

Table of Contents

NEPA DOCUMENT COMPONENTS 1

Standard Document Format..... 1

Standard Document Sections 2

Cover Sheet 3

Executive Summary 5

Table of Contents..... 6

Purpose of and Need for the Project..... 6

Description of Alternatives Including the Proposed Action 9

Affected Environment..... 13

Environmental Consequences (including mitigation measures and cumulative impacts) 15

Consultation and Coordination..... 22

List of Preparers..... 23

List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent..... 24

References and Citations..... 24

Index 24

Appendices (If any) 24

CLASSES OF NEPA DOCUMENTS AND WHAT THEY COVER 26

Classes of Action 26

Categorical Exclusion (CATEX)..... 29

CATEX Projects 29

Unusual Circumstances 30

Programmatic Categorical Exclusions 31

CATEX Documentation Content 31

CATEX Approval..... 32

Environmental Assessment (EA) 32

Public Involvement and Agency Consultation..... 33

EA Document Content 34

EA / FONSI Approval Process 35

Environmental Impact Statement (EIS)..... 38

Notice of Intent 39

Scoping 40

EIS Documentation Content 41

Preparing the Final EIS..... 42

Record of Decision..... 44

EIS Approval Process 45

Other NEPA Documents 47

Tiered NEPA Analyses 47

Reevaluations 48

Supplemental NEPA Analyses..... 53

Supporting Studies..... 54

Certifications 55

Technical Reports 55

Legal Records	56
CDOT Project File	56
Project Directory.....	56
Group Sub-Directories	56
Documentation	57
Administrative Record	58
Project Shelf-Life.....	59
Colorado Open Records Act (CORA)	59
Freedom of Information Act (FOIA).....	60

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NEPA DOCUMENT COMPONENTS

This section discusses the format and presentation for preparation of National Environmental Policy Act (NEPA) documentation. This guidance is expected to help promote clarity, accuracy, consistency and provide for uniformity in document development. It is extremely important to maintain the following when preparing your environmental assessment and environmental impact statements:

- Document quality
- Efficiency in technical and policy review
- Consistency in information development
- Expediency in federal approvals.

Of the three types of NEPA documents, only the components of EAs and EISs or their variations (i.e., supplemental or programmatic) are addressed here. The categorical exclusion (Cat Ex) process is briefly discussed in Section 2.4.1 of the NEPA Manual, and in [Appendix H, Classes of NEPA Documents and What They Cover](#). Additional information is also provided in Chapter 4 of the Environmental Stewardship Guide, and at: <http://www.dot.state.co.us/FormsDepository/cdot0128.pdf>.

Standard Document Format

CDOT has a preferred standard document format to ensure consistency in NEPA documents across CDOT Regions. Adhere to the following guidelines for direction on scale of the document, formatting, and how to present any supporting documentation for the NEPA document:

- **LENGTH** —The adequacy of a NEPA document is measured by its functional usefulness in decision making, not by its size or level of detail. Level of detail should be commensurate with the scale of the proposed project and the related impact.
- **PAPER SIZE AND MARGINS** —Use 8 ½" x 11" paper with standard 1" margins. Even and odd page formatting is preferred with larger interior margins at 1.25" for binding. 11" x 17" paper may be used for graphics if needed and at the Region's discretion.
- **LAYOUT** —Text should be presented in the portrait page setup printing format. Landscape format may be used to present large graphics as necessary.

- **LINE SPACING** —Line spacing may be single- or double-spaced and the document may be printed using one or both sides of the paper. Single-spaced, double-sided copies are suggested to save paper and reduce both document distribution and reproduction costs.
- **PAGE NUMBERING** —All pages in the document should be numbered and appear in a document footer at the bottom of each page. Page numbers should correspond to the appropriate chapter/appendix number of the document.
- **FONT** — Print type should be of adequate size and style to be easily read.
- **EXHIBITS** —Exhibits (figures, charts, tables, maps, and other graphics) are useful in reducing the amount of narrative required. Such exhibits should be technically accurate and of high quality. Avoid complex, busy figures, overly complex charts, and matrices when possible. Documents should be composed to convey to the reader, in understandable terms, the composition of the project and the extent of its impact on the human environment. Exhibits should be produced such that the information is clearly depicted regardless of whether the document is printed in black and white or color (i.e., do not use similar coloring to differentiate within the exhibit; use grayscale shading or colors that would illustrate grayscale differences and/or patterning).
- **SUPPORTING STUDIES** —Technical information and studies developed to analyze impacts should be summarized in the document and/or incorporated by reference. These technical studies, which support the NEPA document, are not environmental documents under NEPA; however, they are a supporting part of the environmental compliance record and are public documents.
- **CROSS REFERENCING** —In referencing letters and other support material appended to the document, ensure the specific page number of the reference is provided to assist the reader in accurately locating the reference.

Standard Document Sections

CEQ regulations specify a recommended format for NEPA EIS documents (40 CFR 1502.10). CDOT should use a format for EISs that will present alternatives clearly, including the Proposed Action, to encourage good analysis and support efficient and effective decision-making. EAs also have a similar structure and format; however, the level of detail will vary commensurate with the scale of the proposed project and the related impact. The preferred CDOT outline includes the following sections, which are discussed in more detail in this appendix:

- Cover Sheet

- Executive Summary
- Table of Contents
- Purpose of and Need for the Project [Chapter 1]
- Alternatives Including the Proposed Action [Chapter 2]
- Affected Environment and Environmental Consequences (including mitigation measures and cumulative impacts) [Chapter 3]
- Section 4(f) Evaluation [Chapter 4]
- Impacts and Mitigation Comparison Table [Chapter 5]
- Consultation and Coordination
- List of Preparers (not required for an EA)
- List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent
- References and Citations
- Index
- Appendices (if any)

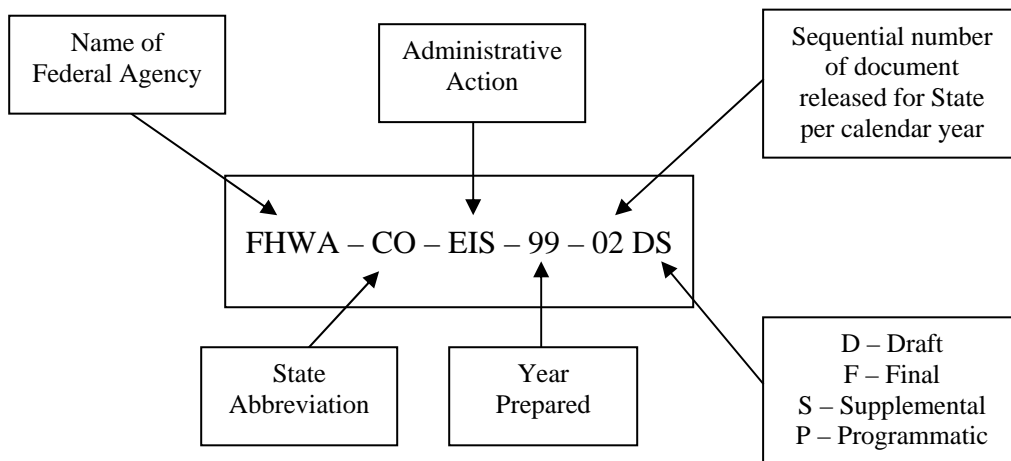
For additional discussion of the major components of NEPA documents, refer to CEQ's regulations for implementing NEPA (40 CFR 1502.10 through 1502.18); and FHWA Technical Advisory T 6640.8A.

Cover Sheet

The cover sheet is a mandatory component of a NEPA document (40 CFR 1502.11). It should not exceed one page and must include the following components:

- Designation of administrative action (i.e., Draft or Final, Programmatic or Supplemental, EA or EIS, FONSI or ROD).
- Title and location of the project; identify route number, local name, project limits, and county in which project is located.
- Responsible agencies, including the lead agency and any cooperating agencies
- Identify financial and federal number.

- Brief project description limited to one paragraph, which includes the length, number of lanes, and major structures involved (bridges, interchanges, park and ride lots, ramps, etc.). For a FONSI or ROD, the brief abstract should include reasons why the action would not have a significant effect on the human environment (FONSI) or the significant effects that would result from the project (ROD).
- Cite the federal authority for which the document is being prepared (i.e., “Submitted pursuant to 42 U.S.C. 4332 (2)(c)”).
- Provide date and signature block for the FHWA Division Administrator.
- If the document is being released for public comment, include the statement “Approved for Public Availability”; the date by which comments must be received; and the name, address, and telephone number of the responsible agency contact to whom public comments should be submitted, such as the Region Environmental Manager/Engineer and FHWA Division Administrator.
- For EIS documents, include the federal identification number, lead agency, and FHWA Division in the upper left corner (i.e., “FHWA-CO-EIS-99-02DS, Federal Highway Administration, Colorado Division”). The federal identification number, assigned by the Central Environmental Management Office (CEMO), consists of the following components:



At the Region’s discretion, a document cover page may be superimposed over an illustration of a project; however, consultant logos are not to be used on the cover of any environmental documents. Consultant logos may be shown on any supporting

material for an environmental document (i.e., Noise Report, Air Report, Preliminary Engineering Report, etc.). All consultant contributions should be documented in the list of preparers for an EIS.

Executive Summary

The executive summary is a mandatory component of a NEPA document (40 CFR 1502.12). The summary forms a reader's first and lasting impression of the EIS and should include sufficient information to allow the reader to gain a complete understanding of the issues addressed in the body of the NEPA document. It should list all reasonable alternatives considered, major environmental resource impacts, and proposed mitigation measures in a comparative form. The summary usually should not exceed 15 pages. Use of a matrix or table(s) is encouraged to present information concisely. In general, the executive summary should serve to highlight for the reader the major findings and conclusions of the environmental analyses and should include the following:

- Underlying need (and purpose if applicable) for taking action.
- Proposed Action (and other connected actions if applicable).
- Identification of project issues and impacts (and areas of controversy and unresolved issues if applicable) in proportion to their importance
- Reasonable range of alternatives considered (and identification of the Preferred Alternative if applicable).
- Identification of principal environmental issues and key differences among alternatives (highlight any significant impacts, impacts that cannot be avoided, impacts that can be mitigated, and additional review or permits required before taking action).
- Any recommendations, commitments, mitigation or interagency agreements that may have been reached over the course of the study (if applicable).
- Appropriate findings reached and concluding statement of findings to comply with Executive Orders 11990 (Wetlands) and 11988 (Floodplains). A statement of no findings is required if there are no wetlands or floodplains involved in the project.
- Appropriate findings reached and concluding statement of findings where there is involvement with Section 4(f) or Section 106 resources. Discussion must state that no "feasible and prudent" alternative exists and that all practicable measures to minimize harm have been taken. A statement of no findings is

required if there are no Section 4(f) or Section 106 resources involved in the project.

- An effects determination for threatened and endangered species or their critical habitat and coordination with the U.S. Fish and Wildlife Service (FWS). A statement of no findings is required if there are no threatened and endangered species or their critical habitat involved in the project.
- Appropriate findings reached and concluding statement of findings where there is involvement with prime or unique farmlands and coordination with the Natural Resources Conservation Service (NRCS).

The executive summary in a final NEPA document is more conclusive than in a draft document. In a final NEPA document, the executive summary should document specific findings, results of consultations, recommendations, commitments, and identify major changes from the draft to final document. For an EA, the executive summary should conclude whether a FONSI or further study in an EIS is appropriate and the basis for the conclusion. For an EIS, the executive summary should provide the components that will be used in final decision-making and later be documented in the ROD. Detail in an executive summary should be succinct, but of sufficient detail to serve as a stand-alone document that can be used for decision-making regarding the recommended or Preferred Alternative.

Table of Contents

The table of contents for NEPA documents must include the major document components (as discussed in this section) as well as a list of figures, tables, and appendices. It should be of sufficient detail to provide a “road map” to reading the document and allow the reader to easily navigate the document.

Purpose of and Need for the Project

A statement of the underlying purpose and need for action is a mandatory component of a NEPA document (40 CFR 1502.13).

The purpose and need was introduced in Section 3.5 of this Manual. The purpose and need statement establishes why the agency is proposing a specific transportation project. A concise, well-justified purpose and need section explains to the public and decision-makers why the proposed expenditure of funds is necessary and worthwhile, and why the priority of the project is warranted relative to other needed transportation projects. The purpose and need statement establishes the basis for selecting reasonable alternatives, including the Proposed Action, and the ultimate selection of a project.

This Purpose and Need section of the NEPA document should—

- Explain the project purpose
- Define the need for action
- Provide any project background that will provide helpful context for the reader.

The purpose and need statement is also vital to meeting the requirements of Section 4(f) of the Department of Transportation Act (49 USC 303; Section 5.19 of this manual); Executive Orders 11990 (Wetlands) and 11988 (Floodplains) (Section 6.2.8 of this manual); and Clean Water Act Section 404(b)(1) Guidelines. Section 404(b)(1) Guidelines are the only regulations other than NEPA that require a purpose statement. In addition, under the NEPA/404 Merger Process, the USACE in consultation with the EPA and USFWS must concur on the purpose and need statement for projects that require an individual section 404 permit (refer to Sections 5 and 7 of the NEPA Manual). This will enable USACE approvals under the CWA to move forward in parallel with the NEPA process.

The purpose and need statement in the NEPA document must be consistent with and build upon the regional transportation plan policies and goals and the preliminary purpose and need. This preliminary purpose and need statement should provide essential information about the transportation problem(s) and the methods that are being proposed as solutions. It should provide the foundation for the purpose and need statement in the NEPA document.

The project's need may be considered as the transportation problem, while the purpose may be thought of as the intention to solve the problem. The differences are discussed in the following sections. Further guidance regarding the development of a purpose and need statement can be found in CDOT's Purpose and Need Guidance (<http://www.dot.state.co.us/environmental/StandardsForms/PurposeandNeedGuidance.pdf>), FHWA Technical Advisory T6640.8A, and FHWA's Memorandum, The Importance of Purpose and Need (September 18, 1990).

Purpose of the Project

The project purpose statement guides the range of alternatives that will be considered to respond to the established need. As such, the statement of purpose should be broad enough to encompass a reasonable range of alternatives, but it need not be so broad that it encompasses every possible alternative. Conversely, it should not be so narrow as to preclude a range of alternatives that could reasonably meet the defined objectives or restrict decision-makers' flexibility in resolving conflicting interests.

Need for the Project

The need section must clearly establish the need for the proposed improvement. This discussion should provide the rationale for how the project addresses the problems, issues, and concerns identified. This section must outline and discuss any established community goals and objectives that pertain to the project. This section serves as the foundation for the proposed project and provides the principal information upon which the “no-build” alternative discussion is based. This section establishes the rationale for pursuing the action and explains how the actions proposed are consistent with local transportation planning, local comprehensive planning, land use planning, and growth management efforts.

The need statement should include a clear description and analysis of the problem(s) that the project is intended to rectify. The need for a project can be characterized as one or more problem, such as inadequate capacity, safety concerns, operational deficiencies, structural deficiencies, current and future demand, and/or other issues. The statement of need should consist of a factual, objective description of the specific transportation problem with a summary of the data and analysis that supports the conclusion that there is a problem requiring action. Quantified data, such as vehicle miles of travel, travel speeds, time of day characteristics, current and projected levels of service, accident rates, and/or road condition assessments, should be utilized where applicable. Full documentation, such as reports and studies that were developed in the project planning process, should be referenced in the need statement and must be available upon request of reviewing agencies and the public.

There are often multiple deficiencies or desires that establish the project need, and therefore are often multiple needs. These needs can be separated into two categories: area-wide needs and project corridor needs. Area-wide needs relate to system deficiencies and local government or community desires. Project corridor needs relate to route deficiencies and specific community desires within the corridor. Examples of each are provided below.

- Area-Wide Needs:
 - ✓ System Linkage
 - ✓ Transportation Demand
 - ✓ Federal, State, or Local Government Authority Desires or Requirements
 - ✓ Social Demands or Economic Development
 - ✓ Modal Interrelationships
- Project Corridor Needs:
 - ✓ System Linkage

- ✓ Capacity
- ✓ Safety
- ✓ Structural Sufficiency

Additional guidance in developing the purpose and need statement can be found at:

- http://www.fhwa.dot.gov/environment/p_and_n.htm
- <http://www.fhwa.dot.gov/environment/need.htm>
- <http://www.fhwa.dot.gov/legsregs/directives/techadv/t664008a.htm>
- <http://www.fhwa.dot.gov/stewardshipeo/purposeneed.htm#Toc98317727>.

Description of Alternatives Including the Proposed Action

The primary function of a NEPA document is to help make informed choices from among reasonable alternatives. In order to define the scope of the NEPA document, it is important to accurately present the range of reasonable alternatives and identify a preferred alternative. Chapter 2 of the document introduces readers to a set of potential alternatives that explicitly address the project's Purpose and Need.

CEQ's regulations identify this section as the heart of the NEPA document and require an agency to "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" (40 CFR 1502.14). It is not required that all possible alternatives be considered, rather that a reasonable range of alternatives be presented. CEQ defines reasonable alternatives as those that are practical or feasible from a technical and economic standpoint, rather than simply desirable from the standpoint of the agency (CEQ, Memorandum: Forty Most Asked Questions, 2a). In general, the range of alternatives is often broader and the number of alternatives subject to analysis of impacts is greater in an EIS than an EA.

Alternatives were introduced in Section 4.6 of this Manual. Evaluation of alternatives should present the Proposed Action and all the alternatives in comparative form in order to best define the issues and provide a clear basis for choice among the options. CEQ requires that agencies shall—

- Rigorously explore and objectively evaluate all reasonable alternatives. For any alternatives that were eliminated from

detailed study, briefly discuss the reasons they were eliminated.

- 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 No Action Alternative.
- Identify the agency's Preferred Alternative or Alternatives, if one or more exists, in the draft statement and identify the alternative(s) in the final statement 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 should be presented at the end of Chapter 2. This 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. [Comparative summary of alternative impacts placeholder – to be inserted at a later time.]

The following sections discuss the types of alternatives in further detail.

No Action Alternative

CEQ regulations (§1502.14) require the consideration of the existing situation without any proposed transportation improvements. This is called the No Action Alternative. However, this alternative does allow for anticipated maintenance activities that would occur if the No Action Alternative is selected.

The NEPA document should present a thorough description of the situation as it is currently and as it is expected to be in the future if the proposed project is not implemented. This description serves to define the No Action Alternative and also provides a basis of comparison for addressing the impacts of all other alternatives.

Reasonable Range of Alternatives

What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case. The number of alternatives, within a reasonable range, is directly related to the purpose and need statement. A well defined Purpose and Need section will assist in limiting the number of alternatives that will achieve the project goals, and provide the basis for a legally defensible

alternatives discussion. FHWA Technical Advisory T 6640.8A provides a detailed discussion of the factors that might be considered in determining what constitutes a reasonable range of transportation alternatives. A range of reasonable transportation alternatives generally includes consideration of the following:

- A No Action Alternative is required. The No Action Alternative means the proposed project would not take place. The resulting environmental effects from taking no action provide the baseline for the comparison among the effects of the considered alternatives.
- Consider Transportation System Management (TSM) alternatives to maximize the efficiency of the present system. These limited construction alternatives are generally relevant only for major projects in urban areas with a population greater than 200,000 residents. TSM alternatives include options such as fringe parking, ridesharing, and high-occupancy vehicle (HOV) lanes, and traffic signal timing. HOV lanes should be considered as an alternative for all major urban projects. For rural areas, an alternative that considers reconstruction and rehabilitation of the existing system should be included before selecting an alternative on a new alignment.
- Mass transit alternatives (bus, rail, etc.) should be considered in all proposed major highway projects in urbanized areas with over 200,000 residents. FHWA guidance indicates that such alternatives should be considered even though they may not be within the existing FHWA funding authority (FHWA Technical Advisory T 6640.8A).
- Evaluate alternatives that would improve existing highway(s), as well as alternatives on new locations.

All reasonable alternatives under consideration need to be rigorously explored and evaluated objectively. These alternatives should each provide substantial detail, allowing the reader to evaluate their comparative merits. This does not dictate an amount of information to be provided for each alternative; rather, it prescribes a level of treatment that may in turn require varying amounts of information to enable a reader to evaluate and compare alternatives. Each alternative should be described briefly utilizing maps, plans or other visual tools. At a minimum, the discussion of each alternative should include a clear, non-technical description of the project concept, location, termini, costs, status of right-of-way needs, and any features of the project that help to clarify differences among alternatives. The Alternatives section of the EIS should be devoted to description and comparison of the alternatives, with impact discussion limited to a concise summary in a comparative form. The Environmental Consequences section of the EIS is the appropriate place for a discussion of detailed scientific analysis of the direct and indirect

environmental effects of each of the alternatives and the Proposed Action. However, redundancy between these sections should be avoided.

Evaluation Criteria

The Alternatives section should be able to provide a clear indication of why the particular range of alternatives was developed, through which processes, and with which kind of public and agency input. Of similar importance is an examination of the reasons for eliminating alternatives from consideration during the NEPA process (through the use of which criteria, at which point in the process, and which parties were involved in establishing the criteria for assessing alternatives and measures of effectiveness).

In preparing NEPA documents, it is important to be candid and specific in describing the rationale for generating, evaluating, and eliminating alternatives. For example, if an alternative is eliminated from further consideration because it does not meet the purpose and need, and there should be adequate explanation of how or why it does not meet the purpose and need.

Under the NEPA/404 merger process, USACE participates in screening the alternatives and must unmitigated state when impacts are used to screen them from further consideration.

Selecting a Preferred Alternative

The Preferred Alternative is the one that CDOT believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. The environmentally preferable alternative is the alternative that will promote the national environmental policy, which ordinarily means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves and enhances historic, cultural, and natural resources. The concept of an agency's Preferred Alternative is different from the environmentally preferable alternative, although in some cases one alternative may be both. CEQ encourages agencies to make a recommendation of the environmentally preferable alternative during EIS preparation to provide maximum opportunity for commentators from other agencies and the public to address the question of which alternative is environmentally preferable.

It is important to note: The Department does not have to select a Preferred Alternative at the Draft EIS phase. Where a Preferred Alternative is not identified, the Draft EIS should state—

- A Preferred Alternative has not been identified
- All reasonable alternatives are under consideration

- The final selection of an alternative will not be made until after alternative impacts and 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 allow for a better understanding of 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 should clearly identify the changes and discuss the reasons for why any new impacts are not significant.

The Final EIS must identify the Preferred Alternative and should discuss the basis for its selection (23 CFR 771.125(a)(1)). The discussion should provide relevant information and rationale for the selection of the alternative. The existence of a Preferred Alternative does not minimize the responsibility of ensuring a similar degree of analysis and evaluation in the EIS of all alternatives. The analysis presented must be neutral and objective in regard to all alternatives and cannot be slanted to support the Preferred Alternative over other reasonable and feasible alternatives. Once the Preferred Alternative had 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. This should occur if the lead agency directs and determines that this would not prevent an impartial decision (SAFETEA-LU 6002 (f)(4)(D); (<http://thomas.loc.gov/cgi-bin/query/D?c109:1:./temp/~c109PMV76I:e2845620>)).

Alternatives Not Considered in Detail

CEQ requires that alternatives that were considered in the planning process, and subsequently rejected, be briefly described and a discussion of the reasons for their elimination be included in this section (40 CFR 1502.14(a)). Particular attention should be given to any alternatives suggested by interested agencies or the public during scoping that are eliminated without detailed study. Include sufficient detail in the NEPA document to preclude successful legal challenge of the decision to eliminate each of these rejected alternatives. As dictated by the NEPA/404 merger (<http://www.dot.state.co.us/environmental/Wetlands/Docs/NEPA404Merger.pdf>) care should be taken to document the reasons why none of the eliminated alternatives could be considered the LEDPA and therefore require full USACE evaluation under their guidance (<http://www.usace.army.mil/cw/cecwo/reg/mou/moafe90.htm>).

Affected Environment

The Affected Environment section succinctly describes the existing social, economic, and environmental setting of the area to be affected by the Proposed Action and alternatives. The description provides the context and foundation for evaluation and comparison of alternatives

and potential environmental impacts. Affected environment was introduced in Section 3.8 of this Manual.

In the interest of producing a concise document, discussion should be limited to information and issues that have a bearing on possible impacts. Where possible, the description should address the general project area rather than providing separate discussions for each alternative or each topic area. Less important material should be summarized, consolidated, or simply referenced. The CEQ explicitly states that a lengthy and detailed description is no measure of the adequacy of the environmental analysis.

In an attempt to ensure consistency, resources should be grouped by environmental, cultural, and social resources. Within these general categories, resource headings should be alphabetized. Resources that are not addressed in the NEPA document should be briefly listed in the beginning of the chapter with a brief discussion of the reasons they are not being considered further.

Although the specific information presented will vary from one subject area to another, description under each environmental topic should contain the following information:

- Description of the affected natural, social or economic resource (e.g., wetland, endangered or listed species, park, housing). This should include a description of the location of the resources within the potentially affected area. However, for archaeological sites, specific locations should not be disclosed in accordance with applicable laws.
- Types of research, survey, and/or data gathering employed.
- Major sources of information on which the analysis is based and any major data gaps or deficiencies in the information.
- Technical report(s) prepared, if applicable.
- Any statutory or regulatory standards for evaluating the level or severity of impacts.
- Criteria of impact evaluation where no statutory or regulatory standard is established.
- Consultation or regulatory reviews undertaken and their outcome.
- Applicable land use plans, policies or programs, and/or restrictions of local, state or federal agencies or jurisdictions.

- Photographs, illustrations, maps, and other graphics in conjunction with narrative to enhance the reader's understanding of the area.
- Any other federal actions or activities taking place or proposed to take place in the area, and their interrelationships.

The discussion of the affected environment should be presented on a resource-by-resource basis, in the same order as resources are evaluated in the environmental consequences section. Chapter 5 of the document provides further resource-specific information on resource areas that are ordinarily covered in the Affected Environment section. However, these resource areas are not all-inclusive and additional topics or issues may be needed to fully establish a thorough understanding of the affected area. The Affected Environment section should also indicate either the presence or absence of resources that must be covered by law and regulation. These resources include the following:

- Floodplains (EO 11988; 10 CFR 1022)
- Wetlands (EO 11990; 10 CFR 1022)
- Threatened, endangered, or candidate species and/or their critical habitat, and other special status species (e.g., state-listed species) (16 USC 1531)
- Prime or unique farmland (7 USC 4201; 7 CFR 658)
- Wild and Scenic Rivers (16 USC 1271)
- Property of historic, archaeological or architectural significance (including sites on or eligible for the National Register of Historic Places) (16 USC 470)
- Native American concerns (16 USC 470; 42 USC 1996)
- Minority and low-income populations (EO 12898)

Environmental Consequences (including mitigation measures and cumulative impacts)

The analysis of environmental consequences forms the basis for comparison of alternatives. This section addresses the probable effects of the project alternatives on the quality of the human environment, and describes the measures proposed to mitigate adverse effects. NEPA defines the "human environment" broadly to include many aspects of the natural and built environments as well as human health. The analysis presented in the NEPA document should be of sufficient detail to establish the rationality of a conclusion that an effect will or will not occur and whether the effects are significant. The

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

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 that comprise Chapter 5 should be discussed for each reasonable alternative where a potential for impact exists.

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 at the CDOT Regional Office and/or local agency for public inspection. Where quantitative data supports conclusions, it should be included within the document. FHWA encourages the use of charts, tables, matrices, and other graphics as a means of comparing the effects of the different project alternatives.

When preparing the final NEPA document, the impacts and mitigation measures associated with 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 following the draft document. The final document should also identify any new impacts (and their significance) resulting from modification or identification of substantive new circumstances or information regarding the Preferred Alternative following the draft document circulation. Where new significant impacts or information relevant to environmental concerns are identified or substantial changes are made to the proposed action that are relevant to environmental concerns between preparation of the draft and final document, a supplemental NEPA document is required (40 CFR 1502.9(c)).

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 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 action and occur later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern 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. Indirect impacts may reach beyond the natural and physical environment (i.e., environmental impact) to include growth-inducing effects and other effects related to induced changes to resource uses (i.e., non-environmental impact).
- **Cumulative effects** result from the incremental impact of the action when it is added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative impacts could result from individually minor, but collectively significant actions that take place over time (40 CFR 1508.7). Cumulative effects are discussed further in Sections 3.9 and 4.27 of the manual.

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 an action eliminates or reduces a situation in the existing context that is considered detrimental. However, even when the effect of an action will be generally environmentally beneficial, an adverse environmental effect can still occur.

FHWA's Technical Advisory T 6640.8A 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). Furthermore, if the term is used it should be consistent with the CEQ definition and supported by factual information. CEQ defines significance in terms of the context in which the action will occur and the intensity of the action (40 CFR 1508.27). Context is defined as the setting of the proposed action and is established in the description of the "affected environment" (see Section 3.8 of the manual. Intensity is considered the severity of the impact. As required by CEQ regulations, the severity of an impact requires consideration of a number of the following factors:

- Degree of effect on public health or safety
- Presence of unique characteristics of the project area such as proximity to resources or protected areas
- Degree of controversy
- Degree to which possible effects are uncertain or involve unique or unknown risks
- Degree to which the action would set a precedent for future actions with significant effects
- Contribution to cumulatively significant effects
- The degree to which there may be adverse effects to scientific, cultural or historical resources
- The degree to which there may be adverse effects on an endangered or threatened species or its critical habitat
- Conflict with federal, state or local laws for the protection of the environment.

Impacts may also be characterized as temporary or permanent. Temporary impacts are generally those that result directly from demolition, site preparation, and construction activities and that will not persist once project construction is completed. Common examples of possible temporary impacts include dust generation, erosion, 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 to establish a construction office, construction of access 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 tree removal, 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.

Mitigation and Monitoring Commitments

Mitigation measures to avoid or reduce temporary and permanent impacts should be identified in the NEPA document. A mitigation measure is an action that will result in a physical change to a proposed project that will actually reduce or eliminate impacts. Mitigation may rectify, reduce or eliminate over time, or compensate for an impact. CEQ regulations require that a NEPA document include a discussion of means to mitigate adverse environmental impacts (40 CFR 1502.14(f) and 1502.16(h)). Effective mitigation measures should

result in a physical change that will actually reduce or eliminate impacts. Consultation, preparation of studies or plans, or monitoring of existing environmental conditions generally are not mitigation measures that result in a physical change to the proposed action and are not usually considered to be adequate or effective measures. The discussion of mitigation measures must address the full range of impacts of the proposal that are not avoidable through incorporation of changes into the project design. A NEPA document must also include a discussion of any “adverse effects that cannot be avoided” by implementing mitigation or selecting an environmentally superior alternative (40 CFR 1502.16).

Mitigation is undertaken when significant impacts cannot be avoided through project redesign. Many potentially adverse impacts can be eliminated or reduced through project design modification, proposal of an alternate design or location for part or all of a project, or (in the case of temporary construction impacts) through the use of best practices. Where these modifications or best practices are incorporated into the proposed project before or during preparation of the NEPA document, they are not considered to be mitigation. They may be summarized in the NEPA document to inform the reader about the steps being taken to protect the environment.

While NEPA requires that a NEPA document identify mitigation measures that could be implemented, the statute does not require federal agencies to carry out mitigation to reduce or eliminate significant environmental impacts (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989)). However, FHWA regulations require that mitigation measures presented as commitments in the final NEPA document are incorporated into a project (23 CFR 771.109(b) and 771.125(a)(1)). Monitoring conducted during project construction and operation is a 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 should be specific and include information regarding responsibility, monitoring, performance standards and schedules for implementation. The NEPA document should make commitments about implementing the proposed mitigation measures and monitoring, and the commitments should also be documented in a “Summary of Mitigation and Monitoring Commitments” appendix. This appendix should be prepared as a document that can be reproduced separately, in order to follow the project through Plans, Specifications, and Estimates (PS&E) and Construction phases.

Further discussion of resource-specific mitigation and monitoring is provided in Chapter 5 of the document. In Section 5.30, the summarization 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 of these commitments. Consequently, this summary should include project design components that are mandatory. This is due to the fact that 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.

Cumulative Impacts

In mandating cumulative impacts analysis, CEQ seeks to ensure that NEPA documents consider not only the project and its alternatives, but also other actions that could contribute to long-term environmental degradation. 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 reasonably foreseeable actions in the vicinity and/or region. Reasonably foreseeable actions are those future activities that have been committed to or are known proposals, which could take place within the defined planning horizon.

In determining cumulative effects, consideration should be given to the following:

Whether a resource(s) is especially vulnerable to incremental effects

If the proposed action is one of several similar actions within the same geographic area

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 potentially affected resource within a defined cumulative impact analysis area. These areas should cover different geographic areas depending on the specific resource or use being evaluated. Generally, these areas are larger for resources that are mobile (e.g., wildlife) compared to resources that are stationary (e.g., historical and archeological resources). In the cumulative effects discussion, only those resources potentially 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, 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.
- **Past, Present, and Reasonably Foreseeable Actions** — When 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 the 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.

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, at: <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm> and EPA’s Consideration of Cumulative Impacts in EPA Review of NEPA Documents (1999), at: <http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>. 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.

Irreversible and Irretrievable Commitment of Resources

NEPA §102(2)(C) requires a discussion of any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented. An irretrievable commitment of a resource is one in which the resource or its use is lost for a period of time (e.g., land used in the construction of the proposed project). An irreversible commitment of a resource is one that cannot be reversed

(e.g., fossil fuels, labor, and materials used during the construction of the proposed project).

Short-term Uses versus Long-Term Productivity

NEPA §102(C) requires discussion of the relationship between local, short-term uses of man's environment and the maintenance and enhancement of long-term productivity of resources. This section compares short-term gains with the long-term expense that may result from a loss of future productivity. While it is assumed that there will be benefits resulting from the proposed project, all projects involve costs, side effects and potential loss of natural resources that have long-term productive value. Generally, all build alternatives will have similar short-term uses and long-term impacts on productivity.

The discussion should point out that transportation improvements are based on state and/or local comprehensive planning that consider(s) the need for present and future traffic requirements within the context of present and future land use development. In this context, proposed actions are generally consistent with the maintenance and enhancement of long-term local or regional productivity.

Consultation and Coordination

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

- Provide a chronology of key meetings and events that have occurred on the project, including the early coordination and scoping processes.
- Document all meetings with government leaders, government agencies, Native American interests, community and advisory groups, and individual citizens.
- Summarize all issues addressed by agencies and the public.
- Identify the key issues in the project.
- Contain copies of pertinent interagency correspondence in an appendix, such as consultation with the FWS, the SHPO, and other important communications with similar agencies (for final NEPA documents).

Comments on the Draft EIS

CEQ's regulations require that in preparing a Final EIS, agencies provide an appropriate response to each substantive comment. The response should adequately address the issue or concern raised by the commenter or, where substantive comments do not warrant further response, explain why they do not, and provide sufficient information to support that position. Specifically CDOT should "assess and consider comments [received on a Draft EIS] both individually and

collectively and respond to comments by modifying alternatives; developing and evaluating alternatives not previously given serious consideration; supplementing, improving, or modifying analyses; making factual corrections; or explaining why comments do not warrant further agency response” (40 CFR 1503.4(a)).

The Final EIS should include a copy of substantive comments from the U.S. Secretary of Transportation, each cooperating agency, and others who commented on the Draft EIS. Where the response is exceptionally voluminous, the comments may be summarized. When the EIS text is revised as a result of the comments received, a copy of the comments should contain marginal references indicating where revisions were made, or should contain such a reference in the response to the comment. The FHWA and CDOT are not commenters within the meaning of NEPA and their comments on the Draft EIS should not be included in the Final EIS. However, the document should include adequate information for FHWA and CDOT to ascertain the disposition of the comment(s).

The 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.

Compliance with Applicable Laws

The final NEPA document should demonstrate compliance with requirements of all applicable environmental laws, EOs, 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.

List of Preparers

CEQ regulation requires the inclusion of the names and brief qualifications (expertise, experience, professional disciplines) of persons who were primarily responsible for preparing the NEPA document or performing environmental studies (40 CFR 1502.17). This should include state (and/or local) agency staff, FHWA staff, and any consultants preparing all or part of an EIS, even if the consultant’s contribution was modified by the agency. Technical editors and graphic support personnel also are included. FHWA’s Technical Advisory T6640.8A calls for listing the FHWA personnel primarily responsible for preparing or reviewing the EIS, and their qualifications.

The list should also indicate the portion of the EIS that the individual prepared. This information can be presented in tabular form. 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 in his or her field.

List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent

The distribution list should name all federal, state, local agencies and persons to whom copies of the EIS are sent (40 CFR 1502.10). FHWA's Technical Advisory T6640.8A notes that the NEPA document should list all entities from whom 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 Chapter 6.

References and Citations

The NEPA document should cite all 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.

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).

Appendices (If any)

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 analysis that is important to the document.

Any lengthy technical discussions should be contained in separate technical reports. Technical reports should not be treated as appendices to the NEPA document. They should be bound as separate documents and referenced. While separate technical reports

should not be 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 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. One exception to this is during the public comment period prior to the public hearing when the NEPA document and some support material may be placed in other locations for public review and copying. In general, there may be less need for the use of appendices in EAs than in EISs because EAs address less significant impacts and are usually more concise documents.

Examples of appendices that may be pertinent to the NEPA document include:

- Coordination and Consultation Correspondence
- Section 4(f) Evaluation (where applicable)
- Mitigation and Monitoring Commitments (this can be detached and used separately during project implementation)
- Noise Evaluation
- Biological Assessment

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

Classes of NEPA Documents and What They Cover

This section discusses the various classes and types of NEPA documents and the processes required to complete, steps for obtaining approval, submission and publication of the final document. This guidance is expected to provide a better understanding of the various types of documents to help in determining the appropriate class of NEPA documentation required for a particular project.

Classes of Action

The decision as to what type of environmental documentation is appropriate or whether or not a project is categorically excluded from NEPA is made in consultation with FHWA. There are three levels of NEPA documentation, shown in [Table 1-1](#) and further discussed in the following sections. The differences in deciding the appropriate level of NEPA documentation is displayed in [Figure 1-1](#).

The appropriate level of NEPA documentation for a project is often determined during the transportation planning process and/or by the Regional Planning/Environmental Manager during initial project review and preparation of Form 1048a (refer to Section 7 of the manual). The CDOT Regional Planning/Environmental Manager in coordination with FHWA may use the following information in making a determination:

- Corridor Optimization Studies
- The Project Data Form 463 or Project Scoping/Clearance Record Form 1048a
- CDOT Design, Right-of -Way, Utilities, Traffic, and Safety Units and corresponding Staff branch reports
- Scoping comments from resource agencies, public, or other agency input
- Early corridor environmental analysis
- Statewide environmental database
- Interdisciplinary studies
- Field scoping reviews.

Table 1-1. Levels of NEPA Documentation

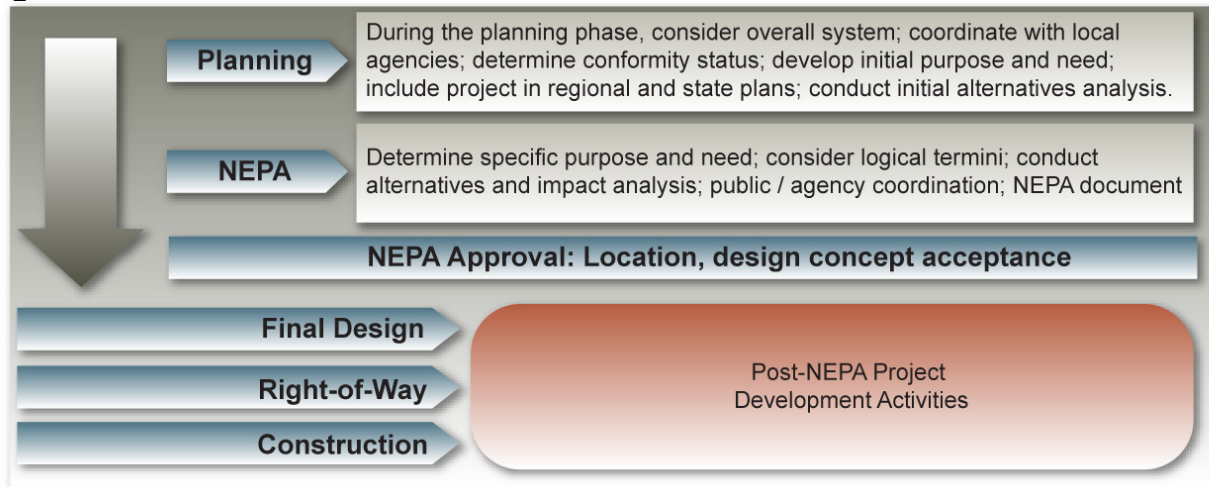
CLASS I	CLASS II	CLASS III
Environmental Impact Statement (EIS)	Categorical Exclusion (CatEx)	Environmental Assessment (EA)
Required for actions likely to have substantial effects on the environment.	Actions that do not individually or cumulatively have a substantial environmental effect. Necessary environmental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

Source: 23CFR §771.115 et seq.

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

After considering the available information, the CDOT Regional Planning/Environmental Manager meets with the Regional Transportation Director (RTD) and Program Engineer to review their preliminary conclusions. They will then consult with FHWA if it requires federal action to determine the most appropriate category. FHWA is the ultimate decision-maker for federal project categorization. If there are any changes to the project that may affect the category determination, the CDOT Regional Planning/Environmental Manager and FHWA jointly reconsider the appropriate category and the FHWA approves the revised category determination. If no federal action is anticipated, CDOT can make the determination without FHWA consultation.

Figure 1-1. NEPA Process



According to the Council on Environmental Quality (CEQ) regulations (40 CFR §§ 1500-1508), the determination of a significant impact is a function of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Intensity refers to the severity of the impact. CEQ defines significance in terms of the context in which the action will occur and the intensity of the action (40 CFR 1508.27). Significance of the impact will vary with the setting of the proposed action and the surrounding area (including residential, industrial, commercial, and natural sites). CEQ regulations call for consideration of the following in determining significance:

- Degree of effect on public health or safety
- Presence of unique characteristics of the project area such as proximity to resources or protected areas
- Degree of controversy
- Degree to which possible effects are uncertain or involve unique or unknown risks
- Degree to which the action would set a precedent for future actions with significant effects
- Contribution to cumulatively significant effects
- The degree to which there may be adverse effects to scientific, cultural or historical resources
- The degree to which there may be adverse effects on an endangered or threatened species or its critical habitat

- Conflict with federal, state or local laws for the protection of the environment.

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

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

Categorical Exclusion (CATEX)

Categorical exclusions (CatEx) are actions that have been determined to not have a significant effect on the human environment either individually or cumulatively (40 CFR 1508.4). The FHWA requirements for a CatEx project are considered less stringent for EA and EIS projects in several areas: public involvement, alternatives analysis, and the detail of documentation required for FHWA approval. Section 2.9 and [Appendix H](#) discusses the criteria for determining if a project qualifies for a CatEx.

Documentation is required to record the rationale for decision-making on all categorically excluded projects. CDOT Form 128 must be completed and approved for all CatEx projects before the project can be implemented. [Appendix H](#) details the preparation of a CatEx document. Additionally, before the project can be implemented, all environmental clearances and associated mitigation measures need to be completed and included in the project and appropriate signatures obtained.

CATEX Projects

FHWA has developed an approved list of projects that are “categorically excluded”, or exempt from a detailed NEPA review. These projects include actions that do not (23 CFR 771.117(a))—

- Induce significant impacts to planned growth or land use for the area
- Require the relocation of a significant number of people
- Have a significant impact on any natural, cultural, recreational, historic or other resource
- Involve significant air, noise or water quality impacts
- Have significant impacts on travel patterns

- Otherwise, either individually or cumulatively, have any significant environmental impacts.

There are two general types of actions that can qualify for a Cat Ex based on the action's potential for impacts:

- Type I. Actions that are known to almost never cause significant environmental impacts, such as minor construction activities and activities that do not lead to construction. These actions are listed in subsection (c) of 23 CFR 771.117. These actions are automatically classified as Cat Exs, except where unusual circumstances occur. The determination that the action is excluded must be documented by completing CDOT Form 128.
- Type II. Actions that normally do not involve significant impacts, but may, depending upon circumstances, have the potential to cause significant environmental impacts. Subsection (d) of 23 CFR 771.117 lists examples of actions generally found appropriate for Cat Ex classification, which includes actions of a similar type or scope of work. Because of the potential for significant impacts, these actions require some documentation in order to determine if the Cat Ex classification is proper.

Other projects may also qualify as Cat Exs if appropriately documented as explained in the CDOT CatEx guidance (see [Appendix H](#)). SAFETEA-LU Section 6004 (<http://www.fhwa.dot.gov/hep/6004qa.htm>) also enables states to assume responsibility for CatExs.

A CatEx from NEPA does not exclude a project from the other federal or state environmental requirements for permits or consultation, except as provided in other agreements. Formal consultation with federal resource or regulatory agencies is carried out by FHWA. Furthermore all environmental consultation requirements, including consultation pursuant to Section 7 of the federal Endangered Species Act and Section 106 of the National Historic Preservation Act, must be met prior to FHWA completing an exclusion determination.

Unusual Circumstances

There may be some unusual circumstances that may need further analysis by FHWA and CDOT to determine if an action warrants an exclusion determination. FHWA regulation 23 CFR 771.117(b) provides that any action that normally would be classified as a Cat Ex but could involve unusual circumstances requires FHWA and CDOT to conduct appropriate environmental studies to determine whether a categorical exclusion is proper.

Unusual circumstances may include actions that involve the following:

- Significant environmental impacts

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

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

Programmatic Categorical Exclusions

Colorado has been granted specific “Programmatic Categorical Exclusions” for all of the categorical exclusions contained in Regulation 771.117(c) and an expanded list of 22 categorical exclusions (listed in [Appendix H](#)) (<http://www.dot.state.co.us/environmental/docs/Agreements/002LOA1191.pdf>) if they meet the accompanying Evaluation Criteria. If the project qualifies as a programmatic Cat Ex, a CDOT Form 128 (located in [Appendix G](#)) should be prepared. If the project is not a programmatic Cat Ex, the Non-Programmatic Categorical Exclusion Environmental Review Summary Form (located in [Appendix G](#)) (http://www.dot.state.co.us/environmental/StandardsForms/8_14_03%20CE%20Checklist.pdf) should be prepared (see [Appendix H](#) for a detailed description of the Cat Ex process steps).

CATEX Documentation Content

Cat Ex documentation includes a completed and signed CDOT Form 128 (located in [Appendix G](#)). A completed CDOT Form 128 attests to the fact that qualified staff have evaluated the project and its potential impacts (including the preparation of any necessary technical reports or compliance documents) and determined that the project meets the criteria of a Cat Ex.

Additional documentation required for a Cat Ex includes an accurate and complete project description, which is important in establishing that the proposed action is consistent with the requirements of 23 CFR 771.117 and, if applicable, the Programmatic Cat Ex Agreement. This project description should fully—

- Describe the action to be undertaken, including the project limits (logical termini/independent utility), construction activities such as shoulder backing, culverts, staging areas and facilities, disposal and borrow sites required, any right-of-way acquisition, utility relocations, and construction activities that may require temporary facilities such as roads, detours, or ramp closures

- Demonstrate that the specific conditions or criteria for the Cat Ex are satisfied and that no significant environmental effects will result
- Comply with any state or federal permit or consultation requirements.

All documentation that supports the Cat Ex becomes part of the project file and provides a record that CDOT's decision was based on factual information and sound judgment. The level of documentation should be commensurate with the action's potential for adverse impacts.

CATEX Approval

All categorical exclusions require the review and approval of FHWA unless they meet the criteria for a programmatic Cat Ex. The CDOT Regional Planning/Environmental Manager will sign the completed form. FHWA is sent the CDOT Form 128 for review and signature if it is a federal project and does not meet one of the programmatic Cat Exs. Once the FHWA signs and returns the original CDOT Form 128 to the CDOT Regional Planning/Environmental Manager for the project file, the project can then be obligated for final design and ROW negotiations can then proceed. The Cat Ex is not complete until it is signed by the FHWA Project Development Engineer and CDOT Regional Planning/Environmental Manager.

Environmental Assessment (EA)

Determining whether an EIS is needed is only one of the purposes of an EA. However, the most common rationale for preparing an EA is to aid in an agency's compliance with NEPA, particularly section 102(2)(E), when an EIS may not be necessary. Section 102(2)(E) requires an agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." An EA can be prepared at any time to assist in planning and decision-making (40 CFR 1501.3(b)).

The preparation of an EA for category Class III actions is a more thorough and detailed process in comparison to a Cat Ex. In preparing an EA, the analysis for potential environmental impacts is more detailed and public involvement and agency coordination is required. However, the EA should only analyze those resources or features that FHWA and CDOT decide may be affected by the project, which will result in a much briefer document than an EIS. The following steps are taken to develop the EA:

- CDOT and/or the FHWA determine that an EA is needed for a particular project.
- A public involvement program is developed and administered by CDOT.

- EA documentation is prepared.
- EA is submitted to FHWA for approval.
- Upon approval, CDOT prepares a Notice of Availability (NOA). The NOA is published in a local newspaper and the EA is made publicly available. The EA is also circulated to participating and cooperating agencies for review and comment.
- After NOA publication, the public and agencies have a period of 30 days from the date of publication of the NOA to submit comments on the EA. Within this time, a public meeting is also held.
- After the 30-day public comment period concludes (or 45 days, if Section 4[f] is included with the EA), the lead agency makes a determination regarding whether the project will cause significant impacts to the environment. If it will not, a FONSI, is prepared. The FONSI will contain the lead agency's decision, reasons for the decision based on results of the EA, responses to comments received during the public comment period, corrected errata discovered during the public comment period, commitment to specific mitigation measures, and the selection of the Preferred Alternative.
- If the impacts of the project that have been analyzed during the EA process are determined to be significant, a FONSI cannot be prepared. The NEPA process would move into preparation of an EIS.
- Formal distribution of a FONSI is not required. However, an EA, at a legal minimum, must be made available for public review upon request for at least 30 days before making a final determination and proceeding with the project. Although the circulation requirements for a FONSI are very limited, it is good practice to send the NOA and a copy of the FONSI and the EA to cooperating and jurisdictional agencies (agencies that commented on the EA are requested to be informed of the project decision).

Public Involvement and Agency Consultation

There is no formal scoping requirement for an EA. However, CEQ regulations mandate that federal agencies involve environmental agencies, applicants, and the public to the extent practicable in the EA process (40 CFR 1501.4(b)). Informal consultation is important in defining purpose and need, environmental consequences, determining alternatives and mitigation, establishing permit requirements and anticipating issues or concerns to both state and federal agencies that may affect the project design, cost, and scheduling.

The degree of public participation and the means of soliciting public input are determined on a case-specific basis, taking into consideration the results of public participation efforts at the planning and programming stages and the degree of public interest or controversy. Where there is potential for public controversy, informal public scoping may be of value in defining environmental impacts, alternatives, and issues of concern to the community. Additionally, Executive Order (EO) 11990 section 2(b) specifically requires opportunity for early public review of an EA where the proposed action involves new construction in a wetland. EO 11988 similarly requires public review of EAs for plans or actions in floodplains. Additionally, Section 106 of the National Historic Preservation Act requires public participation in the identification and evaluation of historic resources, even if no historic properties reside within the Area of Potential Effect (APE). For additional information, resource-specific requirements are discussed in Chapter 5 and public participation requirements are further discussed in Chapter 6.

At the beginning of the environmental process, formal consultation with state and federal agencies is undertaken. Cooperating agencies are sent letters inviting them to participate in the development of the environmental document. Jurisdictional agencies, such as U.S. Army Corps of Engineers (USACE) or U.S. Fish and Wildlife Service (FWS), are invited in writing to participate in early meetings to discuss issues and permits that may be involved in the project. When an action may affect Native American tribal lands or when an action may cause controversy with an Indian tribe, the Tribal Government should be involved in early coordination. Copies of early coordination letters are included in the appendices of the EA. Meetings and substantive contacts with agencies are also documented. Projects that will require an individual permit under Section 404 of the Clean Water Act are subject to the requirements of the NEPA/404 Merger (see <http://www.dot.state.co.us/environmental/Wetlands/Docs/NEPA404Merger.pdf>).

EA Document Content

The CEQ NEPA guidance encourages conciseness in EA documents (Memorandum: Forty Most Asked Questions Concerning CEQ's NEPA Regulations). An EA need only address those issues that CDOT and FHWA agree have a potential for an impact. Technical information and studies developed to analyze impacts and substantiate conclusions in the document are summarized in the document and/or incorporated by reference. Technical studies that support the EA are a part of the environmental compliance record and are public documents that must be available for review.

Finding of No Significant Impact (FONSI)

If it is determined that there will be no significant impacts upon completion of the EA and public and agency comment period, a FONSI will be prepared to conclude the process and document the decision.

A FONSI is a public decision document that briefly describes why the project will not have any significant environmental effect and will not require the preparation of an EIS. If relevant, it must show which factors were weighted most heavily in the determination. It should also incorporate by reference any other environmental documents used to support the assessment. The FONSI is usually a one-page document to which the EA is attached or referenced. No formal public circulation of the FONSI is required, but the Colorado State Clearinghouse must be notified of the availability of the FONSI.

The FONSI should contain the following information:

- Recommendation of an alternative for construction
- Summary of all environmental impacts associated with the project including a statement of findings on all relevant impact categories
- Summary of mitigation of impacts.

Once completed, the FONSI is attached to the updated EA and submitted by CDOT with the Public Hearing Transcript and a cover letter to the FHWA for approval.

EA / FONSI Approval Process

The following subsections describe the approval process as well as public and agency involvement for EAs. In addition, SAFETEA-LU provides guidance for efficient environmental reviews that are mandatory for EISs and optional for EAs at the discretion of the Secretary of Transportation (<http://www.fhwa.dot.gov/hep/igs/lpja.htm>).

EA Approval

Once complete, the EA is submitted to FHWA only after CDOT has completed a quality control review and has determined that the document is complete and ready for approval by FHWA. The EA with supporting technical reports is then forwarded to FHWA for approval. A copy of the EA must also be forward to CDOT headquarters and cooperating agencies (if applicable) involved in the project for review and comment.

FHWA will conduct a document review for compliance with its rules and regulations and upon conclusion of its review will issue one of three responses:

- Review with comments
- Document is not ready for review
- Approval of the document.

If the EA is not approved by FHWA and comments are returned to CDOT from the FHWA Division Office and/or any cooperating agency, CDOT will evaluate the comments and revise the EA accordingly. The EA will then be resubmitted to FHWA for approval. The results of FHWA's second review will result in either additional comments or FHWA's approval for public availability of the document. Once approved, FHWA will return one copy of the approved EA to CDOT for NOA and public meeting purposes.

Once the EA is approved, CDOT will prepare an NOA, which is published in a local newspaper. The NOA should include the following:

- A brief description of the project
- A brief summary of environmental consequences
- Time period and dates of the public comment period (30 days)
- Locations of where the document is available for public review (examples include libraries or municipal offices)
- Location, date, and time of public meetings, if held. The EA must be available for public review at least twenty-one (21) days prior to the public meeting (Section 7.3.7)
- A point of contact at CDOT for further information.
- The NOA and a brief general description of impacts of the project must also be sent by CDOT to the Colorado State Clearinghouse and all interested state and federal agencies.
- Following the public availability period, the EA should be revised or an attachment provided, as appropriate in order to—
- Reflect changes in the proposed action or mitigation measures resulting from comments received on the EA or at the public hearing (if one is held) and any impacts of the changes.
- Include any necessary findings, agreements, or determination (e.g., wetlands, Section 106, Section 4(f)) required for the proposal.
- Include a copy of pertinent comments received on the EA and appropriate responses to the comments.
- Upon conclusion of the public comment period, the public comments are considered and a determination of the significance of the impacts is made. If at any point in the process of preparing an EA it is discovered that the project would result in significant impacts, an EIS must be prepared.

Or if, after completing the EA, it is evident that there are no significant impacts associated with the project, a FONSI may be prepared.

FONSI Approval

The FONSI is submitted to FHWA only after CDOT has completed a quality control review and determined that the document is complete and ready for approval by FHWA. The cover letter should contain a request by CDOT that location and design concept acceptance be granted.

FHWA then conducts a document review of the FONSI for compliance with its rules and regulations and issues one of three responses:

- Review with comments
- Document is not ready for review
- Approval of the document.

Comments received by CDOT from FHWA are evaluated and incorporated in the FONSI and/or the EA is revised and updated and resubmitted to FHWA for approval. This will result in either additional comments to which CDOT must respond or an approval of the document by FHWA. Once the FONSI is approved, the following actions must be taken:

- CDOT and FHWA send the EA to the Environmental Protection Agency (EPA) for review.
- FHWA appends a cover letter to the FONSI stating that location and design concept acceptance has been granted concurrently with approval of the FONSI.
- FHWA forwards a signed copy of the approved EA or FONSI and location and design concept letter to CDOT.
- CDOT forwards a copy of the letter authorizing location and design concept acceptance to the Colorado Division's federal-aid office.

Upon receipt of the location and design concept acceptance and the approved FONSI, CDOT sends an NOA of the approved FONSI to the Colorado State Clearinghouse and all interested state and federal agencies, including the appropriate Regional Planning Council. Notice of receipt of location and design concept acceptance and availability of the FONSI is also published by CDOT in a local newspaper with a general circulation in the project area.

Subsequent to location and design concept acceptance, the FONSI is reevaluated in accordance with 23 CFR 771 to ensure there have not

been any significant changes in the project impacts since approval of the environmental document. If a significant change has occurred, further steps may need to be taken and the project may then need to be re-evaluated.

Environmental Impact Statement (EIS)

Based on the results of the environmental assessment, an agency will make its determination as to whether to prepare an environmental impact statement. An EIS is prepared when a proposed action may significantly affect the quality of the human environment. According to CEQ guidance, the purpose of an EIS is to “serve as an action-forcing device to insure that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the federal government” (40 CFR 1502.1). An EIS is not merely a disclosure document, it is to be used by federal officials, in conjunction with other relevant information, to plan actions and make informed decisions.

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

- Notice of Intent (NOI) is published in the Federal Register by the lead federal agency, which signals the initiation of the process.
- Scoping (an open process involving the public and other federal, state and local, agencies) commences immediately to identify the major and important issues for consideration during the study.
- Draft EIS is developed, which provides a detailed description of the proposal, the purpose and need, reasonable alternatives, the affected environment, and presents analysis of the anticipated beneficial and adverse environmental effects of the alternatives.
- NOA is published in the Federal Register, which initiates a formal comment period and receipt of comments from the public and other agencies.
- Final EIS is developed, which addresses substantial comments as appropriate and provides documentation of the comments and responses received during the comment period. The Final EIS will identify, based on analysis and comments, the “Preferred Alternative.”

- Record of decision (ROD) identifies the selected alternative. It will present the basis for the decision, identify all the alternatives considered, specify the “environmentally preferable alternative,” provide information on the adopted means to avoid, minimize and compensate for environmental impacts, and documents any required Section 4(f) approval.

It is important to note that public and agency involvement is continuous throughout the entire process.

Notice of Intent

Once the decision is made to prepare an EIS for a project, CDOT prepares a notice for FHWA to publish in the Federal Register informing the general public of the scope of the project. The NOI should be written in plain English for ease in public understanding and avoid the use of any technical terminology. The project should always be referred to as the proposed action or proposed project and if any abbreviations are used in the text, they should be clarified. The following information should be included in the NOI:

- **AGENCY:** Include lead and cooperating agencies. FHWA should always be listed first when other cooperating agencies (federal, state, or local) are listed as involved in the preparation of the EIS.
- **ACTION:** Include the title of the action proposed, noting that the project is an EIS.
- **SUMMARY:** Include a brief summary of the elements included as part of the proposed action. Include any relevant information as to the project location, size, related actions, and area affected. Include a brief description of the proposed scoping process for the particular action including if, when, and where any scoping meetings will be held.
- **FOR FURTHER INFORMATION CONTACT:** Include a point of contact for responding to any questions from the public or agencies. This is typically the project manager. Information should include name, telephone number, e-mail, mailing address, and fax number.
- **SUPPLEMENTARY INFORMATION:** Include any additional supplementary information or studies that are relevant to the project. This information must be publicly available.
- Three (3) duplicate originals each signed in ink by the issuing officer will be sent by FHWA to the Office of the Federal Register, National Archives and Records Service at the following address for publication in the Federal Register:

Office of the Federal Register

National Archives and Records Administration

Washington, D.C. 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.

A record should be kept of the date on which each notice is mailed to the Federal Register. A copy of the notice, once published, is sent to CDOT for inclusion in the project file.

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 and the significant issues related to a proposed action (40 CFR 1501.7). The lead agency is required to invite the participation of affected agencies, Indian 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. Question 13 in Forty Most Asked Questions Concerning CEQ's NEPA Regulations addresses the limitations on scoping prior to publication of an NOI. It should be noted that public meetings are a common form of public involvement, but are not specifically required as a part of the scoping process.

Meetings and substantive contacts with government agencies regarding scoping should be well documented. Correspondence with cooperating agencies or the public becomes a part of the record and should be retained in the environmental project file. Pertinent correspondence is also incorporated into a draft and Final EIS, under "Summary of Public Involvement." Public involvement and coordination with tribes and with local, state and federal agencies are summarized in the EIS and documented in the appendix to the document. It is helpful and recommended to keep a brief summary of public involvement activities as they occur (e.g., dates of key meetings and correspondence), so this can be easily added to the EIS without having to reconstruct the information from the project files.

Letters should also be sent to owners of property that may be directly affected by a project as well as to organizations and individuals who have previously expressed an interest in the project or requested to be notified. In the case of projects where there is a high level of community interest or concern, the formation of a citizen advisory

committee may be appropriate to resolve any issues that may develop during the scoping phase.

All EISs must follow SAFETEA-LU's requirements. These requirements are intended to promote efficient project management by lead agencies and enhanced opportunities for coordination with the public and with other federal, state, local, and tribal government agencies during the project development process. The following additional SAFETEA-LU requirements must be completed:

To enhance interagency coordination and ensure that issues of concern are identified, SAFETEA-LU creates a new category of involvement in the environmental review process termed "participating agency." The intent of the new category is to encourage governmental agencies at any level with an interest in the proposed project to be active participants in the NEPA evaluation. Designation as a participating agency does not indicate project support, but does give invited agencies new opportunities to provide input at key decision points in the process.

Lead agencies also must give the public the opportunity for involvement during the development of the purpose and need statement and the identification of the range of alternatives to be considered. Prior to SAFETEA-LU, the public scoping process typically included these elements of a NEPA review, but there was no explicit federal requirement to provide an opportunity for public involvement on purpose and need, nor on the range of alternatives in advance of the Draft EIS.

Lead agencies can decide whether to develop the Preferred Alternative to a higher level of design detail for mitigation purposes or to facilitate compliance with other laws. The guidance, found at <http://www.fhwa.dot.gov/hep/section6002/1.htm>, addresses the timing and information needed to make that decision.

EIS Documentation Content

CEQ regulations and FHWA's Technical Advisory T6640.8A specify several required sections for an EIS. Technical information and studies developed to analyze impacts are summarized in the document and/or incorporated by reference. Technical studies that support the EIS are a part of the environmental compliance record and are public documents that must be available for review.

After clearance by FHWA, copies of all Draft EISs must be made available to the public and circulated for comments by CDOT (40 CFR 1502.19 and 1503.1) to the following parties:

- All public officials, private interest groups, and members of the public known to have an interest in the proposed action or the Draft EIS

- All federal, state, and local government agencies expected to have jurisdiction, responsibility, interest, or expertise in the proposed action
- States and federal land management entities that may be affected by the proposed action or any of the alternatives.
- Distribution must be made no later than the time the document is filed with EPA for Federal Register publication and must allow for a minimum 45-day review period (40 CFR 1506.9 and 1506.10).

Preparing the Final EIS

Following a formal comment period and receipt of comments from the public and other agencies, the Final EIS is developed to address the comments received on the Draft EIS and identify, based on analysis and comments, the Preferred Alternative. The Final EIS should attempt to resolve all environmental issues prior to the submission; however, where issues cannot be resolved, the Final EIS should identify any remaining unresolved issues, the steps taken to resolve the issues, and the positions of the respective parties. In cases where the issues are resolved through this effort, the Final EIS should demonstrate resolution of the concerns.

The Final EIS also contains a summary of the substantive comments. An appropriate response should be provided to each substantive comment. When the EIS text is revised as a result of the comments received, a copy of the comments should contain marginal references indicating where revisions were made, or the response to the comments should contain such references. The response should adequately address the issue or concern raised by the commenter or, where substantive comments do not warrant further response, explain why they do not, and provide sufficient information to support that position. Where the response is exceptionally voluminous the comments may be summarized appropriately.

Options for Preparing the Final EIS

The CEQ regulations place heavy emphasis on reducing paperwork, avoiding unnecessary work, and producing documents that are useful to decisionmakers and to the public. With these objectives in mind, three different approaches to preparing Final EISs are presented below. The first two approaches can be employed on any project. The third approach is restricted to the conditions specified by CEQ (40 CFR 1503.4(c)).

Traditional—Under this approach, the Final EIS incorporates the Draft EIS (essentially in its entirety) with changes made as appropriate throughout the document to reflect the selection of an alternative, modifications to the project, updated information on the affected environment, changes in the assessment of impacts, the selection of

mitigation measures, wetland and floodplain findings, the results of coordination, and comments received on the Draft EIS and responses to these comments. Because a large amount of information is carried over from the Draft EIS to the Final EIS, important changes are sometimes difficult for the reader to identify. Nevertheless, this is the approach most familiar to participants in the NEPA process.

Condensed—This approach avoids repetition of material from the Draft EIS by incorporating, by reference, the Draft EIS. The Final EIS is, thus, a much shorter document than under the traditional approach; however, it should afford the reader a complete overview of the project and its impacts on the human environment.

The crux of this approach is to briefly reference and summarize information from the Draft EIS that has not changed and to focus the Final EIS discussion on changes in the project, its setting, impacts, technical analysis, and mitigation that have occurred since the Draft EIS was circulated. In addition, the condensed Final EIS must identify the Preferred Alternative, explain the basis for its selection, describe coordination efforts, and include agency and public comments, responses to these comments, and any required findings or determinations (40 CFR 1502.14(e) and 23 CFR 771.125(a)).

The format of the Final EIS should parallel the Draft EIS. Each major section of the Final EIS should briefly summarize the important information contained in the corresponding section of the Draft EIS, reference the section of the Draft EIS that provides more detailed information, and discuss any noteworthy changes that have occurred since the Draft EIS was circulated.

At the time that the Final EIS is circulated, an additional copy of the Draft EIS need not be provided to those parties that received a copy of the Draft EIS when it was circulated. Nevertheless, if due to the passage of time or other reasons it is likely that they will have disposed of their original copy of the Draft EIS, then a copy of the Draft EIS should be provided with the Final EIS. In any case, sufficient copies of the Draft EIS should be on hand to satisfy requests for additional copies. Both the Draft EIS and the condensed Final EIS should be filed with EPA under a single Final EIS cover sheet.

Abbreviated—The CEQ regulation (40 CFR 1503.4(c)) provides the opportunity to expedite the Final EIS preparation where the only changes needed in the document are minor and consist of factual corrections and/or an explanation of why the comments received on the Draft EIS do not warrant further response. In using this approach, care should be exercised to assure that the Draft EIS contains sufficient information to make the findings in (2) below, and that the number of errata sheets used to make required changes is small and that these errata sheets, together with the draft EIS, constitute a readable, understandable, full disclosure document. The Final EIS

should consist of the Draft EIS and an attachment containing the following:

- Errata sheets making any necessary corrections to the draft EIS
- A section identifying the Preferred Alternative and discussion of the reasons it was selected. The following should also be included in this section where applicable:
- Final Section 4(f) evaluations containing the information described in Section IX of these guidelines
- Wetland and finding(s)
- Floodplain finding(s)
- A list of commitments for mitigation measures for the preferred alternative; and Copies (or summaries) of comments received from circulation of the draft EIS and public hearing and responses thereto.

Only the attachment need be provided to parties who received a copy of the Draft EIS, unless it is likely that they will have disposed of their original copy, in which case both the Draft EIS and the attachment should be provided (40 CFR 1503.4(c)). Both the Draft EIS and the attachment must be filed with EPA under a single Final EIS cover sheet(40 CFR 1503.4(c)).

Final EIS Public Review Process

Copies of all approved Final EISs must be distributed to all federal, state, and local agencies and private organizations, and members of the public who provided substantive comments on the Draft EIS or who requested a copy (40 CFR 1502.19). Distribution must be made no later than the time the document is filed with EPA for Federal Register publication and must allow for a minimum 30-day review period before the ROD is approved (40 CFR 1506.9 and 1506.10). Two copies of all approved EISs should be forwarded to the FHWA Washington Headquarters (HEV-11) for recordkeeping purposes.

Record of Decision

The ROD provides an explanation of 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 incorporation by reference of the Final EIS and other documents are appropriate, the ROD must explain the basis for the project decision as thoroughly as possible, based on the information contained in the EIS (40 CFR 1502.2). A draft ROD should be prepared by CDOT and submitted to the Division Office with the Final EIS. The ROD may not be issued sooner than 30

days after the approved Final EIS is distributed, nor 90 days after the Draft EIS is circulated.

The following key items need to be addressed in the ROD:

- Decision—Identify the selected Preferred Alternative.
- Alternatives Considered—Briefly describe each alternative and explain the balancing of values that formed the basis for the decision. Identify the environmentally preferable alternative (s) and if the alternative selected is not the environmentally preferable alternative, clearly state the reasons for not selecting it.
- 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 (40 CFR 1505.2(c)).
- 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—Substantive comments received on the Final EIS should be identified and given appropriate responses. Other comments should be summarized and responses provided where appropriate.

If an acceptable Final EIS is not received by FHWA within 3 years from the date of the Draft EIS circulation, a written evaluation is required to determine whether there have been changes in the project or its surroundings or new information that would require a supplement to the Draft EIS or a new Draft EIS (23 CFR 771.129(a)). A written evaluation is also required if CDOT has not taken additional major steps to advance the project within any 3-year time period of the Final EIS, the final supplemental EIS, or the last major FHWA approval action. A consultation, instead of a written evaluation, can occur with FHWA if it is within the 3-year time period from approval of the Final EIS.

EIS Approval Process

The EIS approval process is similar to, but more complex than, the process used for an EA. This is because an EIS is more complex, often addresses significant impacts, and has legally required time periods for public review of the draft and final versions of the document (Figure 3.6-7). A Draft EIS should be reviewed by consultants, the CDOT regional team, EPB staff, FHWA and cooperating agencies

before it is made available for review by the public. Consultants must submit a certification letter signed by a company officer attesting that the document they have prepared is complete and complies with all state and federal regulations. The region must review the document and put it on the Master Document Review Calendar on the first of the month before sending it with a transmittal memo to EPB for their review.

The Draft EIS is submitted to FHWA only after CDOT has completed a quality control review and has determined that the document is complete and ready for approval. The Draft EIS is forwarded to FHWA for approval along with any supporting technical documents.

FHWA conducts a document review for compliance with its rules and regulations and issues one of three responses:

- Review with comments
- Document is not ready for review
- Approval of the document.

If the EIS is not approved by FHWA and comments are returned from the FHWA Colorado Division Office, CDOT will evaluate the comments, revise the EIS accordingly and resubmit it to FHWA for approval. This will result in either responding to additional comments returned by FHWA or approval of the document by FHWA.

A Draft EIS that is approved by FHWA is sent on to cooperating agencies for their review. The approved Draft EIS should be accompanied by technical reports that are appropriate to the agency. For example, the USACE would receive the Wetland Evaluation as well as the EIS; the FWS would receive the Endangered Species Biological Assessment as well as the EIS. Cooperating agencies should be involved throughout document preparation and be given opportunity to review all portions of the Draft EIS.

Upon approval of the Draft EIS by FHWA and cooperating agencies, CDOT files the approved document with EPA together with a draft NOA. EPA publishes the NOA in the Federal Register on the Friday following the filing date. The date of publication of the NOA establishes the beginning of the public comment period, which must run for a minimum of 45 calendar days per CEQ for all Draft EISs, but no more than 60 days per SAFETEA-LU (Section 6002 (g)).

The NOA should briefly summarize the project purpose and need, alternatives, and significant impacts, as well as noting the location where hard copies of the document are available and where/when public hearings will be held. This information should also be published twice in a local newspaper starting at least two weeks before the hearing is scheduled. The NOA should also be mailed to the Colorado

State Clearinghouse, all interested state and federal agencies, and any other parties that have requested to be on the project mailing list.

Following the public availability period, the Draft EIS should be revised as a Final EIS, which is followed by the ROD. The ROD cannot be published until 30 calendar days or more after publication of the Final EIS according to CEQ regulations, although SAFETEA-LU establishes a maximum 30 calendar day interval (Section 6002 (g)).

Further details regarding the NEPA review process for EISs is discussed in Chapter 6 and Chapter 7. In addition, the new SAFETEA-LU procedures for efficient environmental reviews are discussed in these chapters. These new procedures must be followed by all highway and transit EISs for which the NOI was published after 8/11/05 (except highway projects “approved” under TEA-21’s Section 1309 authority may, with approval, continue under prior procedures if their document will withstand legal challenge).

Other NEPA Documents

Tiered NEPA Analyses

Agencies are encouraged by CEQ regulations to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ready for decision at each level of environmental review. FHWA regulations (23 CFR 7111(g)) state that “for major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate.”

There are pros and cons of using tiered NEPA analyses (Table 1-2). By following a tiered process and focusing the Tier 1 documents on strategies for an entire corridor, the Tier 2 evaluation can be expedited since overall corridor issues have been addressed upfront and detailed environmental studies have been reserved for specific project locations. Tier 2 documents allow for FHWA and CDOT to use their limited time and resources on analyzing project-specific impacts and issues in the second tier. Earlier discussions do not need to be revisited as broad-based decisions are made in the first tier. In order to take full advantage of the potential advantages provided by tiered NEPA analyses, one should discuss the potential for development of a programmatic plan for agency participation and comment and its incorporation into a Memorandum of Understanding (MOU) (SAFETEA-LU section 6002).

Table 1-2. 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 unders tiers and what is to be accomplished in e
Theoretically provides an efficient way to address	The scope of the analysis can be so larg

complex situations.	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.	

Reevaluations

23 CFR Part 771.129 (1) states that “after approval of the EIS, FONSI or Cat Ex designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or Cat Ex designation remains valid for the requested Administration action.” This consultation effort is accomplished through the reevaluation process.

What is a reevaluation and when is a reevaluation required?

A reevaluation is an analysis of any changes in the project or environment at specified times in the project development process. The purpose of a reevaluation is to assess whether any changes that may have occurred in project design, scope, affected environment or proposed mitigation would require supplemental environmental documentation and whether the environmental document and resultant decision are still valid. As described in 23 CFR 771.129, a written reevaluation that documents the evaluation and formalizes the consultation between FHWA and DOT, is required on projects with an EIS where no action to advance the project has occurred within 3 years. Formal documentation of the evaluation on the validity of the approved document or Cat Ex designation is not necessary for EIS, FONSI or Cat Ex NEPA approvals, but consultation with FHWA is required at each major milestone (ROW authorization, construction authorization, subsequent authorizations (phased projects)). This consultation completes and closes the loop on the reevaluation process.

How should the loop be closed on reevaluations? (What level of reevaluation is needed?)

Written reevaluations are necessary/required for EISs where the Final EIS has not been issued or no major steps to advance the action have occurred in the last 3 years. For projects with an EA or Cat Ex,

documentation is required as determined necessary by FHWA. This could be as simple as FHWA documenting a phone conversation, with a note to the project file, where assurance was given that no changes had occurred that affect the environmental document. As a process, FHWA and ITD could agree that ITD will provide a letter documenting:

- There were no changes, or
- The changes did not result in major project or scope modification or significant environmental impacts, and
- The existing approved document is still valid.
- Does the reevaluation need to address the entire length of the project?

Yes, the reevaluation is for the entire document or project (i.e., same limits as the original environmental document). The reevaluation should consider the entire project, but be focused on the validity of the NEPA document and/or project decision as related to the current phase or work, major approval, or action to be taken by FHWA to advance the project. If documentation of the reevaluation is necessary, the previous phases would be referenced as a previous action and summarized as background information. The current phase would be discussed in more detail, but only to the extent that there have been changes to the project or affected environment. Future phases could be mentioned and discussed, but the detail could be delayed until approval is needed to proceed with the future phase. There is no requirement to modify phases already built or reconsider previous designs when the next phase is being built.

Does the design year (and traffic numbers) have to be updated for either the final segment or the entire project?

This should be examined on a case-by-case basis and may be commensurate with the time lapse between the original environmental document and decision and the current FHWA approval action. For example, if the project is so old that the design would not be appropriate, it should probably be changed. There is no requirement to change the design year (and associated traffic numbers) of a project during re-evaluation of the environmental document.

23 USC 109 provides that the project must adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability and economy of maintenance. In accordance with AASHTO's 1991 A Policy on Design Standards – Interstate System, "In all but extraordinary circumstances, the design year for new construction and complete reconstruction is to be at least 20 years beyond that which the plans, specifications, and estimate for construction for the section are approved." FHWA does not have a requirement for design year on non-interstate facilities.

ITD's Design Manual provides that 3R-NHS projects include a minimum 8 year Design Traffic Volume (C.2.16).

For a project that is constructed in phases, what are the environmental reevaluation requirements?

Reevaluation and consultation with FHWA is required prior to approval of each major FHWA approval or action (e.g., r-o-w acquisition, etc., for each segment or phase) and would address and consider the following:

- Whether or not the project, as described in the original document, is substantially different or changed and whether or not there will be an environmental impact that was not previously identified and discussed
- Whether or not the affected environment has changed and an environmental impact will occur that was not previously discussed (including a new T&E species or any number of issues)
- Whether or not regulations or laws have changed and if there are new requirements that were not addressed in the approved environmental document.

If the project decision, affected environment, mitigation or other environmental commitments, or environmental requirements have not changed or if the changes examined do not result in the determination by FHWA that the environmental document is no longer valid, the reevaluation process is completed. If the reevaluation process determines that the approved environmental document is no longer adequate, then supplemental environmental documentation is needed to fully analyze the changes that have occurred. [52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Suggested Project Reevaluation Format

The project reevaluation contains evaluation criteria and supporting documentation, and is used to determine the significance of any changes in design features and environmental factors that have occurred since the approval of the Type 2 Cat Ex, EA/FONSI, Final EIS, or supplemental environmental documents. Details on the typical format of the Project Reevaluation are provided below.

Section I.—General Information

This section normally contains information about the originally approved Type 2 Cat Ex, Final EIS, EA/FONSI or any supplemental environmental document and the segment(s) being advanced. Information provided includes the following:

- The phase(s) for which the project segment(s) is (are) being reevaluated (i.e., PE, R/W, Construction Advertisement, and Design Change)
- Document type and date of approval of original document
- Project number(s): state, federal-aid, and financial project number(s) of the original approved document
- Project local name, location, and limits covered under the originally approved Type 2 Cat Ex, EA/ FONSI, Final EIS, or supplemental environmental document
- Segment of highway being advanced: state project number(s), federal-aid project number(s), and Financial Project number(s), location, and limits
- Name of analyst(s): Identify the key person(s) primarily responsible for the completion of the reevaluation.
- If more than one segment is to be advanced for different phases (i.e., right-of-way and construction advertisement), this distinction must be specified in this section.

Section II.—Conclusion and Recommendation

This section normally contains a concluding statement about the reevaluation of the project, the validity of the Administrative Action, and a recommendation for project advancement. If, following documented consultation with the appropriate FHWA Transportation Engineer (or lead agency representative), no major changes are noted or if three (3) or more years have not elapsed since the last major approval, the RPEM will sign the reevaluation and place it in the project files. Documentation of the consultation (which may occur via telephone, fax, e-mail, regular mail, or in person) with FHWA (or the lead agency) is to be placed in the project file and on the written reevaluation.

Section III.—FHWA or Lead Federal Agency Concurrence

If, following consultation with the appropriate FHWA Transportation Engineer (or the lead agency representative), it is determined that submittal of a written reevaluation is required, CDOT will send the reevaluation to FHWA (or the lead agency). After review of the reevaluation, the lead federal agency representative, usually the FHWA Division Administrator (or designee), will sign the reevaluation to provide concurrence with the reevaluation and the recommendation of CDOT.

Section IV.—Changes in Impact Status or Document Compliance

This section is an evaluation matrix used to assess all environmental factors previously considered in the original study as well as any new factors that may now exist. The reevaluation consists of a

determination of any change that has occurred in the social, economic, or environmental setting surrounding the project, and if that change is major in nature. If a change has occurred for a given factor, the analyst marks an "X" in the "YES" box. An explanation is then provided in the COMMENTS column to explain the nature of the change. Additional pages may be added to fully discuss all changes or appropriate reports attached. If any new factors arise, they are added to the form and addressed accordingly. If no change has occurred, the analyst marks an "X" in the "NO" box.

Section V.—Evaluation of Major Design Changes and Revised Design Criteria

Design changes that have occurred since approval of the original document are addressed in this section. Similar to the evaluation of environmental factors, any major design change that has occurred on the project is identified and discussed (supporting materials should be attached as required). The extent of the design change(s) and modification of impacts on the project area must be fully documented. If no major changes in design features have occurred, a statement to that effect should be provided. Examples of design features to be reassessed for major changes include, but are not limited to, the following:

- Changes in typical section
- Shifts in roadway alignment
- Changes in right-of-way requirements
- Changes in bridge to box culverts
- Changes in drainage requirements

The original project design and any approved design variations or exceptions must be reviewed. Design criteria that may have changed since the approval of the original document must be addressed in this section. Revised design criteria may be the reason for a design change as discussed above. On the other hand, there may be changes in design criteria that are not incorporated into the project.

All design elements not conforming to current design criteria or policies shall be identified in this section of the reevaluation. All non-standard design elements should have an approved design variation or exception in the project file. This section of the reevaluation must contain a statement that each non-standard design element has been reviewed, and their incorporation into the project is acceptable based on an approved design variation or exception. If there are design elements that do not conform to current design criteria, the processing of the design variation or exception must be coordinated with the Design Office.

Section VI.—Mitigation Status and Commitment Compliance

Section VI is ordinarily used to identify and to update commitments, recommendations, and mitigation measures set out in the originally approved Type 2 Cat Ex, Final EIS, EA/FONSI, or supplemental environmental document. A list of all commitments, recommendations, and mitigation measures established in the approved Type 2 Cat Ex, Final EIS, EA/FONSI, or supplemental environmental document is to be provided along with their status as to whether they have been accomplished, modified, added to, or deleted. If there have been any changes in the commitments then an explanation must be given satisfying the changes. Standard specifications to be used during the construction of the project that are listed in the latest version of the CDOT Construction Manual are not to be restated in the reevaluation. Any new commitments arising from subsequent agency negotiations or permit requirements, along with any commitments or considerations arising from public involvement are also listed, updated, and discussed accordingly.

Each District will develop internal commitment compliance procedures that will include tracking all environmental commitments and any “actions to be considered” resulting from public involvement.

Section VII.—Permits Status

This section lists all permits required on the project and provides an explanation of their pending issuance.

Non-Programmatic or Programmatic Categorical Exclusion Reevaluation

Once a project has been reviewed to ensure it qualifies as a Non-Programmatic or Programmatic Cat Ex, the reevaluation process is more streamlined. For Type 1 Cat Exs under 23 CFR 771.117(c) and those Cat Exs under 23 CFR 771.117(d) that have been approved as programmatic by agreement between CDOT and FHWA (<http://environment.fhwa.dot.gov/projdev/docuceda.asp>), the reevaluation requires the following statement on the federal-aid checklist, which is forwarded to the FHWA Colorado Division Office:

"This project is a Categorical Exclusion under Type 1."

For projects that are programmatic Cat Exs, the following statement should also be on the federal-aid check list:

"This project is a Programmatic Categorical Exclusion."

Supplemental NEPA Analyses

Whenever there are changes, new information, or further developments on a project that result in significant environmental impacts not identified in the most recently distributed version of the Draft or Final EIS, a supplemental EIS is necessary (40 CFR

1502.9(c)). These changes occur following the last approval (Draft EIS, Final EIS, and ROD). Supplemental EISs normally do not require reinitiating the environmental process; instead, the supplemental EIS is required for the last approval. If a ROD has been granted, only the Final EIS requires supplementing.

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 EIS is needed in the following cases:

- Changes have occurred in the need for or purpose of the project
- Schedule delays have been substantial
- Changes have been made to the design or scope of the project
- Major changes to the environmental consequences of the project (determined following completion of the environmental approval process) that may require supplemental documentation to determine whether EIS conclusions are valid
- FHWA or CDOT determines that new information or circumstances relevant to environmental result in significant environmental impacts not evaluated in the EIS.
- 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 EIS 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 EIS will be reviewed and distributed in the same manner as a draft and Final EIS (23 CFR 771.130(d)).

Supporting Studies

Supporting studies may be required to obtain information adequate for evaluation of impacts to a particular resource or to evaluate these impacts. 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. The need for such studies, their level of detail, extent, and seasonal constraints should be discussed with the appropriate regulatory agency (e.g., SHPO for archeology/paleontology; Colorado

Division of Wildlife and USFWS for fish and wildlife) early in the project. Other field studies on such resources 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 projected impact such as conformity analysis of impact on air quality typically rely on available data to characterize the existing situation and detailed assumptions about project components. Because of the assumptions that must be made when using conformity analysis models, early discussion with the Air Pollution Control Division (APCD) of CDPHE is appropriate.

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 should be 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, 8CCR 1504-7 Rules and Procedures Historical, Prehistorical, and Archaeological Resources Act (revised 01/04); <http://www.coloradohistory-oahp.org/publications/pubs/1308b.pdf>) that help to ensure 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 the Colorado Department of Wildlife (CDOW) (<http://wildlife.state.co.us/NR/rdonlyres/2BFDBAD9-0EDF-41A2-8076-D9211B1518F1/0/Ch13.pdf>) and/or the FWS (<http://www.fws.gov/permits/instructions/ObtainPermit.shtml>). 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.

Such permits are addressed in greater detail in Section 7 of the 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).

Technical Reports

It is important to establish a consistent philosophy and criteria for how technical reports will be incorporated (e.g., reference cited, summary of information, referral to separate technical report) into each type of NEPA document at the early stages of the project.

Generally, multiple copies (minimum of 5) 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 under their specific index number.

Legal Records

CDOT Project File

CDOT has designed a standard Project Directory Structure for all engineering project data and related files. This directory structure, along with a standard file naming convention, has been created to enable efficient, consistent management of all files within a CDOT project. This consistency will aid in the referencing of engineering CADD files, help to facilitate the exchange of data between specialty groups, and ensure consistent, reliable data retrieval by all members of a project team.

CDOT has developed a project creation utility that automates the creation of the standard project directory structure. At the beginning of each project, the Project Manager will run the Project Creation Utility executable to create the standard directories. These directories will be the storage location for all information pertaining to a given project. The tool will create the project directory folders and sub-folders as well as creating and naming certain sheet and model files with the Job Project Code. It is the responsibility of the project manager or project engineer to run the Project Creation Utility when they receive the five digit Job Project Code.

Project Directory

CDOT has designed a standard Project Directory Structure for all engineering project data and related files (http://www.dot.state.co.us/ECSU/Manuals/CDOT_CADD_Manual/Directory_Structure.htm). All CDOT projects should follow the directory structure to ensure the accurate sharing of information between groups within the Department as well as outside consultants. Each project includes a unique top level directory and a set of standardized sub-directories located under the Projects root directory on the appropriate server or Project Manager's computer.

Group Sub-Directories

Below the top-level directory you will find subdirectories for each CDOT specialty group. Under each specialty group directory is a sub-directory structure unique to that specialty group. The example shown in the sidebar shows the specialty group sub-directories below the JPC 14942. In this example, the sub-directory Design has been opened to see the sub-folders where the Roadway Design group will store all their project information.

The project manager or project engineer is required to assign access permissions to every person on the design team and is also responsible for maintaining the current access list.

Note that the Landscape Environmental subfolder under the group sub-directory structure is the location for project files pertinent to the NEPA process for the project.

Documentation

It is important for CDOT to maintain a repository of all types of documentation relative to the NEPA process. All documents should be placed in every CDOT project file. These documents include but are not limited to the following:

- Documents and materials prepared, reviewed, or received by agency personnel and used by or available to the decision-maker, even though the final decision-maker did not actually review or know about the documents and materials
- Policies, guidelines, directives and manuals
- 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 an agency and OMB 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 were or were not superseded by a 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 reports, should be kept in the files but labeled “CONFIDENTIAL- NOT FOR PUBLIC RELEASE” due to their sensitive nature.
- Decision documents
- Minutes of meetings or transcripts thereof

- 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 the following:

- Notes of meetings that include key decisions 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.

In general, the filing structure for the NEPA portion of the CDOT project file should be indexed as shown in the sidebar.

Further information on the legal sufficiency of NEPA documents prepared for transportation projects can be found at: 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.

Administrative Record

Under the Administrative Procedure Act (APA), 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 V.S.C. § 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 file as needed. The CDOT project filing system will identify non-public information that is not appropriate for inclusion in the Administrative Record.

Project 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 3.5.2).

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 is potentially useful in assessing and resolving future problems with project structures, ownership, or choices associated with implementation.

Section 6002 of SAFETEA-LU (<http://www.fhwa.dot.gov/hep/igslpja.htm>) creates 23 U.S.C. 139 (I), which immediately establishes a 180-day statute of limitations 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. This statute of limitations may also result in rethinking the selection of information to be retained in the administrative record.

Colorado Open Records Act (CORA)

The CORA begins at Section 24-72-201 of the Colorado Revised Statutes (http://www.state.co.us/gov_dir/leg_dir/olls/HTML/colorado_revised_statutes.htm) 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 Colorado Open Records Act 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. The types of information that are open to inspection are discussed at: <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>. CDOT must allow the public to inspect such information, although it may charge for copies requested by the public, and CDOT need not help the public narrow its search for broadly stated information requests.

The CORA does not apply to federal government records. [Placeholder – Insert guidance on Procedures for Responding to CORA Requests (Approvals, Types of Information to Include/Exclude, Documentation kept.) A different federal statute, called the Freedom of Information Act (FOIA), applies to federal government. Similarly, this federal statute does not apply to Colorado state or local government.

Freedom of Information Act (FOIA)

FOIA (5 U.S.C. § 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 United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions under FOIA. This right of access is ultimately enforceable in federal court.

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 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, indexes, and descriptions of information locator systems. The best place to get this information is on the agencies' websites.

FHWA has a web site that addresses FOIA requests: <http://www.fhwa.dot.gov/foia/>. It includes a FOIA Request Guide (<http://www.fhwa.dot.gov/foia/guide.htm>) that clearly explains how the public is to make FOIA requests and how FHWA should respond to such requests.

FOIA does not apply to Colorado state or local government records. A different state statute, CORA (discussed above), applies to Colorado state and local government. Similarly, this state statute does not apply to federal government records.