

Table of Contents

3.0 IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESS AND DOCUMENTATION.....3-1

3.1. Developing The NEPA Project Team 3-1

3.2. Gathering Information 3-3

3.2.1. Project Description..... 3-4

3.2.2. Environmental Background..... 3-4

3.2.3. Geospatial Data 3-4

3.3. Preparation of the Notice of Intent..... 3-6

3.4. Early Project Scoping..... 3-7

3.5. Initial Project Purpose and Need..... 3-8

3.6. A Proposed Action..... 3-10

3.7. Developing Alternatives 3-10

3.7.1. Reasonable Range of Alternatives 3-10

3.7.2. No Action Alternative 3-14

3.7.3. Evaluating and Screening Alternatives 3-14

3.7.4. Selecting a Preferred Alternative 3-17

3.7.5. Alternatives Not Considered in Detail 3-18

3.7.6. Scope of the Project and Alternatives (Non-Segmentation)..... 3-19

3.8. Affected Environment..... 3-19

3.8.1. Supplemental Field Studies 3-21

3.9. Environmental Consequences (Including Mitigation Measures and Cumulative Impacts) 3-22

3.9.1. Types of Effects 3-24

3.9.2. Mitigation and Monitoring Commitments 3-26

3.9.3. Cumulative Impacts 3-27

3.9.4. Incomplete or Unavailable Information 3-29

3.10. Consultation and Coordination 3-30

3.10.1. Comments on the Environmental Assessment or the Draft EIS..... 3-30

3.10.2. Compliance with Applicable Laws 3-31

3.11. List of Preparers..... 3-31

3.11.1. List of Agencies, Organizations, and Persons To Whom Copies of the Statement are Sent..... 3-31

3.12. References and Citations 3-32

3.13. Index..... 3-32

3.14. Appendices and Technical Reports..... 3-32

3.15. Finding of No Significant Impact..... 3-33

3.16. Record of Decision 3-34



3.17. Other NEPA Documents..... 3-35

3.17.1. Tiered NEPA Analyses 3-35

3.17.2. Reevaluations 3-36

3.17.3. Supplemental EIS Analyses 3-37

3.17.4. Supporting Studies..... 3-38

3.17.5. Certifications 3-38

3.17.6. Technical Reports 3-39

3.18. Legal Records 3-39

3.18.1. Administrative Record..... 3-39

3.18.2. Project Documents Shelf Life 3-41

3.18.3. Colorado Open Records Act (CORA) 3-42

3.18.4. Freedom of Information Act 3-43

3.18.5. Working with Consultants 3-43

3.0 Implementing The National Environmental Policy Act (NEPA) Process And Documentation

This section provides a summary of considerations when building a NEPA interdisciplinary team and initiating the NEPA process for a project. More detailed, specific guidance on creating a NEPA document is available in [Appendix D](#) of this manual. As noted previously, the NEPA process should be initiated shortly after the Regional Planning and Environmental Manager (RPEM) provides the initial class of action designation.

In developing the core interdisciplinary project team, careful consideration should be given to the types of issues that are likely to have a significant effect on either the decision to be made, or on how the NEPA process proceeds. Interdisciplinary team members should be identified who can provide leadership and management to assure that issues and concerns are identified early and addressed appropriately. This can include specific environmental resource likely to be of significant concern for a project, but also procedural or other aspects including public participation, legal requirements, legislative relations, or other areas as appropriate.

3.1. *Developing The NEPA Project Team*

The core of the NEPA interdisciplinary project team will consist of an assigned regional project manager, a representative from Colorado Department of Transportation's (CDOT's) regional environmental staff, a CDOT Environmental Programs Branch liaison, the consultant (as needed), and the Operations Engineer from Federal Highway Administration (FHWA) Colorado Division assigned to the project. Other staff members who may contribute to the project team over the course of the project will include staff from CDOT Right-of-Way, Access, Engineering, and Traffic, and others as necessary.

Outside of the CDOT/FHWA project team, external agencies will also participate in the process. When different agencies have independent decision-making authority, the goal is to produce one NEPA document that will meet the need of all agencies. The agency in charge of preparing the document is the "lead agency." All others with an interest in the project are called "participating agencies." Those participating agencies with jurisdiction by law (every agency with permitting or funding authority over some aspect of the proposal) or special expertise and that are designated as such by the lead agencies are called "cooperating agencies." Council of Environmental Quality (CEQ) regulations include criteria for designating a lead agency if a conflict exists (40 CFR §1501.5), as well as the roles and responsibilities of cooperating agencies (40 CFR §1501.6). External agency involvement may also be dictated by existing intergovernmental agreements between CDOT and/or FHWA and the agency such as CDOT's MOU Related to Activities Affecting the State Transportation System and

Public Lands in the State of Colorado, MOU among CDOT, FHWA Central Federal Lands Division, and US Forest Service Region 2 for the Planning, Programming, Project Development, Construction and Maintenance of Forest Highways in the State of Colorado, National Environmental Policy Act / Clean Water Act Section 404 Merger Process, and MOU between FHWA, EPA, and CDOT that Formalizes the Cooperative Working Relationship between these Agencies.



Concurrent Reviews

Under the NEPA/404 merger process, US Army Corps of Engineers (USACE) participates in screening the alternatives and must consider the alternatives in their unmitigated state when impacts are used to screen them from further consideration.

FHWA serves as the lead federal agency for NEPA compliance on transportation projects. FHWA may act as a joint lead agency with either another federal agency (40 Code of Federal Regulation (CFR) §1501.5 [b]) or a state or local agency under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Amendments ([See SAFETEA-LU, Section 6002¹](#)).

The lead state transportation agency is CDOT. When other transportation authorities or governmental entities are serving in the role of a joint lead agency, FHWA will generally request CDOT to assist these governmental entities by acting as a program administrator for NEPA compliance. Any time CDOT prepares and processes or assists in the processing of an environmental document to comply with NEPA, the standard used for document development and processing will be this CDOT NEPA Manual.

First, the RPEM must assure that funding for the project is in the Statewide Transportation Improvement Program (STIP), or that an amendment to the STIP is planned or in process. The project team should review a list of environmental requirements to determine the level of effort. Finally, be sure that the team is on the "same page" regarding the anticipated class of action, general approach to analysis, etc., with clarity among all participating members of the team.

For an Environmental Impact Statement (EIS), the project team should discuss the early environmental review logistics outlined in Section 6002 of SAFETEA-LU on the topics discussed below:

- **The Coordination Plan and Schedule.** Establish plans to coordinate public and agency participation early in the process,

¹ <http://www.fhwa.dot.gov/hep/section6002/>

and to identify factors to be considered when developing the coordination plan and schedule.

- **Concurrent Reviews.** Determine the responsibility and schedules of each federal cooperating agency to carry out its obligations under applicable laws concurrently and in conjunction with the review required under NEPA in a timely, coordinated, and environmentally responsible manner, so long as this does not impede its statutory obligations. An example of concurrent agency review of CDOT's NEPA projects is the NEPA/404 Merger process, whereby USACE has agreed to review applicable NEPA documents and accept them as their NEPA document for purposes of approving a 404 permit for wetlands, assuming they agree with the findings. The NEPA/404 Merger Agreement between CDOT and USACE can be found on CDOT's main website.
- **Issues of Concern.** Determine how best to coordinate and handle informative and timely communication between lead and cooperating agencies so that potential issues of concern can be identified and resolved through the appropriate procedure.
- **Process Activities** for cooperating agencies (and others as applicable) if they can measurably improve project delivery.

Refer to SAFETEA-LU Environmental Review Process Final Guidance - Pub L 109-59, Nov. 15, 2006 for additional information including, however not limited to, Project Initiation Letter (Questions 11-13); Cooperating Agencies (Q 30 and 31); and Participating Agencies (Q 21-29). Further information on these topics can be found in [SAFETEA-LU, Section 6002](#)². They are also discussed in [sections 5, 6, and 7](#) of this manual. If unsure who should be invited to participate in the NEPA process, consult with the RPEM.

Alternative review procedures may be used, pending expertise of CDOT staff in the regions, EPB and site-specific situations. The review procedure process will be agreed to during the NEPA scoping meeting between EPB and the region. An alternative review process that may be used is a "Team Review." This alternative review procedure is described below.

3.2. Gathering Information

Information about a potential project begins accruing at project conception. For new EIS projects, CDOT will send a project initiation letter to FHWA. It is important to gather information early in the project to facilitate the NEPA process. As discussed in indicated sections below, such necessary information should be pertinent to the:

² <http://www.fhwa.dot.gov/hep/section6002/>

- Project description ([Section 3.2.1](#))
- Environmental background ([Section 3.2.2](#))
- Geospatial data ([Section 3.2.3](#))

3.2.1. Project Description

A detailed project description is included in the NEPA document for a proposed transportation project. The following information is required:

- A brief description of the existing roadway
- A location map that shows the project limits and displays key landmarks
- A description of the limits of the **proposed** project, including its length, and logical termini
- The name of the city and county where the project is to be located
- A description of the proposed improvements, including the number of lanes, type of median, and any major structures

3.2.2. Environmental Background

Environmental background information is usually collected early in the project when determining project feasibility. Such information is sometimes obtained during the initial site visits. The following information must be retained in a project file administrative record for use in environmental review:

- The existing environmental, social, and economic setting of the area affected by the project and any alternatives considered.
- Any environmentally sensitive locations, and natural and community features.
- Information obtained from other agencies or municipalities on the environmental and community setting, including community or comprehensive land use plans.
- Technical reports, such as geotechnical, traffic, and environmental reports.
- Project area maps

3.2.3. Geospatial Data

Geographic information systems (GIS) assemble, store, manipulate, and display data associated by location and can relate information from different sources. GIS can also convert existing digital information into forms easy to recognize and use. For example, census or other

tabular data can be converted to map form. It is also possible to assign values such as direction and speed to simulate movement through a transportation network. The basic uses of GIS in the NEPA process (for transportation) include:

- **Mapmaking** – Incorporating the mapmaking experience of traditional cartographers into GIS technology for the automated production of maps.
- **Evaluation of Environmental Impacts** - GIS can be used to calculate environmental impacts (e.g., area of wetland impacts, numbers of historic properties, etc.).
- **Simulating Environmental Effects** – Realistic, three-dimensional “before and after” perspective views of the environmental impacts of a given project that support decision making.
- **Static or Interactive Displays** – Enhance public meetings, small group meetings, open houses, conferences, workshops, and websites by conveying complex information in graphic displays. GIS could also be set up as a stand-alone interactive display for meeting participants to review and comment on proposed plans or analysis.
- **Design Meetings** – The project team and community residents can collaboratively sketch community boundaries, as seen by local residents, and identify important community assets and liabilities (for example, cultural resources, historic sites, or hazardous waste sites).

When collecting and developing GIS data during early project development, the following types of data also aid in environmental clearances:

- Baseline information, including locations of existing infrastructure, buildings, streams, jurisdictions, topography, vegetation, utilities and easements, wetlands, rock outcroppings, and parks
- Project design scenarios and alternatives

Project managers should ensure that all information remains as separate layers to enable manipulation later in the project. Also, take care to adhere to geospatial data specifications and protocols. To the extent possible, CDOT’s standards for geospatial data and metadata are compliant with the US Federal Geographic Data Committee standards for quality, content, and transfer.

3.3. *Preparation of the Notice of Intent*

Once the decision is made to prepare an EIS for a project, CDOT prepares a Notice of Intent (NOI) for FHWA to publish in the Federal Register that informs the general public of the scope of the project. The NOI is a summary written in plain English for ease in understanding and avoids the use of technical jargon. At this stage, it is uncertain what the outcome of the NEPA analysis will be. Therefore, the project must always be referred to as the “proposed” action or “proposed” project. Any abbreviations used in the text must be minimal and, if used, must be clarified. The following information should be included in the NOI:

- **Agency** – Include lead and cooperating agencies. FHWA must always be listed first when other agencies (federal, state, or local) are listed as being involved in the preparation of the EIS.
- **Action** – The title of the proposed action and a statement that the project is being evaluated through the NEPA EIS process.
- **Summary** – A brief summary of the elements of the proposed action must be included. Include any information relevant to the project location, size, related actions, and area affected. Also, include a brief description of the scoping process for the particular action, including when and where the scoping meeting(s) will be held and other information obtained from the scoping meeting or field view.
- **For Further Information Contact** – Include point of contact, typically the FHWA Operations Engineer and the CDOT project manager, in case there are any questions from the public or agencies. Information should include name, telephone number, e-mail, mailing address, and fax number.
- **Supplementary Information** – Include supplementary information or studies that are relevant to the project. This information must be available to the public.

FHWA sends three (3) duplicate originals of the NOI, each signed in ink by the issuing officer to:

Office of the Federal Register

National Archives and Records Administration

Washington, DC 20408

Three (3) additional copies are required if material is printed on both sides. If a single original and two certified copies are sent, the statement “CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL” and the signature of a duly authorized certifying officer must appear on each certified copy.



Prior to NOI

Prior to the NOI, a Project Initiation Letter is sent from CDOT, the sponsoring agency to the Lead Federal Agency (generally FHWA). The Final Q&A Guidance for 6002 gives information on what should be included in the Project Initiation Letter (Q 11-13). The letter would let FHWA know that CDOT is serious about initiating the project. At that point FHWA would then publish the NOI in the Federal Register. An NOI is not required for EAs or CatExs.

A record must be kept of the date each notice is mailed to the Federal Register. A copy of the notice, once published, is sent to CDOT for inclusion in the administrative record.

3.4. Early Project Scoping

Scoping is the process by which a lead agency solicits input from the public and other agencies regarding the breadth and depth of issues to be addressed as well as the minor issues related to a proposed action (40 CFR §1501.7). For information regarding project scoping refer to Classes of NEPA Documents in [Appendix D](#).

SAFETEA-LU, as noted in [Section 2.3](#) of this manual, includes requirements for the scoping process, including the interaction of the lead agency and other agencies. See [Section 2.3](#) and its references for more detail on those elements.

The lead agency is required to invite the participation of any interested agencies, Native American tribes, project proponents, and other interested persons, and to consult with and obtain the comments of any federal agency with jurisdiction by law or special expertise with respect to any environmental impact of the proposed action. NEPA encourages the use of scoping as early as reasonable in the project planning process and again at the initiation of the NEPA process.



Timing input on issues and alternatives to be addressed during the NEPA process should be encouraged during scoping.

Meetings and substantive contacts with government agencies regarding scoping must be documented. Correspondence with participating and cooperating agencies or the public becomes a part of the administrative record (see [Section 3.18.1](#)). Pertinent correspondence is also incorporated into a Finding of No Significant Impact (FONSI), and the draft and final EIS, under “Summary of Public Involvement.”

It is helpful to maintain a brief summary of public involvement activities and the issues raised as they occur (e.g., dates of key meetings and correspondence), so it can be easily added to the EIS or EA without having to reconstruct the information from the administrative record.

The project team will also be sending correspondence to property owners who may be affected by a project, as well as to organizations and individuals who have previously expressed an interest in the project or requested notification. In every case, the CDOT project manager must coordinate with the CDOT Right-of-Way office, and in some cases the CDOT Public Relations office, to ensure that communications with property owners are handled appropriately and that a clear message is sent to the public.

Where there is a high level of public controversy, the formation of citizen committees and specialized efforts aimed at issue identification and resolution are encouraged.

3.5. Initial Project Purpose and Need

This section provides a brief but important overview of information that must be considered in defining an initial purpose and need for the project. [Appendix D](#) of this NEPA Guidance Manual provides more detailed information on preparing the purpose and need section for a NEPA document.

The purpose and need section in the NEPA document takes the goals and objectives developed in a transportation plan to the next logical step—implementing those goals and objectives through on-the-ground project development. The planning level goals and objectives describe the transportation problem(s) that need to be addressed. This section also looks into the future an average of 20 years (based on planning horizons), to determine the needs of the project area in that future. A NEPA purpose and need statement provides the details about the transportation-related needs and describes the “what and why” of the project. The purpose and need defines the criteria under which transportation alternatives are initially evaluated. Alternatives other than the No Build/No Action alternative should fully address the stated purpose and need. Those alternatives that do not fully address the purpose and need can be eliminated from further consideration (further explained in [Section 3.7](#)). SAFETEA-LU requires that a proposed project has clearly identified objectives for improving transportation conditions, such as:

- Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan
- Serving national defense, national security, or other national objectives, as established in federal laws, plans, or policies
- Supporting and consistent with land use, economic development, or growth objectives established in applicable federal, state, local, or tribal plans

The language of NEPA has been interpreted to require that an agency take a “hard look” not only at the proposed action, but at reasonable alternatives to that action that result in avoidance or minimization of impacts to the environment, to the community, or to the economy. A proposed project’s purpose and need, therefore, should be well defined and help refine the reasonable alternatives that should be analyzed to address the transportation problem. The project need should be supported with facts and statistics. It is important to define the needs in a way that is neither too narrow nor too broad. If the needs are too narrow, you may preclude too many alternatives and be accused of “predetermining” your outcome. On the other hand, if the needs are defined too broadly, there will be too many possible

solutions and you will have a hard time narrowing them down to a manageable number.

Transportation planning data developed for regional, sub-area, and corridor planning can be an excellent primary source of information to assist in establishing a purpose and need statement.

Briefly describe the project status and history including actions taken to date, other agencies and governmental units involved, actions pending, schedules, and so on. Background information sets the stage for identifying the project needs and how and why you came to know they were needs/issues to resolve. The following bullets are examples of possible project needs:

- **System Linkage** – Describe how the project fits into the existing transportation system.
- **Transportation Demand** – Describe relationships to any statewide plan or other transportation plan together with an explanation of the project's traffic forecasts.
- **Capacity** – Describe how the capacity of the existing transportation system is inadequate for the present or projected system load. Clearly define what level(s) of service are required for existing and proposed facilities.
- **Legislation** – State the federal, state, or local governmental mandates that must be met by the project.
- **Social Demands or Economic Development** – Clearly identify all projected economic development/land use changes driving the need for the project. These include new employment, schools, land use plans, and recreation.
- **Modal Interrelationships** – Describe how the proposed project evaluates modes of transportation as an alternative to highway travel and how the project interfaces with and serves to complement other transportation features existing in the corridor, including existing highways, airports, rail and inter-modal facilities, and mass transit services.
- **Safety** – Describe the existing or potential safety hazards within the project area. Include data related to existing accident rates as well as other plans or projects designed to improve the situation.
- **Roadway Deficiencies** – Describe any existing deficiencies associated with the project area roadways (e.g., substandard or outdated geometrics, load limits on structures, inadequate cross section, or high maintenance costs).

The resulting purpose and need section should be succinct, yet include enough information to clearly identify a problem and a need to fix it that may require the expenditure of funds. It should be narrowly defined enough to serve as an effective means to screen/evaluate alternatives. The initial purpose and need statement may change during the NEPA process if new information or needs are discovered or public input provides suggestions for improving the purpose and need statement. If the initial purpose and need statement changes substantially during the process, the lead agency will need to be cognizant of the effects that will have on the selection of alternatives or the criteria used to evaluate and screen alternatives.

For an EIS purpose and need statements are required to be made available for public review; all Environmental Assessments (EAs) are made available for public review.

3.6. A Proposed Action

A “proposed action” is usually a proposed transportation project that satisfies an identified purpose and need. In the NEPA context, a “proposal” exists at that stage in the development of an action when an agency has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (40 CFR §1508.23). Simply planning for a project does not constitute a proposed action that triggers NEPA requirements. However, once the planning is completed and a project is proposed, NEPA may be triggered. As noted in [Section 2.1.2](#), the planning process needs to be closely linked to the project development process when NEPA analyses and documentation are recorded.

3.7. Developing Alternatives

Alternatives development and the affected environment descriptions go hand-in-hand and are often developed in tandem. Alternatives development is also very dependent upon the purpose and need. The alternatives discussion in the NEPA document should provide a clear understanding of each alternative’s logical termini, location, costs, and the project concept (number of lanes, right -of-way requirements, median width, access control, etc.) (FHWA TA 6640.8A). Gathering the necessary data outlined in [Section 3.2](#) of this manual may be a first step toward understanding the environmental parameters that will influence development of the alternatives. This section provides a brief overview of the development of alternatives to address the need for the project and to achieve the project’s purpose.

3.7.1. Reasonable Range of Alternatives

The term “reasonable” is defined by the CEQ as those alternatives that are “practical and feasible from a technical and economic standpoint using common sense” (CEQ NEPA’s 40 Most Frequently Asked Questions, Guidance, Question 2A). For a complete text of the NEPA language regarding reasonable alternatives, see 40 CFR §1502.14.



Watch Your Budget

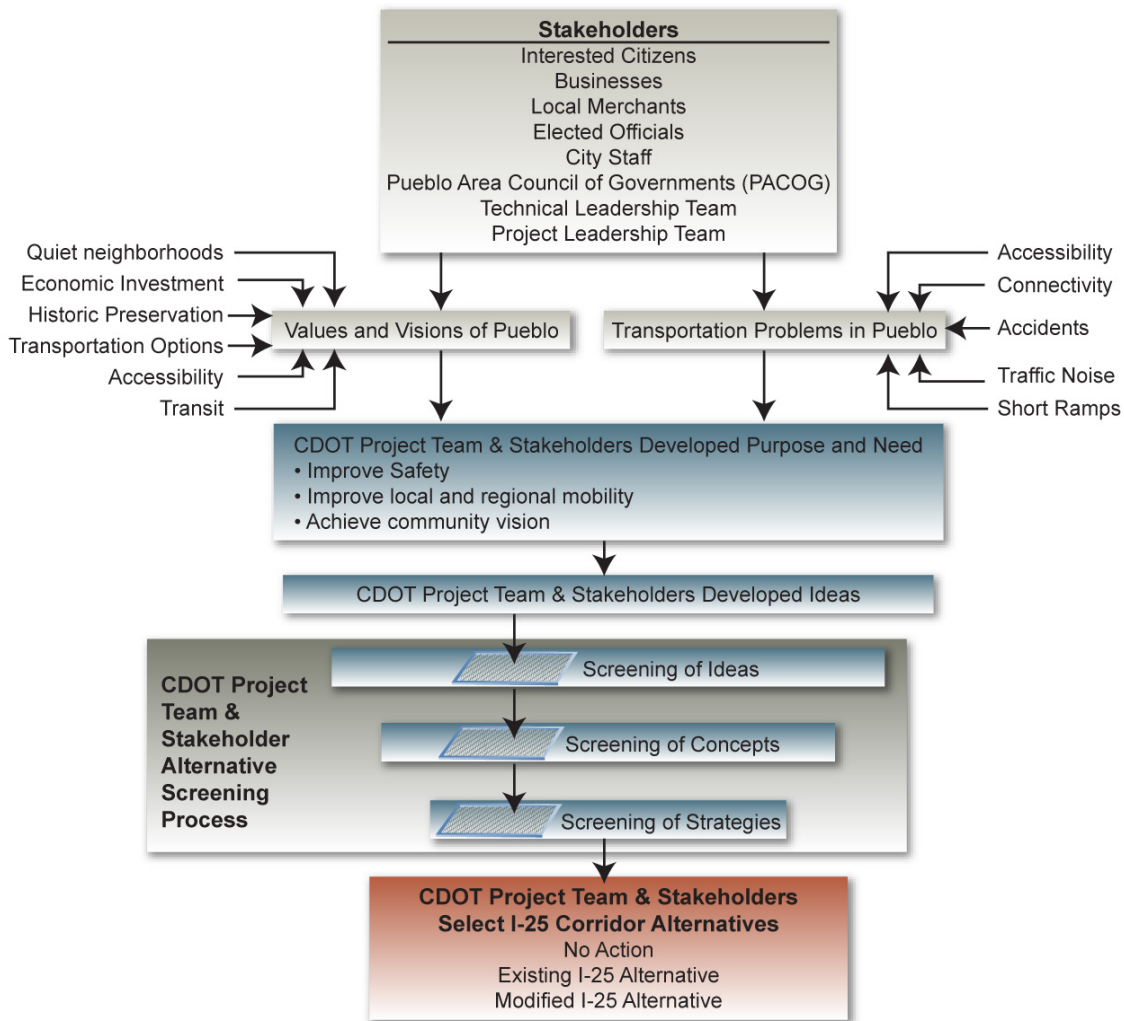
Alternatives analysis needs close project management. It can easily be your largest cost during the NEPA process and must be managed properly.

The key to a successful project is the exercise of professional judgment in determining the reasonableness of an alternative. This judgment is informed by experience and case law. Use the project team to discuss the extent of alternatives analysis necessary, including limitations that may be directed by project costs or other parameters.

Develop a range of alternatives early in the scoping process. These alternatives can then be screened based on their ability to meet purpose and need, and their ability to avoid or minimize impacts and address stakeholders' issues and concerns. Alternatives analysis can be the single most costly aspect of developing the NEPA document and will require close management by CDOT staff. Please refer to [Figure 3-1](#) as an example an alternatives development process.

For an EIS, include "all reasonable" alternatives, which includes a reasonable range (and could include a variety of modes, even those the lead agency cannot pursue), a reasonable number (representative examples) and avoidance alternatives (these usually get developed in accordance with other parallel regulations under the NEPA umbrella (like Section 404, Section 4(f), Section 7, etc.). For EISs, the evaluation may consider many alternatives and screen them down several times before a Preferred Alternative is identified. For EAs and CatExs, there may be only one alternative or one alternative with options. For example, there could be an EA for widening an existing road. What are the alternatives? Widen to the left, or to the right, or split the difference? Are these different alternatives or just options of the same alternative? On the other hand, what if there is an "S" curve on that stretch of road and a need to improve safety (lots of accidents at the "S" curve). Maybe there will be a couple of different alternatives for straightening the curve. What constitutes a "reasonable range" is commensurate with the complexity of the specific project. Finally, the project manager should take special note that the No Action Alternative is always included as an alternative.

Figure 3-1. Example Alternatives Development Process



Developing a range of alternatives that meets the project purpose and need communicates a clear vision of the transportation improvements to be implemented. This may include analysis of facility location and design and/or alternate transportation modes. The data, advantages, and disadvantages of each alternative will be compared in the NEPA document and address the transportation issues identified in the purpose and need, as well as potential impacts to resources identified in the affected environment.

CEQ requires that agencies:

- Rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives that are eliminated from detailed study, briefly discuss the reasons for their elimination.

- Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- Include reasonable alternatives not within the jurisdiction of the lead agency.
- Include the alternative of no action and carry it through screening until a Preferred Alternative is identified.
- Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft EIS or FONSI and identify such alternative in the final EIS unless another law prohibits the expression of such a preference.
- Include appropriate mitigation measures not already included in the proposed action or alternatives.

A comparative table of all alternatives and associated impacts can be presented in lay terms that will be easily understood by a lay reader. This comparison follows the resource-specific affected environment presentation and alternative impact evaluation, and provides a comparison among all evaluated alternatives at a logical place in the document.

The rationale for screening out alternatives that are impractical or unfeasible from a technical, environmental, or economic standpoint must be included in the NEPA document. It is important to be consistent when using the developed rationale for screening of alternatives. In some cases, technical memoranda that provided additional details about the alternative screening process are helpful. This documentation should be summarized in the EIS and should be made part of the administrative record.

Among the reasonable alternatives, transportation system management (TSM) programs that focus on making the transportation systems more efficient need to be considered. While each component of the TSM programs may not be used exclusively as "an alternative," components may be used in conjunction with broader alternatives to provide a complete package of transportation services to the public. These programs emphasize getting the most capacity out of existing or proposed transportation facilities. These programs could include:

- Parking modifications
- Intelligent transportation systems
- Detectors and sensors
- Closed circuit television

- Cameras
- Ramp meters
- Radar detectors
- Weather stations
- Variable message signs
- Traffic centers
- Software systems and communications

Transportation demand management (TDM) strategies are implemented to make transportation systems more efficient, safe, or convenient. TDM strategies focus on changing or reducing travel demand, particularly at peak commute hours, instead of increasing roadway capacity, to make more efficient use of the current roadway system. TDM strategies include carpooling, vanpooling, guaranteed ride home programs, walking, bicycling, alternative working arrangements (e.g., telecommuting, flex-place, and flexitime), and congestion pricing (such as variable toll fees).

TSM and TDM strategies are considered part of the reasonable range of alternatives when appropriate. This may require coordination with entities outside CDOT, such as regional transportation authorities, major employers, or major destinations (such as sports venues, ski areas, or other entertainment venues). Agreements must be secured with these entities before considering TDM alternatives to be viable.

3.7.2. No Action Alternative

CEQ regulations (40 CFR §1502.14) require the consideration of the existing situation without the proposed action. This is called the “no action” alternative and includes other programmed activities already in a plan, or approved through the NEPA process, or longer-term maintenance activities that would occur even if the no action alternative is selected.

The NEPA document should present a thorough description of the current transportation problem and paint a picture of a future in which the proposed project is not implemented. This description serves to define the no action alternative and also provides a baseline against which to compare the impacts of all other alternatives.

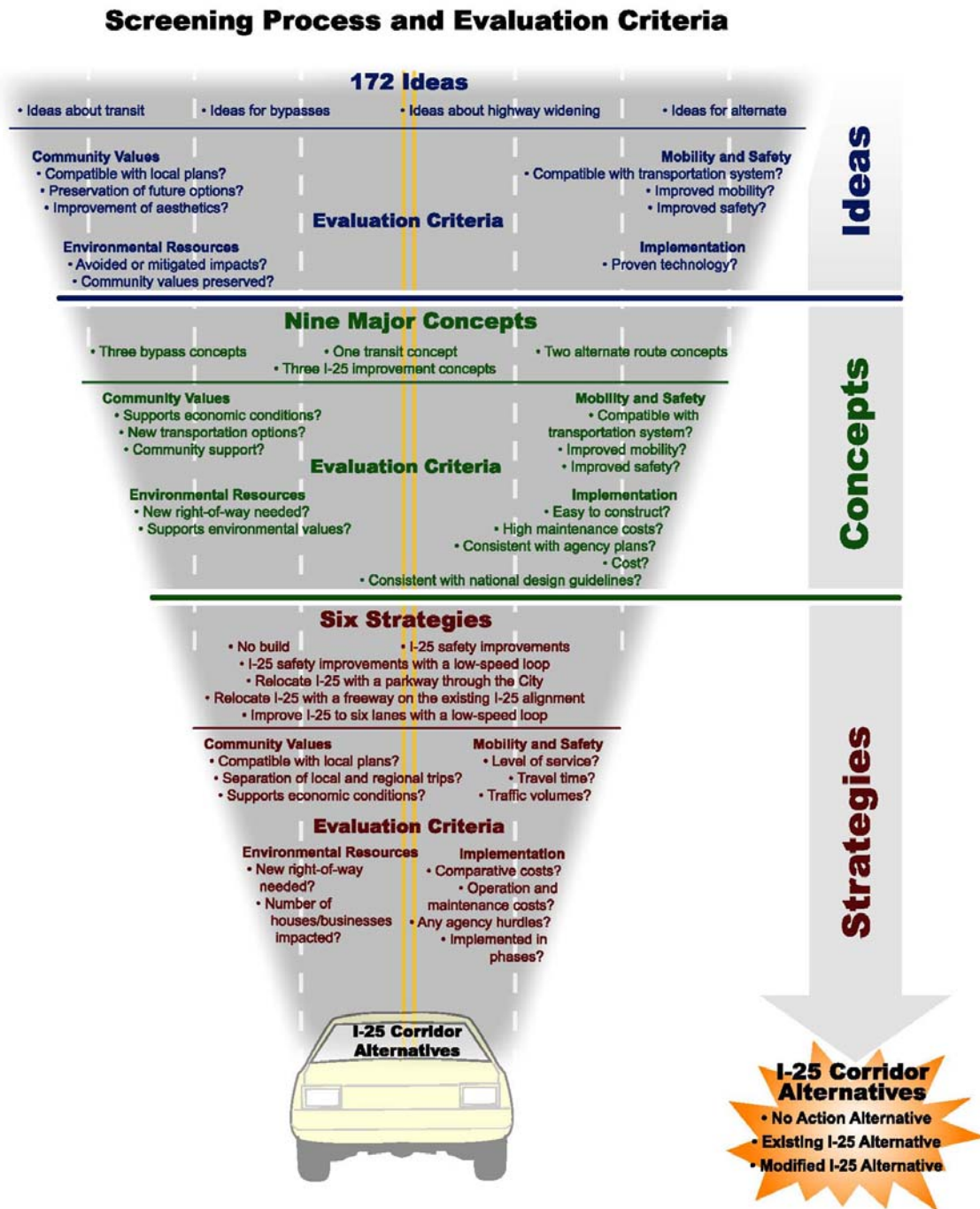
3.7.3. Evaluating and Screening Alternatives

The alternatives analysis section in the NEPA document gives a clear indication of why the particular range of alternatives was developed, the process used, and a summary of public and agency input. Just as important as analyzing alternatives is explaining why alternatives have been eliminated from consideration during the NEPA process (the

criteria used, the point in the process where alternatives were eliminated, and disclosure of the parties involved in establishing the criteria for assessing alternatives and measures of effectiveness). The alternatives documentation should also define the role of 404, 4(f), and 106 in avoidance and minimization. Care should be taken in the screening process not to be arbitrary and to ensure that the form and extent of alternatives screening selected is within the discretion of the lead agency.

Screening may be simple and straightforward, depending on the complexity of the project, or may involve several levels of analysis before the list of alternatives can be narrowed to a reasonable set for final evaluation. **Figure 3-2** provides an example of one project's approach to displaying in the NEPA document how the alternatives were narrowed down from a very broad scope.

Figure 3-2. Example of An Approach to Narrowing Down Alternatives



In preparing NEPA documents, it is important to be explicit about the rationale for generating, evaluating, and eliminating alternatives. Being as specific as possible is also essential—if an alternative is eliminated from further consideration because it “does not meet the purpose and need,” there should be adequate explanation of why this is true (evidence/supporting facts).

Take time to review the requirements under SAFETEA-LU for including agencies and the public in the development and screening of alternatives. Public and agencies must have an opportunity to provide input/comments on the range of alternatives developed for the project. See [Section 2.3](#) for the SAFETEA-LU discussion.

3.7.4. Selecting a Preferred Alternative

The preferred alternative is the one that survived the screening process, been given consideration during the alternatives analysis process as to economic, environmental, technical, and other factors, and may or may not be the same as the original proposed action. The preferred alternative is the one that the lead agency believes would best fulfill CDOT's mission and responsibilities while meeting project purpose and need and minimizing impacts to the environment (natural, cultural and socioeconomic) and is supported by the public and resource agencies. Typically, because of numerous factors such as studying ways to avoid or minimize impacts, proposed actions are adjusted throughout the NEPA process to minimize harm to the environment and communities. The preferred alternative is typically the alternative that has incorporated these changes and achieves the best balance between needs, impacts, costs, etc.

When a preferred alternative is clear based on the analyses developed during the draft EIS process, CDOT is required to disclose that preferred alternative at that time. Where the preferred alternative is not clear, it is not essential that the preferred alternative be identified at the draft level. (Note that an EA, by its nature, will evaluate fewer alternatives and in some cases only one build alternative and one no-build alternative. The preferred alternative for an EA may be disclosed in the EA or in the FONSI.) However, the draft EIS should state that:

- A preferred alternative has not been identified.
- A reasonable range of alternatives is under consideration.
- The final selection of an alternative will not be made until after any new proposed reasonable alternatives and public comments on the draft EIS have been fully evaluated.

If a preferred alternative has been identified in the draft EIS, it is acceptable to collect additional information relevant to that alternative to more fully develop it and better understand its impacts. However, such information should not be used in comparing and deciding among the full range of alternatives being evaluated. If the preferred

alternative is modified after the draft EIS, the final EIS must clearly identify the changes and discuss the reasons why any new impacts are not of major concern.

The final EIS must identify the preferred alternative and discuss the basis for its identification (23 CFR §771.125[a][1]). The discussion must provide relevant information and rationale for the identification. The identification of a preferred alternative does not lessen the responsibility to give all alternatives a similar degree of analysis and evaluation during the EIS process.

It is important to note that the analysis presented must be neutral and objective in regard to all alternatives and cannot be slanted to support a preferred alternative over other reasonable and feasible alternatives. Once the preferred alternative has been identified, it may be developed to a higher level of detail than other alternatives to facilitate development of mitigation measures or concurrence compliance with other laws, if the lead agency so directs and determines that this would not prevent an impartial decision (SAFETEA-LU §6002 [f][4][D]).

The term “environmentally preferable” alternative is slightly different from the “preferred alternative” in that the environmentally preferable alternative promotes the national environmental policy, which ordinarily means it is the build alternative that causes the least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources. For EIS projects, the ROD must identify the environmentally preferable alternative. If it is not the selected alternative, the ROD must explain why a different alternative was selected.

Therefore, the concept of an agency’s preferred alternative may be different from the environmentally preferable alternative, though in many cases one alternative may be both. Identifying the environmentally preferable alternative during EIS preparation may help to provide maximum for commenters from other agencies and the public to address the question of which alternative is environmentally preferable. However, the agency is not required to specify an environmentally preferable alternative until the preparation of the Record of Decision (ROD).

3.7.5. Alternatives Not Considered in Detail

CEQ requires that alternatives that were considered in the (early) planning process and subsequently rejected be briefly described and the reasons for their elimination discussed (40 CFR §1502.14[a]). Particular attention should be given to any alternatives suggested by cooperating and participating agencies or the public during scoping that are eliminated without detailed study. Include sufficient detail in the NEPA document to ensure legal requirements have been met and well documented.

3.7.6. Scope of the Project and Alternatives (Non-Segmentation)

As alternatives are defined, it is important that the scope of the alternative be comprehensive enough to address the project's purpose and need. FHWA regulations state that in order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the proposed action evaluated in each EA or EIS must ([23 CFR §771.111(f)] and CEQ regulations [40 CFR §1508.25]):

- Have logical termini and be of sufficient length to address environmental matters on a broad scope.
- Have independent utility or independent significance; that is, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
- Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

The federal courts have considered a fourth factor: whether or not the proposed project “irretrievably commit[s] federal funds for closely related projects” (Piedmont Heights Civic Club v. Moreland, 637 F2d 430 (5th Cir. 1981)).

The environmental impact review conducted during the NEPA process frequently covers a geographic area broader than the strict limits of the transportation improvements (for example, impacts to resources downstream from a project water resource, or covering the habitat range of a protected wildlife species). Choosing a corridor of sufficient length to look at all impacts need not preclude staged construction.

Therefore, for a transportation corridor where the improvements are so related to one another that they should be considered one project, the project scope should not be selected solely on the basis of what is programmed in a short-range improvement program, but instead the several related construction projects should be evaluated as one. Construction can be programmed for shorter sections or finite construction elements as funding permits.

With the proper project scope determined, decision makers and the public will have a clearer picture of the transportation requirements in the project area and a better understanding of how the proposed project will meet the purpose and need. Further information on logical termini and independent utility can be found at 23 CFR §771.111(f) and on [FHWA's website](http://www.environment.fhwa.dot.gov/projdev/tdmtermini.asp)³.

3.8. Affected Environment

This section provides a brief overview of early considerations when establishing the baseline information on the project study area—

³ <http://www.environment.fhwa.dot.gov/projdev/tdmtermini.asp>

typically referred to in NEPA as describing the affected environment, both for Environmental Assessments and Environmental Impact Statements. The Affected Environment section sets the context for developing alternatives and assessing effects/impacts. More detail on developing the Affected Environment and Environmental Impact sections of the NEPA document is also available in [Appendix D](#) of this manual.

The FHWA “[Environmental Review Toolkit](#)” [website](#)⁴, as well as the FHWA Technical Advisory TA6640.8A on NEPA, provide excellent guidance for gathering data and setting up the NEPA document.

At this stage, the project team may also be able to identify potential environmental impacts resulting from the project. It is best to develop a good definition of the project’s affected environment before proceeding with project design or alternatives analysis. A complete baseline encourages more accurate project budgeting and provides a better basis for determining the appropriate level of NEPA documentation, project schedule, and funding.

Preliminary environmental analysis varies with the complexity of the project. For example, for smaller projects, the initial site visit to the project area by the project engineer and key environmental specialists may be sufficient to gather the information necessary to form a project baseline and identify potential impacts. For more complex projects, multiple site visits with a multidisciplinary team may be necessary to collect relevant baseline information, identify potential impacts that need to be considered, and identify future data needs including supplemental field studies (discussed in [Section 3.8.1](#)). For more complex projects, it is often useful at this stage to consider the potential geographic area(s) in which indirect and cumulative impacts will be assessed, as data will often need to be gathered in a broader area than the project study area for direct effects. Some background data may also need research before the site visit, including a review of area maps or GIS information, relevant environmental or transportation reports, previous surveys, and consultation with resource experts including external agency personnel.

In any case, the project manager should use these early visits and discussions to feed information into the overall project schedule and budget, allowing time for longer-term monitoring requirements and other environmental issues.

The description of the affected environment associated with the project area provides the context for evaluating environmental impacts. The project baseline should rely heavily on information already available from known, reliable sources, including agencies responsible for environmental resources. In all cases the context and complexity of the project as they relate to the surrounding area should be taken into



Know Your Study Area

Knowing the study area of your project is an important step in preparing the affected environment section.

⁴ <http://www.environment.fhwa.dot.gov/index.asp>

consideration. This data set should address all the resources, ecosystems, and human communities potentially affected by the project. All data gaps should be identified and noted, since supplemental field studies may be required to provide the missing information. The initial affected environment description should contain the following information to the extent that it is readily available:

- The status and location of important natural, cultural, social, or economic resources and systems
- Important environmental or social stress factors and constraints
- Pertinent development plans and local regulations and local administrative standards
- Environmental and socioeconomic trends

The description of the project's affected environment should not only provide the baseline required for evaluating potential environmental consequences of transportation strategies, but it should also be a strong resource when developing alternatives that will avoid or minimize impacts associated with the project. The more complete the description, the more accurately potential impacts can be predicted.

At the same time, the section should “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions should be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement must be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies are urged to avoid useless bulk during the NEPA documentation process and concentrate efforts and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement” (CEQ Regulation 40 CFR §1502.15). Refer to American Association of State Highway and Transportation Officials (AASHTO's) [“Improving the Quality of Environmental Documents”⁵](#) for suggestions on preparing good, concise, readable, and legally sufficient NEPA documents.

Early descriptions should be limited to readily available information because the affected environment and environmental consequences will be further refined during preparation of the NEPA document. Resource-specific impact analysis and mitigation measures are discussed in [Section 4](#) of this manual.

3.8.1. Supplemental Field Studies

If gaps exist in the information required to characterize specific resources or identify potential project impacts, the project team may

⁵ http://environment.transportation.org/pdf/IQED-1_for_CEE.pdf

need to conduct supplemental field studies to fill these gaps. These studies may include, among others:

- Wetland surveys
- Noise analyses
- Surveys for threatened/endangered species
- Surveys for cultural resources
- Environmental justice or broader community surveys or analysis

Identify and initiate supplemental studies early in the project whenever possible. These studies are frequently restricted to specific seasons, may take a long time to complete, or need to be coordinated with other agencies. Start these supplemental studies early in the process to avoid affecting the project schedule and budget.

Use the information gained from field studies to evaluate alternatives; this information should clearly support the analysis of impacts. Having the appropriate detailed information from these studies will avoid project delays and cost increases. The results of baseline data collection and supplemental field studies may require reconsideration of budget estimates for related environmental analyses. Budgets may need to increase or could be decreased depending on the findings. Similar impacts on the project schedule should also be anticipated. Further detail on supplemental field studies is provided by resource in [Section 4](#).

The timeline for determining how field studies fit into the overall project schedule should be discussed during early site visits and adjusted as necessary throughout the project. The schedule could be part of the Coordination Plan and Schedule which could be developed during the official project Scoping at the onset of the NEPA process. Updates may be necessary as you get closer to doing the field studies, but it would be a starting point.

3.9. *Environmental Consequences (Including Mitigation Measures and Cumulative Impacts)*

The analysis of environmental consequences forms the basis for comparing alternatives. This section of the NEPA document addresses the probable effects (or impacts) of the project alternatives on the quality of the human environment, and describes the measures proposed to mitigate potential adverse effects of the project. NEPA defines the “human environment” broadly to include many aspects of the natural and built environments. The analysis presented in the NEPA document should be of sufficient detail to establish the reasonableness of a conclusion that an effect will or will not occur and whether the effects are substantial. The description and analysis of

effects must be supported by the information and data presented in each of the specific resource sections.

To aid the lay reader in understanding the logical progression of the NEPA document, the structure of the Environmental Consequences section should parallel the Affected Environment section with construction, operations, and mitigation subsections provided within each resource discussion. Impacts to each of the resource areas and other considerations discussed in [Section 4](#) of this manual should be covered for each reasonable alternative if a potential for impact to that resource exists. The organization of the environmental consequences should be relatively consistent between technical sections. Statements that describe impacts for a particular alternative should not be repeated for another alternative if this sort of redundancy can be avoided with a better organization of the analysis. Reader understanding and simplicity should overrule format consistency.

The allocation of environmental study resources should be in proportion to the importance of the potential impacts identified in the scoping process with the resource agencies and the public. Information developed in the project planning process and studies conducted by environmental specialists should provide the basis for determining what areas of the environment may be affected and therefore require specific analysis in the NEPA document. A summary of the results of studies undertaken should be included, but not all information resulting from specialist studies and reports needs to be incorporated in the NEPA document. All special studies referenced in the NEPA document are a part of the public record and must be available with the NEPA document at the CDOT regional office and/or local agency and public reading rooms for public inspection. Where quantitative data support conclusions, they should be included. FHWA encourages the use of charts, tables, matrices, and other graphics as a means of comparing the effects of the different project alternatives. It should be noted that quantitative data does not always show the whole picture. Qualitative data is sometimes needed to get a clearer picture.

The key to managing the considerable amounts of data required to conduct a full NEPA analysis is to determine what is important in terms of disclosing environmental impacts. For example, if the project is in an urban setting with no farmlands, then farmland impacts are not discussed. If the project is a highway widening in an area inhabited by an endangered mammal, the wildlife surveys, background data, Biological Assessment and Biological Opinion, and a thorough discussion of avoidance and mitigation measures may all be appropriate for inclusion in the main body of the document, in an appendix, and in associated technical reports.

When preparing the final NEPA (decision) document, the impacts and mitigation measures of the alternatives, particularly the preferred alternative, may need to be discussed in more detail to elaborate on

information, firm-up commitments, or address issues raised during the public comment period.

The decision document should also identify any new impacts (and their implication) that may have resulted from modification or identification of substantive new circumstances or information regarding the preferred alternative following the draft document's circulation. Where new major impacts are identified between preparation of the draft and final, a supplemental NEPA document may be required (40 CFR §1502.9[c]). See [Section 3.17.3](#) for more details.

3.9.1. Types of Effects

NEPA uses the terms “impact,” “effect,” and “consequences” synonymously. For an action to affect the environment, it must have a causal relationship with the environment. NEPA distinguishes three types of causal effects: direct, indirect, and cumulative.

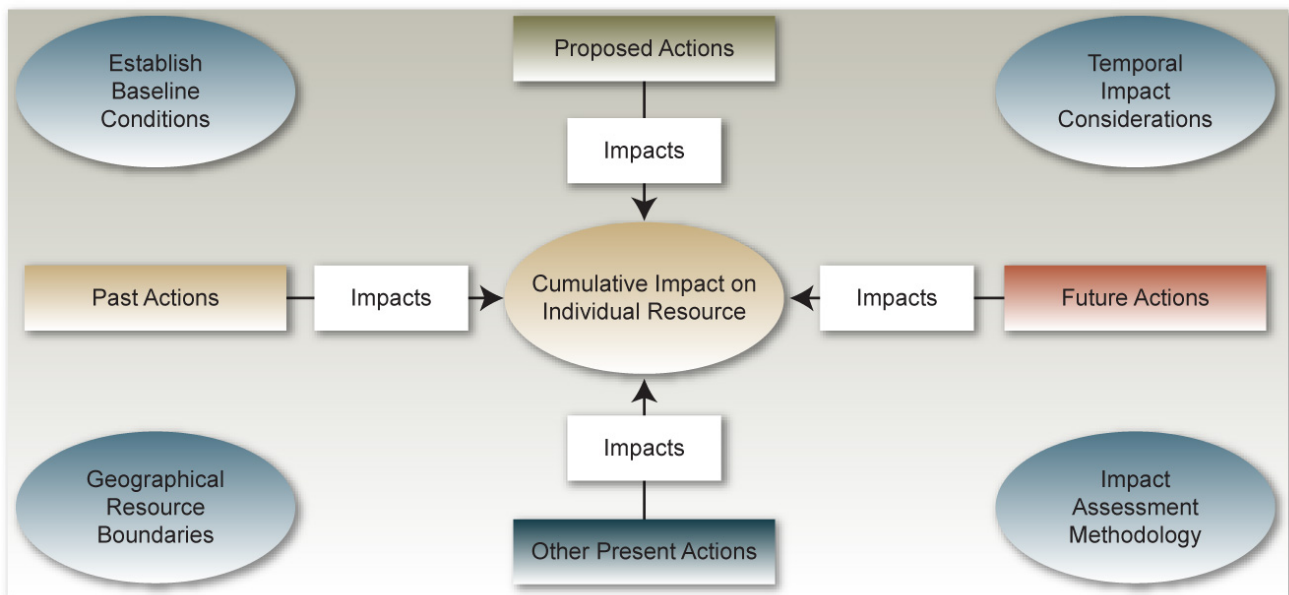

- **Direct effects** are caused by the proposed action and occur at the same time and place (40 CFR §1508.8). For example, highway construction that occurs within a wetland would completely remove the wetland or modify the structure and function of the wetland and would therefore be a direct impact on wetlands.
- **Indirect effects** are caused by the proposed action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include those related to induced changes in patterns of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems (40 CFR §1508.8). For example, highway construction that alters the hydrology of an area could increase or decrease overland water flow to nearby wetlands and streams, which would have an indirect effect on the structure and function of these water resources. Additional indirect impacts could occur to plant and animal species that inhabit the affected wetlands and streams.
- **Cumulative effects** result from the incremental impact of the proposed action when it is added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts could result from individually minor, but collectively significant, actions (see [Figure 3-3](#)) that take place over time (40 CFR §1508.7). Cumulative effects are discussed further in [Section 3.9.3](#).

Effects may be ecological, aesthetic, historical, cultural, economic, social, or health related. Effects may also be either beneficial or adverse. Beneficial effects may occur when a proposed action improves a situation (e.g., lessens serious traffic congestion). However, even when the effect of an action will be generally

environmentally beneficial, adverse environmental effects may still occur.

FHWA’s Technical Advisory T6640.8A notes that the level of impacts should not be described using the term “significant.” However, when conclusions regarding the significance of an impact have received concurrence from consulting or jurisdictional agencies, this information should be included (for instance, there may be concurrence on a Finding of Adverse Effect under Section 106 of the Historic Preservation Act). Furthermore, if the term “significant” is used, it should be consistent with the CEQ definition and supported by factual information. (40 CFR §1508.27).

Figure 3-3. Determining Cumulative Impacts

Impact discussions and associated findings should reflect realistic impact potentials rather than what might be possible if well known requirements, mandates and commitments to avoid, minimize and mitigate effects did not exist.

Impacts may also be characterized as temporary or permanent. Temporary impacts are generally those that result from demolition, site preparation, and construction activities, and will not persist once project construction is completed. Common examples of possible temporary impacts include dust generation, erosion, construction noise, stream diversion or traffic congestion. When analyzing temporary impacts, all aspects of project construction should be considered, including use of areas to store equipment and materials or set up a construction office, construction of roads to gain access to the site, or use of areas for borrow of fill or disposal of excavated material. Permanent impacts are those that persist after a project has been completed. Common examples of permanent impacts include creating cut-and-fill areas or right-of-way acquisition. Some impacts, such as changes in noise levels or changes in access to local businesses or residences, may be temporary or permanent or both, depending on project specifics.

3.9.2. Mitigation and Monitoring Commitments

Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- (e) Compensating for the impact by replacing or providing substitute resources or environments. (40 CFR 1508.20).

FHWA regulations require that mitigation measures presented as commitments in the final NEPA document be incorporated into a project (23 CFR §771.109[b] and 23 CFR §771.125[a][1]). Monitoring conducted during project construction and operation is the means to ensure mitigation measures are implemented effectively. If monitoring identifies any deficiencies in mitigating the impact, adjustments to the level, timing, and/or procedure of mitigation must be made accordingly.

Mitigation commitments are specific and include information regarding responsibility, monitoring, performance standards, and schedules for implementation. The NEPA decision document makes commitments about implementing and monitoring the proposed mitigation measures, and the commitments are documented in a “Summary of Mitigation and Monitoring Commitments” table. This summary should be formatted to allow its use as a stand-alone document that can be reproduced separately and follow the project through the design, construction, and maintenance phases. CDOT maintenance staff should be informed and consulted as early as possible in the process of determining mitigation measures.

It is important for the project team to note that long-term mitigation measures may include multi-year environmental monitoring and other components that have an effect on project schedule, budget, and long-term maintenance and operation. Furthermore, the project manager and construction, operation, and maintenance personnel must make the discussion of long-term mitigation measures a part of the project daily meeting agenda, and/or have these mitigation measures posted in an area that is likely to be observed routinely by workers on the project.

Further discussion of resource-specific mitigation and monitoring is provided in [Section 4](#). In [Section 4.28](#), a summary of mitigation and

monitoring commitments by project phase is discussed. This summary is a key component of a NEPA document because it highlights commitments on which project approval is based and makes them readily available to those responsible for implementation. Consequently, this summary should include project design components that are mandatory. Such components are in essence mitigation or monitoring commitments that have been incorporated into the project before its impacts were formally assessed under NEPA, rather than as a result of that assessment.

3.9.3. Cumulative Impacts

In mandating cumulative analysis, CEQ seeks to ensure that NEPA documents consider not only the project and its alternatives, but the other actions that could contribute to long-term environmental degradation. For example, a CDOT highway project may be just one piece of the bigger growth picture in a county. Other pieces of this picture include new retail (a new mall), new business parks (such as Interlocken or the Denver Tech Center in the Denver Metro Area, or Centerra in Loveland), new housing developments (occurring all around Colorado), and the competing demands of new residents for open space, parks, hospitals, and schools. In this example, land use is the resource being evaluated in a cumulative impact context; the growth in the area would supply information about the baseline condition and future conditions.

Cumulative impact analysis must also look at how the project area got to where it is today.

In other words, the cumulative analysis must take into consideration all of the aspects of the environment affected by the proposed action, as well as the effects of that action in relation to other past, present, and reasonably foreseeable actions in the vicinity and/or region. Reasonably foreseeable actions are those future activities that have been committed to or that are known proposals, which could take place within the defined planning horizon.

In selecting the cumulative effects to analyze and discuss, consider:

- Whether a resource(s) is important and especially vulnerable to incremental effects
- If the proposed action is one of several actions within the same resource study area with common effects
- Whether other proposed activities in the area will have similar effects
- If these effects have been historically significant for the resource

- If other environmental or planning analysis in the area has identified a cumulative effect concern

Individual resource studies and consultation with federal, state, and local agencies should provide the basis for identifying important cumulative effect issues. Previous environmental documents prepared for local and regional plans can provide guidance regarding adopted mitigation that may be applicable to reducing the cumulative impact of a specific proposed highway or off-highway project.

The potential cumulative impacts are described for each important resource within a defined cumulative impact analysis area. Generally, these areas are larger for important resources that are mobile (e.g., wildlife) compared to resources that are stationary (e.g., historic and archaeological resources). In the cumulative effects discussion, only substantial impacts to those important resources that may be affected need be discussed. The following components are required for a cumulative analysis:

- **Spatial and Temporal Boundaries** – In establishing appropriate spatial and temporal boundaries for cumulative analysis, Environmental Protection Agency (EPA) points out that there are no set or required formulas for determining appropriate scope. Decisions must be made on a case-by-case basis depending on the magnitude of the project impacts and the environmental setting. For a given project, decisions are also made on a resource-by-resource basis. Generally, the boundaries for cumulative analysis are broader than the scope of analysis used in assessing direct or indirect effects. Geographic boundaries should be defined for each resource of concern, and the periods of time considered should include the period in which the proposed action's impacts will persist. The geographic boundaries and periods of time being considered are likely to vary among different resources. The rationales used to establish the spatial and temporal boundaries of the cumulative analysis should be identified in the NEPA document. Some thought must be given to whether the CDOT project is the cause or the effect of cumulative impacts. A larger development may be drawing all the growth, and the CDOT project could just be a response to that growth.
- **Past, Present, and Reasonably Foreseeable Actions** – In identifying past, present, and future actions to be considered, only those actions that incrementally contribute to the cumulative effects on resources need be addressed. Consideration should be given to current level of degradation, ongoing activities in the area that are causing impacts, and trends for activities and impacts in the area. To be considered “reasonably foreseeable” an action need not be a specific proposal; however, the courts have excluded actions that can be considered purely “speculative.” Near-term projects

identified in local, state, and federal agency planning documents are usually considered reasonably foreseeable. In general, the description of past, present and reasonably foreseeable projects for a cumulative analysis should be inclusive, but does not need to identify every project in the defined spatial and temporal boundaries of the analysis.

The EPA and CEQ have highlighted the importance of cumulative impact analysis and recognized the complexity of delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. Both CEQ and EPA have issued detailed guidance to assist in formulating cumulative analysis. See [CEQ's Considering Cumulative Effects Under the National Environmental Policy Act, 1997](#)⁶ and [EPA's Consideration of Cumulative Impacts in EPA Review of NEPA Documents \(1999\)](#)⁷. The latter document was prepared to assist EPA staff in evaluating and commenting on NEPA documents; however, it contains substantial information of use to NEPA practitioners.

3.9.4. Incomplete or Unavailable Information

When evaluating reasonably foreseeable significant adverse effects on the human environment in a NEPA document, and when there is incomplete or unavailable information, it is important for the document to indicate that such information is lacking.

CEQ Regulation 40 CFR §1502.22 states:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

1. a statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;

⁶ <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>

⁷ <http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>

3. a summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

3.10. Consultation and Coordination

Public involvement, consultation, and coordination efforts are summarized in the NEPA document. This section should:

- Provide a chronology of key public and stakeholders meetings and events that have occurred on the project, including the early coordination and scoping processes.
- Document all meetings with government leaders, government agencies (including Cooperating and Participating Agencies), Native American interests, community and advisory groups, and individual citizens.
- Summarize all issues raised by agencies and the public.
- The final NEPA document should contain copies of pertinent interagency correspondence in an appendix, consultation with the US Fish and Wildlife Service (USFWS), Section 106 coordination with the State Historic Preservation Officer (SHPO), and important communications with similar agencies.

3.10.1. Comments on the Environmental Assessment or the Draft EIS

The FONSI and the final EIS should include a copy of substantive comments from the cooperating agencies, participating agencies, and other stakeholders who commented on the EA or draft EIS during the public comment period. Where the response from these parties is exceptionally voluminous, the comments may be summarized. An appropriate response should be provided in the NEPA document to each substantive comment. If the final NEPA text is revised as a result of the comments received, a copy of the comments should contain references indicating where revisions were made. The response should address the issue or concern raised by the commenter adequately or, where substantive comments do not warrant further response, explain why they do not, and provide sufficient information to support that position. The FONSI or final EIS should (1) summarize the substantive comments on social, economic, environmental, and engineering issues made at the public hearing, if one is held, or the

public involvement activities; and (2) discuss the consideration given to any substantive issue raised and provide sufficient information to support that position.

The document should include adequate information for FHWA and CDOT to ascertain the disposition of the comment(s).

3.10.2. Compliance with Applicable Laws

The final NEPA document should demonstrate compliance with requirements of all applicable environmental laws, executive orders, and other related requirements, such as Title VI of the Civil Rights Act of 1964. To the extent possible, all environmental issues should be resolved prior to the submission of the final NEPA document. When disagreement on project issues exists with another agency, coordination with the agency should be undertaken to resolve the issues. Where the issues cannot be resolved, the final NEPA document should identify any remaining unresolved issues, the steps taken to resolve the issues, and the positions of the respective parties. Where issues are resolved through this effort, the final NEPA document should demonstrate resolution of the concerns. For a list of NEPA-related regulations that are often considered during a CDOT NEPA effort, refer to [Section 7](#) of this manual.

3.11. List of Preparers

CEQ regulation requires the inclusion of the names and brief qualifications (expertise, experience, professional disciplines) of persons primarily responsible for preparing the NEPA document or conducting environmental studies (40 CFR §1502.17). This should include state (and/or local) agency staff, FHWA staff, and consultants preparing all or part of the document, even if the consultant's contribution was modified by the agency. Technical editors and graphic support personnel are included. FHWA's Technical Advisory T6640.8A calls for listing the FHWA personnel primarily responsible for preparing or reviewing the NEPA document, and their qualifications. The list should also indicate the portion of the NEPA document that the individual prepared. This information can be presented in tables. To obtain accurate information for the list of preparers, each person should be contacted to verify educational and professional experience and the number of years employed. A list of preparers is not required for CatExs.

3.11.1. List of Agencies, Organizations, and Persons To Whom Copies of the Statement are Sent

The distribution list should name all federal, state, and local agencies and persons to whom copies of the NEPA document are sent (40 CFR §1502.10). FHWA's Technical Advisory T6640.8A notes that the NEPA document should list all entities from which comments are requested. This should include local agencies and organizations likely to have an interest in all or part of the proposed project. Federal, state, and local

agencies that are typically included in the NEPA process are discussed in [Section 5](#).

3.12. *References and Citations*

The NEPA document must cite the references used in preparing the document. The citations should include the technical studies used to substantiate the analyses and conclusions in the document. They may also cite other relevant sources, such as local or regional planning documents, pertinent scientific studies, or other relevant materials. Materials prepared by other agencies in compliance with other regulatory processes (e.g., a Biological Opinion) should also be referenced.

3.13. *Index*

The index of a NEPA document should include important subjects and areas of major impacts so that a reviewer need not read the entire document to obtain information on a specific subject or impact. It should have a level of detail sufficient to focus on areas of the document of reasonable interest to any reader. However, it need not identify every conceivable term or phrase. A keyword index is not required by regulation, but is highly recommended by CEQ guidance (CEQ's 40 Most Asked Questions).

3.14. *Appendices and Technical Reports*

NEPA guidance emphasizes that NEPA documents should be succinct statements of the information on environmental impacts and alternatives that the decision maker and the public need in order to make decisions and to ascertain that significant factors have been examined. The appendices should only include material that is directly relevant to the NEPA document and that substantiates data that is important to the analysis and supports the conclusions.

Lengthy technical discussions should be contained in separate technical reports. Technical reports are not treated as appendices to the NEPA document. They are bound as separate documents and referenced. While separate technical reports are not circulated with the NEPA document during public review, they are public documents and must be available for review. They must also be submitted along with copies of the administrative draft for CDOT headquarters (Environmental Programs Branch (EPB) and others) review and FHWA administrative review and approval. All reports and studies referred to in the environmental document must be readily available for public review and copying at a convenient location, which is usually the CDOT regional office. An exception to this is during the public comment period prior to the public hearing when the NEPA document and the technical reports are placed in additional locations for public review and copying (typically libraries or other easily accessible public buildings).

Relevant appended information may include listings (e.g., wildlife species common to the project area), letters of agreement, Memoranda of Understanding, or Referendums. The appendices to a NEPA document must contain all correspondence received from government agencies and private interest groups concerning the project. However, they do not include any letters between CDOT and FHWA, internal CDOT memos, or letters.

3.15. Finding of No Significant Impact

When preparing an EA, once the environmental analyses are completed and a review indicates that no significant impacts are present or predicted, a Finding of No Significant Impact (FONSI) is prepared. The CEQ Regulations 40 CFR §1508.13 states that a “finding of no significant impact is a document by a federal agency briefly presenting the reasons why an action, not otherwise excluded (40 CFR §1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR §1501.7[a][5]). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.”

FHWA reviews the EA and any public hearing comments and other comments received regarding the EA. If FHWA agrees with the applicant's (CDOT's) recommendations pursuant to 23 CFR §771.119(g), FHWA will prepare a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents. In the case of FHWA and CDOT acting as co-lead agencies for a project, CDOT actually prepares the FONSI for FHWA signature.

After the FONSI determination has been made by FHWA, a notice of availability (NOA) of the FONSI is sent by CDOT to the affected units of federal, state, and local government, and the FONSI is made available from CDOT and FHWA upon request by the public. Notice is also sent to the state intergovernmental review contacts established under Executive Order 12372.

If another federal agency has issued a FONSI on an action that includes an element proposed for FHWA funding, the FHWA will evaluate the other agency's FONSI. If FHWA determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, FHWA will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately identified and assessed, FHWA will require appropriate environmental studies (FHWA Regulation 23 CFR §771.121).

3.16. *Record of Decision*

The Record of Decision (ROD) typically follows a final EIS and identifies the selected alternative. In addition the ROD explains the reasons for the project decision, summarizes any mitigation measures that will be incorporated in the project, and documents any required Section 4(f) approval. While cross-referencing and incorporating the final EIS (and other documents) as appropriate, the ROD must explain the basis for the project decision as completely as possible, based on the information contained in the EIS (40 CFR §1502.2). It is important to note that ONLY FHWA has approval/issuing authority for a ROD, whether or not the NEPA process has been merged with, for example, COE 404 (b)1. The ROD may not be issued sooner than 30 days after the approved final EIS is distributed, nor sooner than 90 days after the draft EIS is circulated.

The following key items are addressed in the ROD:

- **Decision** – Identify the selected alternative and the basis for its selection.
- **Alternatives Considered** – Briefly describe each alternative and explain the balancing of values that formed the basis for the decision. Identify the environmentally preferred alternative(s) and, if the alternative selected is not the environmentally preferred alternative, clearly state the reasons for not selecting it. Also identify the Least Environmentally Damaging Practicable Alternative (LEDPA), if applicable.
- **Section 4(f)** – Summarize the basis for any Section 4(f) approval, when applicable (23 CFR §771.127[a]).
- **Measures to Minimize Harm** – Describe the specific measures adopted to minimize environmental harm and identify those standard measures. State whether all practicable measures to minimize environmental harm have been incorporated into the decision and, if not, why they were not (40 CFR §1505.2[c]). Identify any impacts that can't be mitigated.
- **Monitoring or Enforcement Program** – Describe any monitoring or enforcement program adopted for specific mitigation measures, as outlined in the final EIS.
- **Comments on Final EIS** – Include substantive comments received on the final EIS as well as the given appropriate responses. Summarize other comments and responses where appropriate.

3.17. Other NEPA Documents

3.17.1. Tiered NEPA Analyses

Agencies are allowed by CEQ regulations to tier their NEPA documents (typically environmental impact statements) to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. FHWA regulations (23 CFR §7111[g]) state that “for major transportation actions, the tiering⁸ of EISs as discussed in the CEQ regulation (40 CFR §1502.20) may be appropriate.” The CDOT Executive Management Team and FHWA determine whether a project should use a tiered approach:

- Tier 1 is equivalent to programmatic (i.e., “big picture”) documents. These documents focus on broad policy decisions such as general location, mode choice, and area-wide air quality and land use implications of major alternatives.
- Tier 2 is equivalent to project-specific documents. These documents address site-specific details on project impacts, costs, and mitigation measures.

There are pros and cons of using tiered NEPA analysis ([Table 3-1](#)). By following a tiered process and focusing the Tier 1 document on strategies for an entire corridor, the goal is to expedite the Tier 2 evaluation since overall corridor issues have been addressed up front, and detailed environmental studies have been reserved for specific project locations. Tier 2 documents allow FHWA and CDOT to focus on analyzing project-specific impacts and issues in the second tier.

⁸ Note that the term “tiering” is also used in a general sense to mean dependence on information from previously published documents, which are referenced, without repeating their information in the current document. The phrase “to tier to” another document means to incorporate by reference without repeating.

Table 3-1. Pros and Cons of Tiered NEPA Analysis

Pros	Cons
Tier 2 analysis may be accomplished by one or more CatEx, EA or EIS.	Requires explicit explanation and understanding of both tiers and what is to be accomplished in each.
Theoretically provides an efficient way to address complex situations.	The scope of the analysis can be so large that it is difficult for stakeholders to understand; lack of design and mitigation details escalates stakeholder concerns; there are funding limitations for such a large undertaking.
Provides a corridor-wide and site-specific analysis.	Requires consistent agency input and representation.
High-level policy decisions identify big-picture solutions such as mode(s) of transportation and general location for large corridors.	Requires adequate funding for each level of the project. Level of detail at Tier 1 may be inadequate to address agency concerns.
May be able to take advantage of long-range planning; simplifies Tier 2 analysis because few alternatives (as little as one) are carried forward.	Must be managed closely to ensure closure at the Tier 1 level. Changing environment or regulations may render Tier 1 analysis obsolete before Tier 2 studies begin.
Tier 2 documents rely heavily on the affected environment and cumulative impacts of the Tier 1 document, which streamlines the Tier 2 process.	Potential identification of late alternatives in Tier 2 makes similar scrutiny of all alternatives difficult.
Tier 1 analysis provides local governments with the big picture benefits and impacts of planned growth.	

3.17.2. Reevaluations

After completion of the NEPA process, CDOT must consult with FHWA before requesting any major approvals to establish whether the approved NEPA document or CatEx remains valid. If circumstances have changed, FHWA may require a written reevaluation. A written reevaluation is prepared to determine what changes have occurred and whether new documentation or a supplemental EIS is necessary. A written reevaluation is required under the following conditions:

- Before CDOT requests federal-aid authorization for major production phases (preliminary engineering, right-of-way acquisition, and construction advertisement) of projects for which a non-programmatic CatEx, final EIS, EA/FONSI, or supplemental environmental document has been prepared
- Before preparing a final EIS or supplemental document if more than three years have lapsed since the circulation of the approved draft EIS or supplemental environmental document
- For a final EIS, if more than three years have elapsed since draft EIS approval and a subsequent major phase has not been authorized by the FHWA
- Any time during the project development process when a major change in the project’s concept has occurred
- For a ROD if more than 3 years elapsed since approval of the final EIS

3.17.3. Supplemental EIS Analyses

Whenever there are changes, new information, or further developments on a project that may result in major environmental impacts not identified in the most recently distributed version of the draft or final EIS, a supplemental EIS is necessary (40 CFR §1502.9[c]). These changes occur following the last approval (EA, FONSI, draft EIS, final EIS, ROD). Supplemental EISs normally do not require reinitiating the entire environmental process. Instead, the supplemental EIS is for the last approval. If a ROD has been granted, only the final EIS will need to be supplemented.

If the changes are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, FHWA/CDOT will suspend any activities that would have adverse environmental impacts or limit the choice of alternatives until the supplemental EIS is complete.

A supplemental NEPA document is needed in the following cases:

- Changes have occurred in the need for or purpose of the project requiring analysis of totally new alternatives.
- Schedule changes that would require the evaluation of previously unexplored options.
- Changes have been made to the design or scope of the project.
- Significant changes to the environmental consequences of the project (determined following completion of the environmental approval process) may require supplemental documentation to determine whether NEPA document conclusions are valid.
- FHWA or CDOT determines that new information or circumstances would result in substantial environmental impacts not evaluated in the NEPA document.

In addition, supplemental information may be required to address issues of limited scope such as the extent of proposed mitigation, the evaluation of location, or design variations for a limited portion of the overall project. When this is the case, preparation of the supplemental will not prevent granting new approvals, require the withdrawal of previous approvals, or require suspension of project activities for any activity not directly affected by the supplement.

A supplemental NEPA document will be reviewed and distributed in the same manner as its previous draft and final versions (23 CFR §771.130[d]) to ensure that the public and interested agencies understand the changes in status of the project.

3.17.4. Supporting Studies

Supporting studies may be required to obtain information adequate for evaluation of impacts to a particular resource. In the context of NEPA, they are most likely to include supplemental field studies that collect new and project area specific data on such resources as archeology, paleontology, vegetation, fish and wildlife, and others. The need for such studies, their level of detail, extent, and seasonal constraints will be determined during the early site visits and should be discussed with the appropriate regulatory agency (e.g., SHPO for archeology/paleontology, and/or CDOW and USFWS for fish and wildlife) early in project planning. Other field studies on resources such as geology or soils may be necessary to collect information for project structural design, but these are not typically required for the evaluation of impacts under NEPA.

Studies that evaluate a project's impact, such as conformity analysis of impacts on air quality, typically rely on available data to characterize the existing situation and detailed assumptions about project components. In this example, because of the assumptions made when using conformity analysis models, early discussion with the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and the Environment (CDPHE) is appropriate.

Such studies are discussed in further detail by resource in [Section 4](#).

3.17.5. Certifications

Specific certifications may be required to legally conduct some of the supporting studies that require collection of field data. For example, field survey of historic properties is performed by personnel who are listed in the Directory of Cultural Resource Management Agencies, Consultants and Personnel for Colorado, as holding a state permit to do fieldwork in archaeology and paleontology on state, county, city, and some private lands in Colorado (but not on federal or tribal lands). This is because there are minimum qualifications for state permits (Office of Archaeology and Historic Preservation, [Colorado Historical Society, Publication #1308b](#)⁹, 8CCR 1504–7 Rules and Procedures Historical, Prehistorical, and Archaeological Resources Act (revised 01/04)) that help to ensure that the permit holder will collect reliable and legally compliant data.

In addition, field surveys of fish and wildlife species that require handling to be surveyed, may require a permit from [CDOW](#)¹⁰ and/or the [USFWS](#)¹¹. The population status of the species to be studied frequently determines whether a permit is required. Field surveys that rely solely on observation seldom require permits.

⁹ <http://www.coloradohistory-oahp.org/publications/pubs/1308b.pdf>

¹⁰ <http://wildlife.state.co.us/NR/rdonlyres/2BFDBAD9-0EDF-41A2-8076-D9211B1518F1/0/Ch13.pdf>

¹¹ <http://www.fws.gov/permits/instructions/ObtainPermit.shtml>

Such permits are addressed in greater detail in [Section 7](#) of this manual. Verify that consultants hired to perform supplemental field studies have or can readily obtain the required permits in time to perform the needed field work in the appropriate season(s).

3.17.6. Technical Reports

The project team, when laying out the project scope, schedule, and budget, as well as conducting site visits, should also establish the philosophy and criteria for how technical reports will be incorporated (e.g., by individual citation, summary of information, referral to separate technical report) into each type of NEPA document. The review of these reports, as noted in CDOT's Document Review Procedures on the main CDOT website, goes through the same process as the remainder of the NEPA documents. In fact, resource specialists usually need the resource-specific technical reports to better understand the reasoning for the results summarized in the main NEPA document.

Generally, multiple copies (minimum of five) of each technical report should be reproduced and available for the public (unless the report contains sensitive information not for public release). All technical reports need to be filed in the administrative record to be made available to the public upon request for a printed version.

3.18. Legal Records

3.18.1. Administrative Record

Under the Administrative Procedure Act, a court reviews an agency's action to determine if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (5 US Code [USC] §706[2][A]). In making this determination, a court evaluates the agency's whole administrative record. The administrative record is the paper trail that documents the agency's decision-making process and the basis for the agency's decision.

The administrative record for each project will be drawn from the CDOT project files as needed. Not all material in the project file will necessarily become part of the administrative record; however, any information that supports the final decision should be part of it. The CDOT project filing system will identify non-public information that is not appropriate for inclusion in the administrative record.

Documentation

Types of documentation relative to the NEPA process placed in the CDOT administrative record include:

- Documents and materials prepared, reviewed, or received by agency personnel and used by or available to the decision maker

- Policies, guidelines, directives and manuals, or easy references to these materials if they are readily available
- Articles and books. Be sensitive to copyright laws governing duplication. Include factual information or data
- Communications the agency received from other agencies and from the public, and any responses to those communications. Be aware that documents concerning meetings between the lead and cooperating agencies should be included but may qualify, either partially or fully, for the deliberative process privilege
- Documents and materials that contain information that support or oppose the challenged agency decision
- As a general rule, do not include internal “working” drafts of documents that may be superseded by a later, more complete, edited version of the same document. Generally, include all draft documents that were circulated for comment either outside the agency or outside the author’s immediate office, if changes in these documents reflect significant input into the decision-making process
- Technical information, sampling results, survey information, engineering reports or studies. Certain technical information, such as threatened/endangered species, historic, and archaeological resource survey report, should be kept in the files but labeled “CONFIDENTIAL – NOT FOR PUBLIC RELEASE” due to their sensitive nature
- Decision documents
- Minutes or transcripts of meetings
- Memos of telephone conversations and meetings, such as a memorandum or handwritten notes, unless they are personal notes

At a minimum, items that should be kept in the record include:

- Notes of meetings where key decisions are made about the content of the document
- Issues to be examined in detail
- Alternatives
- Notes
- Public comment letters

- Minutes of meetings
- Phone calls
- E-mails
- Documentation of public involvement efforts
- Copies of EAs or EISs that were circulated within CDOT, FHWA, or to other agencies or entities outside CDOT and FHWA, for review or comment

All written documentation should contain a date, indicate to/from (or attendees for meetings), location (for meetings), and be clear on subject matter. The project team may want to consider establishing a template for internal communications, memos, e-mails (e.g., always using the project number in the subject line of an e-mail) early in the NEPA process.

Further information on the legal sufficiency of NEPA documents prepared for transportation projects can be found on [FHWA's website](#)¹².

3.18.2. Project Documents Shelf Life

All current CDOT project data should be kept in active files until the project has been implemented or a formal decision has been made to delay the project indefinitely. Much of this information is also appropriate for inclusion in the administrative record required under NEPA ([Section 3.18.1](#)).

There is no general NEPA guidance on how long an administrative record should be kept and federal agencies are free to establish their own guidelines on retention, although FHWA has not done so. However, once a project has been completed, prudence dictates that the following types of data should be permanently retained:

- Design and as-built drawings and specifications
- Deeds and titles
- All information considered under NEPA in selecting the alternative that was implemented (i.e., the administrative record)

Such information may be useful in assessing and resolving future problems with project structures, ownership, or choices associated with implementation.

¹²

<http://nepa.fhwa.dot.gov/ReNEPA/ReNepa.nsf/0/A5920192C00C461D8525719F000C861C?opendocument&Group=NEPA%20Process%20and%20Documentation&tab=REFERENCE>; http://environment.transportation.org/pdf/IQED-1_for_CEE.pdf

Section 6002 of SAFETEA-LU establishes a [180-day statute of limitations](#)¹³ on litigation for projects being implemented under either the new or old procedures. The 180-day clock starts with Federal Register publication of a notice that a permit, license, or approval action is final. As part of implementing this procedure, a new process for publication of notices regarding RODs and FONSI's will need to be developed.

3.18.3. Colorado Open Records Act (CORA)

The CORA begins at [Section 24-72-201 of the Colorado Revised Statutes \[CRS\]](#)¹⁴ and applies to virtually all levels and types of governments within Colorado. These include the state, its agencies and institutions, cities, counties, towns, school districts, special districts, and housing authorities, among others. Each of these organizations of government must meet the requirements of the Open Records Act.

The “public records” that are open for inspection under the CORA include a very wide variety of materials. Books, papers, maps, photographs, tape recordings and electronic mail, among other written materials, are all open records. In order to be a “public record,” the materials must be made by the government, kept by the government, or maintained by the government, and the record must also involve the receipt or expenditure of public funds, or the exercise of functions required or authorized by law or administrative rule.

CDOT and other state agencies must respond within three days to requests made for information under CORA and must provide the information requested within seven days unless it is somehow protected from disclosure (e.g., specific locations of sensitive archaeological sites are often unavailable to the public in order to preserve the integrity of the site).

Upon receipt of a CORA request, immediately notify CDOT's Legal Staff at Headquarters for assistance. In some cases, it may be necessary to consult with the CDOT representative at the State of Colorado Attorney General's office to develop an appropriate response.

The types of information that are open to inspection are discussed in [CRS 24-72-201](#)¹⁵. CDOT must allow the public to inspect such information, although it may charge for copies requested by the public, and need not help the public narrow its search for broadly stated information requests (due to staffing constraints).

¹³ <http://www.fhwa.dot.gov/hep/section6002/3.htm>

¹⁴ http://www.state.co.us/gov_dir/leg_dir/olls/HTML/colorado_revised_statutes.htm

¹⁵

<http://198.187.128.12/colorado/lpext.dll/Infobase4/375be/3ddab/3ddad/3de4d/3de50?f=templates&fn=fs-main-doc.htm&q=24-72-201&x=Advanced&2.0#LPHit1>

The CORA does not apply to federal government records. A different federal statute, called the Freedom of Information Act (FOIA, discussed below), applies to requests for information from the federal government. Similarly, FOIA does not apply to Colorado state or local government.

3.18.4. Freedom of Information Act

The US Freedom of Information Act (FOIA) (5 USC §552, as amended by Public Law No. 104-231, 110 Stat. 3048) is a federal law that establishes the public's right to obtain information from federal government agencies. FOIA carries a presumption of disclosure; the burden is on the government—not the public—to substantiate why information may not be released. Upon written request, agencies of the US government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court.

The FOIA applies to Executive Branch departments, agencies, and offices; federal regulatory agencies; and federal corporations. Congress, the federal courts, and parts of the Executive Office of the President that function solely to advise and assist the president, are not subject to the FOIA. Records obtainable under FOIA include all “agency records,” such as print documents, photographs, videos, maps, e-mail, and electronic records, that were created or obtained by a federal agency and are, at the time the request is filed, in that agency's possession and control. Agencies are required by FOIA to maintain information about how to make a FOIA request, including a handbook, reference guide, indices, and descriptions of information locator systems. The best place to get this information is on the agencies' websites.

FHWA has a website that addresses [FOIA requests](#)¹⁶. It includes a [FOIA Request Guide](#)¹⁷ that clearly explains how the public is to make FOIA requests and how FHWA should respond to them.

The FOIA does not apply to Colorado state or local government records. A different state statute, called CORA, applies to Colorado state and local government (see [Section 3.18.3](#)). Similarly, this statute does not apply to federal government records.

3.18.5. Working with Consultants

The region's assigned NEPA project manager and resource specialists are responsible for implementing the formal NEPA process and will provide guidance throughout the project. However, to facilitate timely completion, especially of large projects, CDOT typically hires consultants for the project team who can provide additional staffing and technical expertise during the NEPA process. Consultants should

¹⁶ <http://www.fhwa.dot.gov/foia/>

¹⁷ <http://www.fhwa.dot.gov/foia/guide.htm>

serve as an extension of the CDOT staff or as technical experts or advisors on all or part of a project.

CDOT has a [Generic Statement of Work \(GSOW\)](#)¹⁸ Basic Contract that is used when hiring consultants. Chapter 6 of this GSOW Basic Contract is reserved to address Environmental Work Task Descriptions.

This environmental scope of work (See [Appendix E](#)) was prepared to facilitate high-quality, efficient consultant support of the NEPA process. It provides consistent language for requests for proposals (RFPs) so that they will be clear, comprehensive, complete, and result in environmental products that are prepared efficiently and of high quality. The language also clearly places the responsibility for delivery of such products on the consultant, which will save CDOT both money and time.

¹⁸

<http://www.dot.state.co.us/Consultants/TEMPLATES/GENERIC%20SCOPE%20OF%20WORK%205-5-06.pdf> /or/ <http://www.dot.state.co.us/Consultants/>

This page intentionally left blank.