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## 2.0 The Colorado Department of Transportation (CDOT) and the National Environmental Policy Act (NEPA) Process

CDOT's planning, project development, and NEPA procedures and processes are intricately linked. These processes are summarized in CDOT's Environmental Stewardship Guide, and detailed at length in CDOT's 2035 Regional and Statewide Plan Guidebook and CDOT's Project Development Manual, all available for review on CDOT's main web site.



### **Important Websites**

More information about the transportation planning process is available on CDOT's main web site ([www.dot.state.co.us](http://www.dot.state.co.us)) and at the following links:

- <http://www.dot.state.co.us/StatewidePlanning/>
- <http://www.dot.state.co.us/environmental/StandardsForms/Forms.asp>.

FHWA's state, MPO, and rural area transportation planning guidance can be found at the following links:

- <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/07-493.htm>
- <http://www.fhwa.dot.gov/planning/metro/index.htm><http://www.fhwa.dot.gov/planning/rural/index.html>
- <http://www.fhwa.dot.gov/hep10/state/index.html>.

FHWA Linking Planning and NEPA Guidance is at:

- <http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/0/9fd918150ac2449685256fb10050726c?OpenDocument>

### **2.1. CDOT's Transportation Development Process**

CDOT's transportation development process transitions through several major phases (see **Figure 2-1**), starting with developing policy and program components; incorporating transportation system planning; developing corridor optimization visions; moving on to project development, design and construction; and, finally, operation and maintenance of the developed project. Environmental factors must be considered in all phases.

#### **2.1.1. Policy And Program Development**

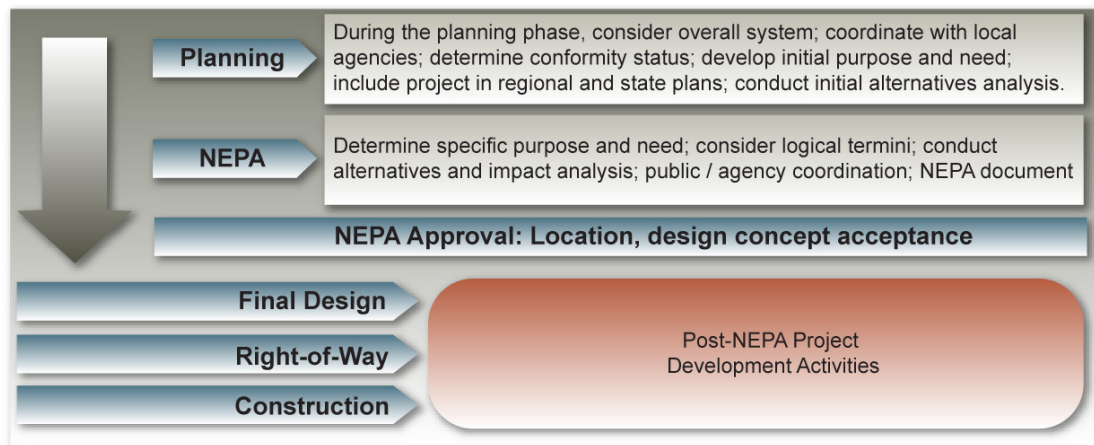
CDOT has an array of policies that guides the development and implementation of projects. These policies and specific requirements and guidance are available in numerous manuals available to all CDOT staff and others online at the CDOT website.

But where do these policies originate? The Transportation Commission is responsible for providing direction on the management of the state highway system. CDOT policies may either be established by the Transportation Commission or through the issuance of Chief Engineer

Policy Memorandum. The information and recommendations for establishing new policies or changing existing policies is generally developed internally by CDOT staff.

The results of transportation system- and project-level planning are fed back into the policy and program development phase continually. The products resulting from this process are policy directives adopted by the Colorado Transportation Commission and the Long Range Statewide Transportation Plan. This plan provides significant policy direction and forms the basis for the planning and development of the transportation system.

**Figure 2-1. NEPA Process**



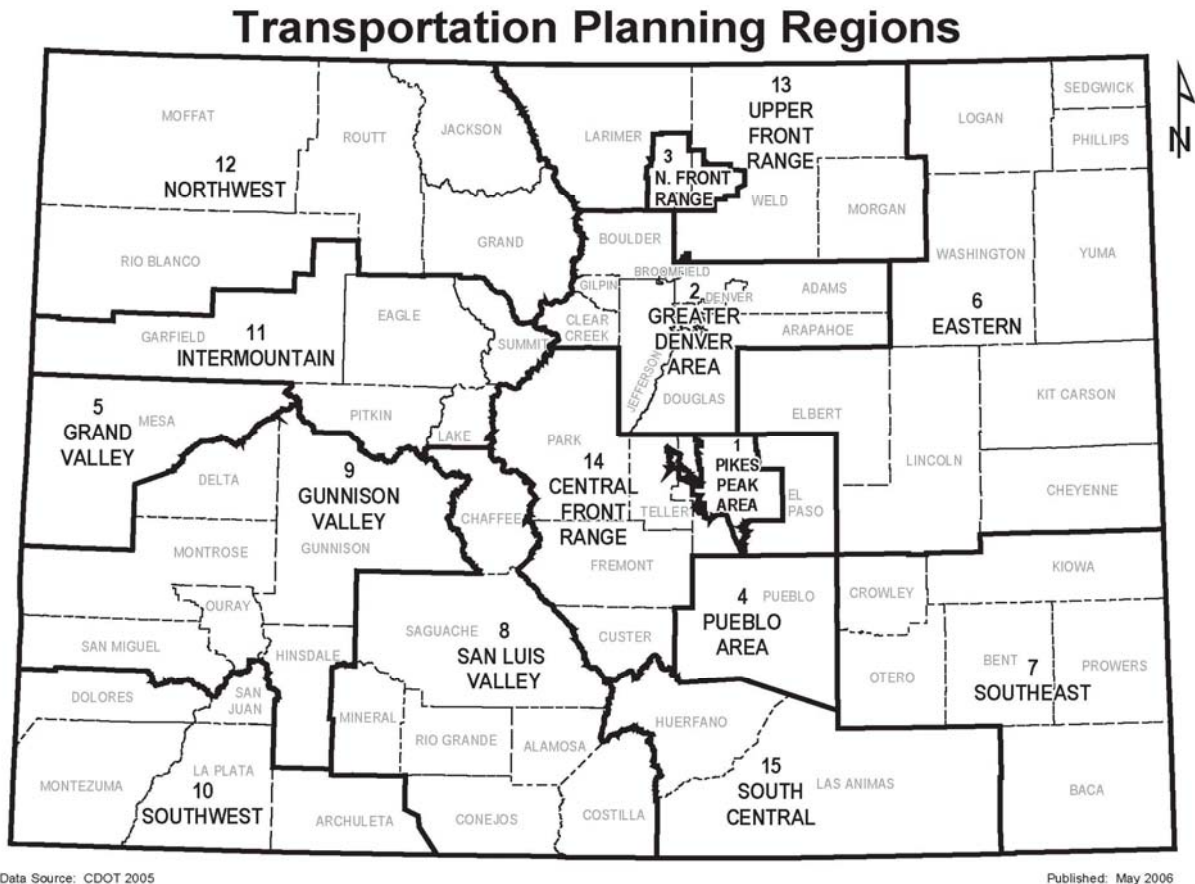
### 2.1.2. Transportation System Planning

CDOT is responsible for long-range transportation planning within the State of Colorado. CDOT Regions coordinate regularly throughout the planning process to identify the Transportation Planning Regions (TPRs') priorities, including corridors in the long-range plan and project prioritization in the Statewide Transportation Improvement Program (STIP). The development of transportation projects is a multi-phased, multi-year process that involves significant commitment of technical and financial resources and the cooperation of many regional and local groups.

CDOT coordinates the multi-modal planning efforts of 15 TPRs in Colorado, which consist of five metropolitan planning organizations (MPOs)— Denver, North Front Range (Fort Collins, Loveland, Greeley region), Pikes Peak (Colorado Springs area), Pueblo, and Grand Valley (Mesa County)—and 10 non-metropolitan TPRs (see [Figure 2-2](#)). Regional Transportation Plans (RTPs) developed by the TPRs are integrated into the long-range Statewide Transportation Plan, which is approved by the Transportation Commission. The long-range Statewide Transportation Plan is reviewed annually and updated every three years. The Statewide Plan is implemented through the STIP, a short-term, 6-year implementation mechanism that sets the

priorities for how transportation resources are invested and identifies project implementation schedules. The STIP update cycle occurs every two years.

Figure 2-2. State Transportation Planning Regions



In accordance with SAFETEA-LU (see [Section 2.3](#)), statewide and regional transportation plans must, in consultation with land management, regulatory and wildlife agencies, including tribes, discuss potential environmental mitigation strategies and potential areas to carry out these activities. This discussion can result in insight into potential environmental issues well before projects begin.

When a project is fully defined, funded, and scheduled, it becomes the responsibility of the CDOT administrative regions for implementation. Local agency federal-aid projects, interchanges, and corridors are planned through similar, interconnected processes.

The transportation planning process is divided into several phases: policy and program development (discussed in [Section 2.1.1](#)), system planning including broad corridor visions, and specific corridor optimization planning.



**Keep in Mind**

It is important to note that a NEPA decision document, such as a Record of Decision (ROD) or a Finding of No Significant Impact (FONSI), cannot be signed until the project is fiscally constrained in the long-range Statewide Transportation Plan.

CDOT planning staff encourage local governments to take NEPA requirements into consideration when developing plans—saving time later during the project development process. As a project emerges from system and corridor planning into the more project-specific NEPA process, CDOT project managers must be sure to incorporate the earlier planning-level elements and environmental considerations into the NEPA process to reduce the potential for revisions to project decisions later on. Consult with the Regional Planning and Environmental Manager (RPEM) on the project-specific information needed, as these needs may vary.

Decisions made during planning can be reflected in project-specific NEPA documentation without revisiting those decisions depending on the process that was followed and the magnitude and sensitivity of the related issues (See Linking Planning and NEPA at the [main Federal Highway Administration \(FHWA\) website](#)<sup>1</sup>). CDOT project managers must also work closely with their RPEM and planning staff to understand the required components of the project that have already gone through the planning process and may not need to be revisited.

### 2.1.3. Corridor Visions

Corridor visions establish a conceptual assessment of how to meet future travel demands in a given corridor. This assessment must answer fundamental questions regarding modal mix, capacity, access, land use mix and density, cost, and potential funding options. Corridor visions developed as part of a regional transportation planning process may be followed by a more detailed corridor optimization plan. The resulting regional transportation plan section or corridor optimization plan defines the CDOT and Local Agency vision of alternatives for meeting travel demands in terms of opportunities for modal expansion (highways and transit), right-of-way needs, and corridor access. It also suggests the roles that transit, the adjacent arterial street system, and other alternatives could play to help meet future overall corridor demands. However, corridor optimization is a voluntary process not required for all corridors. For more information see [CDOT's main website](#)<sup>2</sup> under 'Planning'.

### 2.1.4. Project Development

The FHWA approves the NEPA class of action and in turn, the level of documentation required. The class of action is determined by the project's likely impacts to the natural and built environment, and other criteria, as discussed in [Appendix D](#).

Typically, the NEPA class of action preliminary designation occurs after a proposed project is identified in the STIP by the Colorado Transportation Commission, which authorizes the project for potential federal or state funding.

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<sup>1</sup> <http://www.environment.fhwa.dot.gov/integ/index.asp>

<sup>2</sup> <http://www.dot.state.co.us/>

The region's assigned project manager, the RPEM, and staff from FHWA (as appropriate), work together to assess the project's potential environmental effects using early environmental study data from various sources including:

- Corridor optimization studies and corridor visions developed during the planning phase
- The project data form 463 or project scoping/clearance record form 1048
- CDOT Design, Right-of-Way, Utilities, Traffic, and Safety groups' corresponding staff branch reports
- Early scoping comments and other input from agencies and the public
- Early corridor environmental analysis
- Information from the statewide environmental database (currently under development by the University of Colorado at Denver)
- Interdisciplinary studies
- Field scoping reviews
- 1601 Interchange Approval Process studies

The context and intensity of project impacts determines whether or not the project impacts are "significant." Where project impacts are expected to be significant, an EIS must be prepared. Where impacts are clearly not significant, the project can be processed as a Categorical Exclusion. Where it is not clear whether project effects will be significant, an EA can be prepared to determine significance.

Following scoping and preliminary studies, the NEPA process is initiated. At the conclusion of the NEPA process (CatEx determination, FONSI or ROD), a decision on the design concept and scope and general location of the project will be made.

#### **2.1.5. Design/Construction And Operation/Maintenance**

These two phases of CDOT projects—design/construction and operation/maintenance—take place for the most part after NEPA is complete and the decision documents signed. The project manager must walk a fine balance of providing enough information regarding design to be able to evaluate environmental impacts from the project, but not so much detail that extensive design engineering has already taken place and would need to be redesigned in the event that impacts require design changes, avoidance measures, or extensive mitigation requirements. Completion of preliminary design, (typically 10-15%, but



sometimes up to 30% depending on the complexity of the project), of major project components is critical before and during the NEPA process so that environmental, social, and economic impacts of the proposed project can be determined. The preliminary design of the project may need to be adjusted during the NEPA process to minimize these impacts or avoid them altogether. An example would be where the NEPA process indicates the need for a bike lane on a project and additional right-of-way may be necessary in order to include it, or where a project centerline may be moved in order to avoid wetlands in response to environmental analysis results or comments from the US Army Corps of Engineers (USACE).

Final project design is not allowed to begin until the final NEPA decision document is signed by the lead agency. The operation and maintenance of a completed project must include the environmental mitigation measures adopted in the NEPA decision. The mitigation measures must be contained in categorical exclusion documentation, the Finding of No Significant Impact (FONSI) or Record of Decision (ROD), and are considered legally binding components of the final decision document. Mitigation measures may include keeping equipment out of wetlands, limiting construction activities to certain times of the day, dust suppression, particular water quality requirements, long-term monitoring of a wildlife species, or other measures. In the event that CDOT managers in the field find mitigation measures that may fit the need of the project better than those delineated in the FONSI or ROD, the differences between the FONSI/ROD decisions and the in-the-field changes must be documented and approved by the signatories to the decision document(s).

#### **2.1.6. When Does NEPA Apply To Your Project?**

Under federal law, NEPA applies to any proposed action or transportation project that has a federal Nexus, including but not limited to instances where:

- Federal funds or assistance will be used at some phase of project development
- Federal funding or assistance eligibility must be maintained
- Federal permits are required
- Federal approval of an action is required

New or revised access to the interstate system requires FHWA approval and is subject to NEPA. CDOT, like many state Departments of Transportation (DOTs) around the nation, has also chosen to apply the principles of NEPA to all of its state transportation projects, even

those without a federal connection. The 1601 Interchange Approval Process is further detailed on the [CDOT website](#)<sup>3</sup>.

## **2.2. Integrating Project Development And NEPA**

CDOT transportation projects are guided by the [Project Development Manual](#)<sup>4</sup> (CDOT 2001), as noted below in [Section 2.2.1](#). [Section 2.2.2](#) summarizes the "Design-Build" approach to projects, which can be found in much more detail in the Project Development Manual and will not be repeated here. [Section 2.2.2](#) also touches on value engineering. Finally, [Section 2.2.3](#) briefly describes context sensitive solutions, a program which is embraced by CDOT and is being developed more fully; more information on CSS will be made available on the NEPA manual web site in the near future.

One of the intentions of the NEPA process is to influence project design before a project is subjected to environmental impact analyses. Project design should focus on addressing facility requirements while also reflecting consideration of environmental issues, including incorporation of measures to avoid, minimize and mitigate potential effects of the design. Project designs that must be modified late in the NEPA process to address environmental requirements typically add to project costs and delay project progress. The level of design necessary to provide for an adequate alternative screening analysis and subsequent NEPA analysis varies depending on project features and site circumstances. The level of detail provided should be sufficient to allow for a meaningful comparison of alternatives and to clarify the magnitude of the effects of the proposed action/alternatives.

### **2.2.1. CDOT'S Project Development Process**

CDOT's Project Development Manual identifies and describes the activities related to project development from conception to award of the build contract, and establishes a uniform application of processes and procedures for use across CDOT. The Project Development Manual is organized into eight sections, each covering an important aspect of Form 1048a Project Scoping/Clearance Record (see [Appendix G](#) for a copy of Form 1048a). The following are important to the initiation of NEPA:

- Section 1 of the Form 1048a mandates a preliminary field survey using CDOT Form 1217a, Preliminary Survey Request, with check boxes for environmental requirements such as hazardous materials, noise, and wetlands.
- Section 2 of the Form 1048a must be reviewed before the site visit to decide what environmental considerations are to be documented. Information gained from the site visit will be used

<sup>3</sup> <http://www.dot.state.co.us/AccessPermits/index.htm>

<sup>4</sup>

<http://www.dot.state.co.us/DesignSupport/Project%20Development%20Manual/CDOT%20Project%20Development%20Manual.htm>

in the initial NEPA process and will help the project team assess the need for supplemental field studies. Information gathered during this visit could very well be used in the future development of alternatives to avoid or minimize impacts to sensitive resources.

- Section 2 of the form 1048a also addresses route location approval and environmental compliance. As noted in [Section 2.1.4](#), and in compliance with 23 Code of Federal Regulation (CFR) Part 771, all proposed projects must be assigned an environmental class of action designation, which helps determine the appropriate level of environmental studies and public involvement activities required for route location approval. The RPEM is responsible for scoping the project and, in consultation with the project team and FHWA, determining the initial class of action and the environmental studies, approvals and permits required.

There are three classes of action (a more detailed discussion of each can be found in [Section 2.4](#) of this NEPA manual):

- Class I – Environmental Impact Statement,
  - Class II – Categorical Exclusion, and
  - Class III – Environmental Assessment.
- Section 2 of the Form 1048a documents the presence or absence of environmental resources that must be considered in the NEPA process (See Form 1048a in [Appendix G](#)).

The region's Program Engineer assigns a project to a Resident Engineer, who in turn assigns a Project Manager. This Project Manager guides the project through the remainder of the process. The Project Manager is required to involve the RPEM in the development of Form 1048a at a minimum. However, integrating NEPA environmental specialists who represent physical, biological, cultural, and socioeconomic resources is also required to aid in completing Form 1217a and Form 1048a to:

- Identify environmental considerations during the early stages of project definition
- Assure that CDOT handles environmental issues for consideration when schedule and budget decisions are being made
- Guide the formal NEPA process, particularly if CDOT retains consultants for NEPA support

The NEPA process is initiated immediately after the RPEM provides the initial NEPA class of action designation and environmental study requirements. The results of Form 1048a Sections 1 and 2 are discussed with the regional environmental project manager and CDOT headquarters when an environmental study is needed. All information must be kept in the project file, which becomes part of the administrative record. Early coordination with the RPEM and environmental specialists will reduce the potential for time delays, increased costs, and changes to project design.



Studies may be needed for two reasons: to identify impacts and potential mitigation, and to comply with applicable environmental requirements.

CDOT's environmental program as described in the [Environmental Stewardship Guide](#)<sup>5</sup> is an iterative and collaborative process between CDOT's regions and Environmental Programs Branch in cooperation with FHWA. [Table 2-1](#) is an attempt to more clearly define those roles and responsibilities. Variations from this template will occur, especially for specific resources. More detailed descriptions of roles and responsibilities will be covered in the NEPA guidance manual methodology chapters.

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<sup>5</sup> <http://www.dot.state.co.us/environmental/StandardsForms/ESGuide5-12-05PrePress.pdf>

**Table 2-1. Roles and Responsibilities for CDOT’s Environmental Program**

Activity	Regions	EPB	FHWA
Statewide consistency	Support	Lead	Review
Policy development	Support	Lead	Support
Project development	Lead	Support	Approval
Scoping	Lead	Support	Review and Approval
Agency coordination	Lead	Support	Review and Approval
Public involvement	Lead	Support	Approval
Document preparation	Lead	Review and Support	Approval
Document review	Initial	Approval	Final
Obtaining permits	Lead	Support	
Specialty area expertise	Support	Lead	Support and Approval
Programmatic agreements	Support	Lead	Approval
Mitigation measures	Lead	Support	Approval
Training	Support	Lead	Review
Research/innovation	Support	Lead	Approval
Compliance	Lead	Support	Review and Approval

**2.2.2. Design-Build and Value Engineering**

Section 1503 of the SAFETEA-LU enables CDOT to award design-build contracts and issue notices to proceed with preliminary design work under design-build contracts. However, Section 1503 states that these projects cannot proceed with final design or any construction of permanent improvements until all NEPA requirements and environmental requirements are met. The environmental review process described in CDOT’s Project Development Manual should be initiated as early as possible, in some cases even as little as 10 percent design, in development of design-build projects to avoid or minimize environmental impacts and incorporate necessary mitigation measures as part of project design. The project manager will work with the NEPA team to determine if sufficient detail is available to allow for adequate NEPA project review. This will help control project budget and schedule (FHWA Regulations for Design-Build are at 23 CFR §636).

Formal value engineering studies are encouraged throughout the NEPA process. However, early in the project development process, the value engineering team should be informed of all environmental considerations and concerns identified through Form 1217a and

Section 2 of Form 1048a (FHWA regulations for Value Engineering (VE) are at 23 CFR §627). At the same time, CDOT project managers should use caution to assure that the value engineering process itself is not started too early in the overall NEPA process and in turn force intensive or specific impact analyses before the timing is appropriate. In other words, there should be strong certainty that the alternative(s) evaluated via the value engineering process are those that have made it to the end of the evaluation process and not screened out early on. Formal VE studies should be led by a Certified Value Specialist. A NEPA VE Study does not preclude future design VE Studies which will examine the project details. Refer to [FHWA's policy on value engineering](#)<sup>6</sup> for additional information.

As Design-Build and Value Engineering processes are developed for a project, it is important to remember the continuing role of internal and external stakeholders in the process as a means of assuring that stakeholder needs and concerns are not forgotten. Internal and external stakeholder participation in value engineering should be given consideration and language in the Design-Build contract should also be considered that will provide a means for continued appropriate stakeholder involvement.

For more information about SAFETEA-LU language regarding these issues, go to the [FHWA website](#)<sup>7</sup>.

### 2.2.3. Context Sensitive Solutions

CSS is a collaborative, interdisciplinary approach that involves all stakeholders in developing transportation solutions that:

- Fit the physical setting
- Preserve scenic, aesthetic, historic, and environmental resources
- Increase safety and mobility

CSS involves stakeholders such as the residents, businesses, and local institutions that will be affected by a proposed transportation project. CSS emphasizes the need to solicit input and incorporate stakeholder feedback from the very outset of the planning and design development processes and during all subsequent stages of construction, operations, and maintenance. It is important to note that the solicitation of this input is no guarantee that such input will be incorporated into the final design. However, it is guaranteed that such input will be given due consideration in the decision process.

The Secretary of Transportation considers the following eight process characteristics that support CSS when setting policy:



#### ***Integrating NEPA With Project Development***

- Start NEPA early
- Conduct a site visit with a multi-disciplinary team from engineering and environmental
- Involve resource specialists from the regions and headquarters to represent physical, biological, cultural, and socioeconomic resources
- Maintain continuity of staff from project inception to completion whenever possible
- Collaborate and communicate across disciplines frequently and consistently

<sup>6</sup> <http://www.fhwa.dot.gov/ve/>

<sup>7</sup> <http://www.fhwa.dot.gov>

- Tailor processes to meet the circumstances/project
- Consider multiple alternatives and reach consensus
- Commit to the process
- Understand valued resources before engineering design is started
- Use a full range of tools
- Communicate openly, honestly, early, and continuously
- Work with a multidisciplinary team
- Involve a full range of stakeholders in the project scoping phase

The Secretary also considers the following seven qualities of project excellence:

- Satisfy the purpose and need as agreed to by a full range of stakeholders
- Provide a safe facility both for the user and the community
- Ensure the facility is in harmony with the community, natural resources, and values of the area
- Strive to exceed the expectations of both designers and stakeholders
- Involve efficient and effective use of the resources (time, budget, community) of all involved parties
- Design and build the facility with minimal disruption to the community
- Provide added lasting value to the community

Further information can be found in [Section 2.3](#).

### **2.3. SAFETEA-LU**

SAFETEA-LU represents the largest surface transportation investment in US history and builds on the foundation of previous transportation law (Intermodal Surface Transportation Efficiency Act (ISTEA) and TEA-21) to refine, among other things, the transportation planning and project development processes. Following is a summary of the FHWA



guidance relevant to topics of this manual, which can be found on FHWA's website<sup>8</sup>.

Because the SAFETEA-LU requirements (2005) play such an integral role in the development of the NEPA process for transportation projects, it is worthwhile to offer a brief discussion of them in this manual.

SAFETEA-LU retains and increases funding for environmental programs of TEA-21, and adds new programs focused on the environment. Environmental streamlining procedures have also been incorporated that are aimed at improving the process for transportation projects. These changes, however, come with some additional steps and requirements for transportation agencies.

The provisions include a new environmental review process for highways, transit, and multi-modal projects that require preparation of an EIS. SAFETEA-LU clarified the responsibilities of the transportation agencies and created a new type of agencies, called participating agencies. It requires notice and comment periods for purpose and need statements and the range of reasonable alternatives prior to circulation of the draft EIS. The law provides a 180-day statute of limitations following publication of a Federal Register notice that the final environmental approval or permit has been issued for a project. Limited changes are made to Section 4(f). The air quality conformity process is improved with changes in the frequency of conformity determinations and conformity horizons. These primary changes are outlined in the paragraphs below.

### **2.3.1. Section 1805 – Use of Debris from Demolished Bridges and Overpasses (guidance pending)**

States are directed to first make the debris from the demolition of such structures available for beneficial use by a federal, state, or local government, unless such use obstructs navigation.

### **2.3.2. Section 6001 – Transportation Planning**

Changes to the metropolitan and statewide transportation planning requirements extended the planning update cycles and integrated big-picture environmental considerations. Agencies are required to:

- Update metropolitan plan cycles at least every four years in air quality nonattainment and maintenance areas, and at least every five years in attainment areas.
- Update TIPs/STIPs every four years and must contain at least four years of projects and strategies.
- Promote consistency between transportation improvements and planned growth and economic development.



#### **SAFETEA-LU Title VI Sections**

- 6001—Transportation planning
- 6002—Environmental reviews
- 6003 & 6004—State responsibilities for selected programs/projects
- 6005—Project delivery pilot program
- 6006—Restoration and pollution abatement
- 6007 and 6009 — Interstate system and 4(f)
- 6008—Natural resources and transportation planning
- 6010—Environmental review of ITS activities
- 6011—Conformity

<sup>8</sup> <http://www.fhwa.dot.gov/safet3ealu/index.htm>



- Include strategies in plans to improve existing transportation facilities.
- Metropolitan Planning Organizations (MPOs) must publish their plans and provide interested parties an opportunity to comment.
- Include a process in Transportation Management Areas for effective management and operation to address congestion management.
- Long-range Statewide Transportation Plans and long-range Metropolitan Planning Organization plans must be developed in consultation with State, Federal, Tribal and Local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation includes the comparison of the statewide and MPO long-range plans with State conservation plans or maps and inventories of natural and historic resources.
- Include a discussion in metropolitan and statewide transportation plans of types of potential environmental mitigation activities, to be developed in consultation with federal, state, and tribal wildlife, land management, and regulatory agencies. The mitigation discussion should address mitigation activities at the strategic level and generally not include project or site specific mitigation activities. The environmental mitigation discussion must be completed and included as part of any adopted plan.

### **2.3.3. Section 6001 – Transportation Conformity**

SAFETEA-LU changes to the transportation conformity process include a 12-month conformity lapse grace period; a change in update frequency cycle to four years; a conformity redetermination on existing transportation plans within two years of certain actions on the state implementation plan (SIP) for air quality; options to shorten the time horizon for conformity demonstration; and streamlined conformity SIP requirements (See [Section 2.1](#) of this manual). Environmental Protection Agency (EPA) is required to issue new regulations addressing these changes to the conformity process no later than August 10, 2007.

### **2.3.4. Section 6002 – Environmental Review Process**

SAFETEA-LU prescribes a new environmental review process for transportation projects. It is mandatory for EISs and optional for EAs, at the discretion of the FHWA Division Office. The process includes new obligations to create enhanced opportunity for coordination with the public and promotes efficient project management by lead agencies.

SAFETEA-LU defines the roles and responsibilities of lead, cooperating, and, a new category, participating agencies:

- **Lead agencies** – The direct recipients of federal funds must serve as joint lead agencies. Typically this is FHWA and/or Federal Transit Authority (FTA) and CDOT. In addition to the traditional responsibilities, the lead agencies must provide increased oversight in managing the NEPA process and resolving issues.
- **Cooperating agencies** – Federal agencies, other than the lead agency, that may have jurisdiction by law or special expertise with regard to environmental impacts from the project (e.g., US Fish and Wildlife Service and the US Army Corps of Engineers). State or local agencies with similar qualifications may also become a cooperating agency by agreement with the lead agencies (e.g., Colorado Division of Wildlife and the State Historic Preservation Office). Cooperating agencies have a similar but higher degree of authority, responsibility, and involvement in the environmental review process than the participating agencies.
- **Participating agencies** – Those agencies with an interest in the project. Their responsibilities include, but are not limited to, participating in the scoping and NEPA process; identifying, as early as practicable, issues of concern; participating in issue resolution. Cooperating agencies are a subset of participating agencies.

In this section, SAFETEA-LU also sets forth various requirements for engaging broad agency and public input throughout the development and approval processes (More detail is provided at <http://www.fhwa.dot.gov/hep/section6002/>):

- **Purpose and Need** – The lead and cooperating agencies must provide opportunities for and consider the input of participating agencies, cooperating agencies, and the public in developing the project's purpose and the need for action. This participation can occur during the planning process or during scoping. The lead agencies must be in agreement on the purpose and need statement prior to proceeding with the rest of the document.
- **Alternatives Analysis** – As with the purpose and need statement, the lead and cooperating agencies must provide opportunities for the participating agencies and the public to play a role in the development of the range of alternatives, and the lead agencies must be in agreement before proceeding with the rest of the document. The lead agencies must consider the views of the participating agencies on the methodology and level of detail to be used in the analysis.

- **Preferred Alternative** – A preferred alternative can be developed to a greater level of detail for only the following reasons: (1) to facilitate the development of mitigation measures, or (2) to facilitate concurrent compliance with other applicable environmental laws.
- **Coordination Plan and Schedule** – The lead agencies are required to develop a plan for coordinating public and agency participation for completion of the environmental review process. Although a schedule for completion is not required, it is highly recommended. Plans are developed early in the process after project initiation, and there must be agreement by the lead agencies prior to proceeding to implement any plan element.
- **Project Management Plan** – Projects with total costs estimated at \$500 million or more, or that US Department Of Transportation (USDOT) has identified as “major” as a result of some special interest in the project, are required to have a Project Management Plan to ensure efficient and effective management.
- **Deadlines for Public Comments** – The comment period for a Draft EIS is not to exceed 60 days, and no more than 30 days for other comment periods in the environmental review process. The lead agencies can extend these deadlines for good cause.
- **Concurrent Reviews** – SAFETEA-LU directs federal agencies, to the maximum extent practicable, to carry out the environmental review process in conjunction with the USDOT review.
- **Issue Identification and Resolution** – SAFETEA-LU provides a formal process for resolving serious issues that may delay the project or result in a denial of approval for the project.
- **Statute of Limitations** – Once a transportation project is approved, SAFETEA-LU provides a process, through publication in the Federal Register, for implementing a 180-day statute of limitations on claims against USDOT and other federal agencies for approval of a FONSI, ROD, or Section 4(f) evaluation.

### **2.3.5. Section 6006 – Environmental Restoration and Pollution Abatement; Control of Noxious Weeds and Aquatic Noxious Weeds and Establishment of Native Species**

Provides for added NHS fund eligibility for retrofits to projects undergoing reconstruction, rehabilitation, resurfacing, or restoration, if both NHS and STP funds could be used for stand-alone projects for retrofits to address water pollution or environmental degradation caused “wholly or partially by a transportation facility.”

Makes activities for the control of noxious weeds and the establishment of native species eligible for federal-aid funds under the NHS and the STP.

### **2.3.6. Section 6007 – Exemption of the Interstate System**

Section 6007 acts in general to exempt the bulk of the Interstate Highway System from consideration as a historic property under existing Section 4(f) requirements. It effectively excludes the vast majority of the 46,700 mile Dwight D. Eisenhower System of Interstate and Defense Highways (Interstate System) from review as historic property under both Sections 106 and 4(f). Only distinct elements of the system, which meet the National Register of Historic Places criteria for national or exceptional significance, will continue to be treated as historic properties under both authorities<sup>9</sup>. When designated by FHWA, elements such as certain bridges, tunnels, and rest stops, shall be excluded from the general exemption.

### **2.3.7. Section 6009 – Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites**

Section 6009a – De Minimis Findings allows a finding of de minimis impact to Section 4(f) resources where only minimal impacts would occur. It eliminates the need for alternative analysis, but efforts to minimize impacts are still required. Specific procedural requirements are established for the use of de minimis. The procedural requirements differ between historic and non-historic 4(f) resources.

Section 6009b – Prudent and Feasible Alternatives (guidance pending) requires the clarification of “prudent and feasible alternative” standards for Section 4 (f) resources.

### **2.3.8. Section 6010 – Environmental Review of Activities That Support Deployment of Intelligent Transportation Systems (guidance pending)**

This section requires rulemaking to establish Intelligent Transportation Systems (ITS) activities as CatExs to the extent appropriate, and requires the development of a national programmatic agreement for ITS and Section 106 of the National Historic Preservation Act. Most

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<sup>9</sup> The final list was published at [http://environment.fhwa.dot.gov/histpres/highways\\_list.asp](http://environment.fhwa.dot.gov/histpres/highways_list.asp). In Colorado, segments and elements (bridges and tunnels) on I-25 and I-70 are included.

ITS activities already qualify as CatExs. This clarification will be included in the pending 23 CFR 774 regulations.

**2.3.9. Section 6018 – Use of Granular Mine Tailings (guidance pending)**

EPA is to develop criteria for the safe and environmentally protective use of granular mine tailings known as “chat.”

**2.4. Classes of Action**

CDOT staff decide the appropriate class of NEPA documentation needed, in consultation with FHWA, although FHWA makes the final determination on class of action. The three classes of action, as shown in [Table 2-2](#), are discussed in the following sections. The decision process is outlined in [Figure 2-3](#).

While FHWA is the ultimate decision maker for federal project NEPA classifications, if there are any changes to the project that may affect the classification determination, the CDOT project team and FHWA jointly reconsider the appropriate classification and FHWA approves the revised classification determination. If no federal action is anticipated, CDOT can make the determination without FHWA consultation.

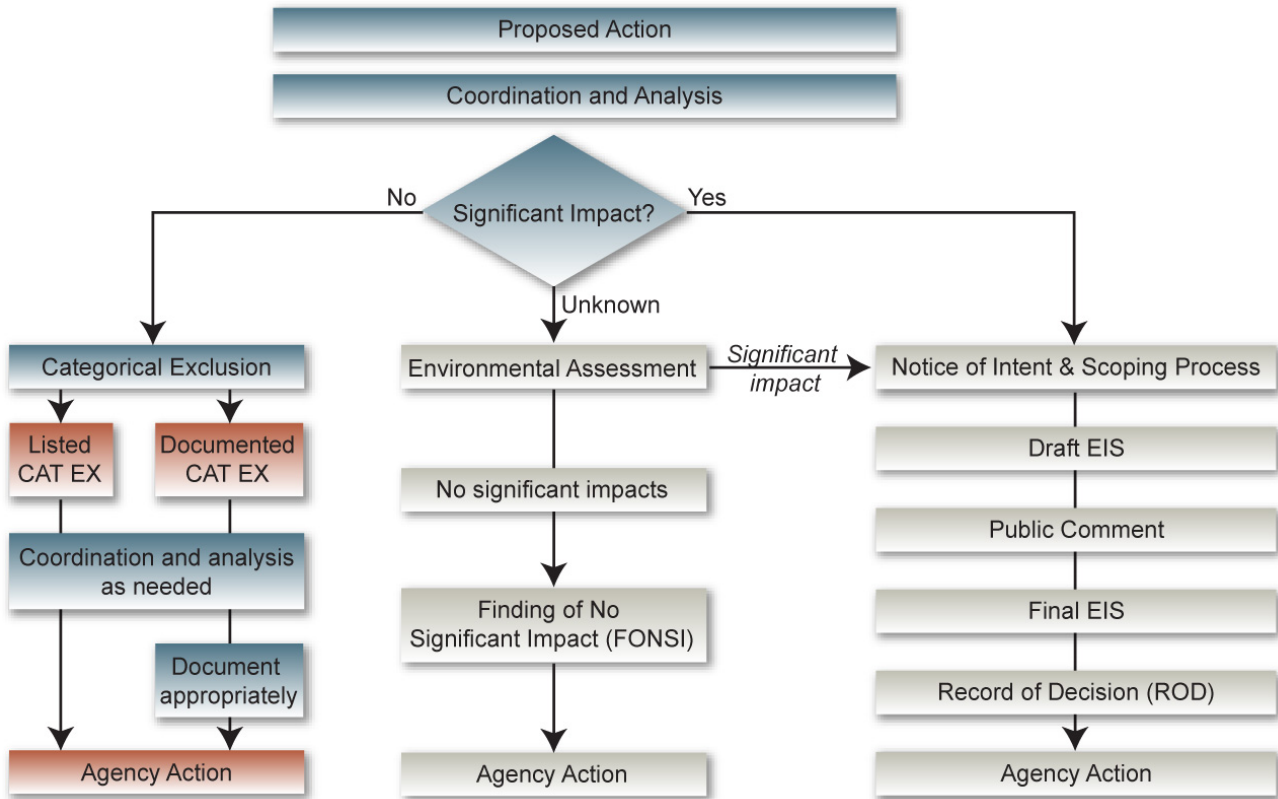
**Table 2-2. FHWA and CDOT NEPA Classes of Action**

CLASS I	CLASS II	CLASS III
<p><b>Environmental Impact Statement (EIS)</b></p>	<p><b>Categorical Exclusion (CatEx)</b></p>	<p><b>Environmental Assessment (EA)</b></p>
<p>Required for actions likely to have substantial effects on the environment.</p>	<p>Actions that do not individually or cumulatively have a substantial environmental effect. Necessary environmental studies and compliance with all applicable requirements are still required for the project.</p>	<p>Required for actions that do not qualify as CatEx, but where there is insufficient information to determine whether the project's impacts warrant an EIS. An EA may also be a useful tool in that it incorporates environmental considerations with project design and can aid in NEPA compliance when an EIS is not required.</p>
<p>Normally required for:</p> <ul style="list-style-type: none"> <li>▪ A new, controlled-access freeway</li> <li>▪ A highway project of four or more lanes in a new location</li> <li>▪ New construction or extension of fixed rail transit facilities</li> </ul>	<p>Examples may include:</p> <ul style="list-style-type: none"> <li>▪ Pedestrian facilities</li> <li>▪ Landscaping</li> <li>▪ Routine maintenance, including resurfacing, bridge replacement and rehabilitation, and minor widening</li> </ul>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>▪ Actions that are not clearly Class II (CatEx)</li> <li>▪ Actions that are not clearly Class I (EIS)</li> </ul>
<p>Upon completing the EIS, CDOT (or FHWA for federal projects) signs a ROD that presents the basis for the determination, summarizes any mitigation measures to be incorporated in the project, and documents any 4(f) approval.<sup>a</sup></p>	<p>CDOT or FHWA approval is required on all CatEx projects. In Colorado, FHWA has programmatically approved some CatExs.</p>	<p>In coordination with FHWA, CDOT determines whether a Finding of No Significant Impact (FONSI) is appropriate or if further study is required in an EIS.</p>

Source: 23CFR §771.115 et seq.

<sup>a</sup> In some cases, if during the course of the project it is determined clearly that the project will not have a major impact on the environment, the project may be reclassified as Class III (EA) and result in a FONSI. FHWA retains final categorization determination for federal projects.

Figure 2-3. NEPA Process Options (Classes of Action)



According to the Council on Environmental Quality (CEQ) regulations (40 CFR §§1500–1508) the determination that a project will have a “significant impact” is a function of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Intensity refers to the severity of impact. Significance of the impact will vary with the setting of the proposed action and the surrounding area (including residential, industrial, commercial, and natural sites). CEQ regulations call for consideration of the following in determining significance:

- Degree of effect on public health or safety
- Presence of unique characteristics of the project area such as proximity to resources or protected areas
- Degree to which effects on the quality of the human environment are likely to be highly controversial
- Degree to which possible effects are uncertain or involve unique or unknown risks
- Degree to which the action would set a precedent for future actions with significant effects
- Contribution to cumulatively significant effects
- Degree to which there may be adverse effects to properties or districts on, or eligible for, listing on the National Register of Historic Places
- Degree to which there may be adverse effects on an endangered or threatened species or its critical habitat
- Conflict with federal, state, or local laws for the protection of the environment
- Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial

To determine significance, the severity of the impact must be examined in terms of:

- Type, quality, and sensitivity of the resource involved
- Location of the proposed project
- Duration of the effect (short- or long-term)
- Other considerations of context



### 2.4.1. Categorical Exclusion (CatEx)

“Categorical exclusion” means a category of actions which do not individually or cumulatively have a substantial effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency. Neither an environmental assessment nor an environmental impact statement is required. The FHWA/FTA regulations at 23 CFR 771.117 describe highway and transit projects and activities that are categorical exclusions. The regulations also describe unusual circumstances that would preclude an action from being classified as a categorical exclusion. Because CatEx projects have no major impacts on the environment, the NEPA requirements are significantly less stringent than those for an EA or EIS. For example, public involvement and alternatives analysis are not explicitly required, and the detail of documentation for FHWA approval is greatly reduced. Although public involvement is not explicitly required for a CatEx, it is still a good idea to have some sort of public involvement at least for those CatExs that include some property acquisition, road closures or detours, etc.

Documentation, however, is required to record the rationale for decision making on all projects that are categorically excluded from further consideration under the NEPA process. CDOT Form 128 must be completed and approved before the project can enter final design/ROW acquisition/construction. Before the CatEx determination is approved, all applicable environmental requirements must be completed. Any mitigation measures found necessary must be included in the project design.

FHWA has developed an approved list of projects that are “categorically excluded,” or exempt, from further detailed NEPA review (23 CFR §771.117(a)). This list includes actions that do not:

- Induce significant impacts to planned growth or land use for the area
- Require the relocation of significant numbers of people
- Significantly impact any natural, cultural, recreational, historic, or other resource
- Involve significant air, noise, or water quality impacts
- Significantly impact travel patterns
- Otherwise, either individually or cumulatively, significantly impact the environment

Classifying a project as a CatEx does not exempt it other Federal or state environmental requirements. All applicable environmental requirements, including, but not limited to consultation pursuant to Section 7 of the Endangered Species Act or Section 106 of the

National Historic Preservation Act, must be completed before FHWA or CDOT makes the CatEx determination.

Upon completion of Parts A and B of CDOT Form 128, funds for final design and right-of-way acquisition can be obligated and negotiations for right-of-way acquisition can proceed.

### **Unusual Circumstances**

FHWA regulation 23 CFR §771.117(b) provides that any action which normally would be classified as a CatEx but could involve unusual circumstances requires FHWA and CDOT to conduct appropriate environmental studies to determine whether a CatEx is proper. Unusual circumstances include actions that involve:

- Significant environmental impacts
- Substantial controversy on environmental grounds
- Inconsistencies with any federal, state, or local law relating to environmental impacts

The type and scope of the studies necessary to determine the appropriateness of a CatEx will vary with the facts and circumstances of each situation. If studies conclude that the project will not cause a substantial effect, the studies, or a summary, are included with the request to FHWA for CatEx approval. If the studies conclude that unusual circumstances exist, a CatEx does not apply.

### **Programmatic Categorical Exclusions**

FHWA has assigned responsibility to CDOT for approval of certain CatExs through a [Programmatic CatEx Agreement](#)<sup>10</sup>. These CatExs are listed in [Appendix H](#) and include all of the 'c' list CatExs. CDOT may approve other CatExs if they meet certain evaluation criteria, shown in [Appendix H](#). A Form 128 is prepared by the regions for all CatEx's, whether they are programmatic or not. For programmatic CatEx's, the RPEM's signature on Part B will serve to document that the project fits within the criteria for a programmatic CatEx and has no major environmental impacts. For non-programmatic CatExs, FHWA's signature on Part B documents that the project meets the requirements of a CatEx under 23 CFR 771.117 and has no major environmental impacts. Depending on the project's expected impacts, FHWA may require additional documentation. In these situations, FHWA may request that the region prepare the [Non-Programmatic Categorical Exclusion Environmental Review Summary Form](#)<sup>10</sup> (contained in [Appendix H](#)). [Appendix H](#) also contains a detailed description of the CatEx process steps.

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<sup>10</sup> <http://www.dot.state.co.us/environmental/docs/Agreements/002LOA1191.pdf>

<sup>10</sup> [http://www.dot.state.co.us/environmental/StandardsForms/8\\_14\\_03%20CE%20Checklist.pdf](http://www.dot.state.co.us/environmental/StandardsForms/8_14_03%20CE%20Checklist.pdf)

### **CatEx Documentation Content**

CatEx documentation includes a completed and signed CDOT Form 128 (contained in [Appendix H](#)). This form attests that qualified staff have evaluated the project and its potential impacts (including the preparation of any necessary technical reports or compliance documents) and determined that the project meets the CatEx criteria.

An accurate and complete project description is important in establishing that the proposed action is consistent with the requirements of 23 CFR §771.117 and, if applicable, the Programmatic CatEx Agreement. The project description should fully:

- Describe the action to be undertaken, including the project limits (logical termini/independent utility); construction activities such as shoulder backing, culverts, staging areas, and facilities; disposal and borrow sites required; any right-of-way acquisition; utility relocations; and construction activities that may require temporary facilities such as haul roads, detours, or ramp closures.
- Demonstrate that the specific conditions or criteria for the CatEx are satisfied and that no substantial environmental effects will result.
- Satisfy any state or federal permit or consultation requirements.

Documentation that supports the CatEx determination becomes part of the administrative record and provides evidence that CDOT's decision was based on factual information and sound judgment. The level of documentation should be commensurate with the action's potential for adverse impacts.

### **CatEx Approval**

All CatExs require the review and approval of FHWA unless they meet the criteria for a programmatic CatEx. The CDOT RPEM will sign Part B of the 128 Form after environmental clearances have been obtained. FHWA is sent the CDOT Form 128 for review and signature if the project is a federal project and is not one of the programmatic CatExs. Once FHWA signs Part B of Form 128 and returns it to the CDOT RPEM for the administrative record, the project can then be obligated for final design and ROW negotiations can then proceed. The CatEx is not complete until it is signed by the FHWA Operations Engineer and CDOT RPEM (See [Appendix H](#) for a detailed flow chart and a description of the process steps). The RPEM will not sign Part E of Form 128 until all clearances and permits for the project have been obtained and mitigation requirements are included in the plans and specifications.

### 2.4.2. Environmental Assessment (EA)

An environmental assessment is prepared for a project when the importance of the impacts is not clearly established. Determining whether a project may result in major impacts is only one of the purposes of an EA. However, an EA can be prepared at any time to assist in planning and decision making (40 CFR §1501.3[b]).

The preparation of an EA is a more in-depth and detailed process compared to a CatEx. The analysis for potential environmental impacts is more thorough and public involvement and agency coordination is required. However, as with any NEPA document, the EA should only analyze those resources or features that FHWA and CDOT decide may be affected by the project. The EA should concentrate attention on impacts that may be substantial; therefore, this approach should result in a much shorter and more focused document than with an EIS. The following steps summarize the general approach taken to develop the EA:

- CDOT and/or FHWA determine that an EA is needed for a particular project.
- A public involvement program is developed and administered by CDOT.
- The necessary technical studies are completed and the EA is prepared.
- Environmental studies, effects determination and mitigation plan.
- The EA is submitted to FHWA for approval.
- Upon approval, CDOT prepares a Notice of Availability (NOA), which is published in a local newspaper, and the EA is made publicly available. The EA is also circulated to agencies for review and comment.
- The EA and the technical studies are submitted to EPA for review.
- Upon publication of the NOA, the public and agencies have 30 calendar days to submit comments. During this time, a public meeting is also held.
- After the 30-day public comment period concludes, the comments gathered are evaluated to determine where changes to the analysis would affect the decision. Responses to substantive comments must be prepared, and the comments and responses must be submitted to FHWA.

- A determination of the importance of the impacts is made, resulting in either preparation of a FONSI or the decision to prepare an EIS.
- If no significant impacts are identified, the applicant shall furnish FHWA a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met. When FHWA expects to issue a FONSI for an action described in § 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before FHWA makes its final decision (See 40 CFR 1501.4[e][2].) This public availability shall be announced by a notice similar to a public hearing notice. (i) If, at any point in the EA process, FHWA determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

For a more detailed discussion of the EA content, process, and approval and the FONSI, see [Appendix D](#).

### 2.4.3. Environmental Impact Statement (EIS)

An EIS is prepared when a proposed action may considerably affect the quality of the human environment. The purpose of an EIS is to “serve as an action-forcing device to [ensure] that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the federal government” (40 CFR §1502.1). An EIS is not merely a disclosure document; it is to be used by federal officials in conjunction with other relevant information to plan actions and make informed decisions.

An EIS details the process through which a transportation project is developed, including consideration of a range of reasonable alternatives and detailed analysis of the potential impacts resulting from each. It demonstrates compliance with other applicable environmental laws, regulations, and executive orders. The EIS process is completed in the following ordered steps:

- CDOT sends a project initiation letter to the FHWA Colorado Division Office. The Project Initiation letter goes from the State DOT to the FHWA Division office and indicates the State DOT's intent to get started on the project. The Project Initiation letter could request that the FHWA publish the NOI in the Federal Register.
- An initiation notice is required under SAFETEA-LU, and should identify the “type of work, termini, length and general location of

the project.” It also should identify any “federal approvals” that the project sponsor believes will be necessary (e.g., Section 404 permits).

- Scoping (an open process involving the public and other federal, state, and local agencies) begins immediately to identify the important issues to consider during the study.
- Invite participating and cooperating agencies to develop a coordination plan and schedule indicating how and when coordination will be undertaken with the Cooperating and Participating agencies and with the public.
- Make the purpose and need statement and the range of reasonable alternatives available for public and participating agency comment.
- The draft EIS provides a detailed description of the proposed action, the purpose of and need for the project, reasonable alternatives to the project, and the affected environment. It presents analysis of the anticipated beneficial and adverse environmental effects of the alternatives and mitigation.
- NOA is published in the Federal Register and a formal comment period commences for the draft EIS a minimum of 45 calendar days and receipt of comments from the public and other agencies. A public hearing is required and a notice is also published in local newspapers.
- The final EIS addresses comments as appropriate and provides documentation of the comments and responses received during the comment period. The final EIS will identify, based on analysis and comments, the “preferred alternative.” The agencies and public entities that commented on the draft EIS are provided with copies of the final EIS. There is a 30-day “waiting period” or “availability period” for the final EIS, which is not a “comment period”. Comments may be received on the final EIS, and should be addressed if received, however they are not specifically requested as they are for the draft EIS.
- The ROD identifies the selected alternative, presents the basis for the decision, identifies all the alternatives considered, specifies the “environmentally preferred alternative,” and provides information on the adopted means to avoid, minimize, and compensate for environmental impacts. It documents any required Section 4(f) approval.

Public and agency involvement are continuous throughout the process. Please refer to [Section 5](#) for more information on interagency coordination and [Section 6](#) for more information on public involvement.

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