetings, the team also sought out feedback by visiting every business within 0.125 miles of the corridor at each intersection, capturing input from stakeholders who might otherwise have been unable to participate in scheduled meetings.

Further Resources

[Colorado Department of Transportation \(CDOT\) PEL Handbook \(2016\)](#)

The CDOT's PEL Handbook provides additional resources that may be useful, including strategies to identify stakeholders and appropriate participation methods.