



NEPA

SAFETY * AVOID * MINIMIZE * MITIGATE * HABITAT * PERFORMANCE * CONSERVATION * GIS * COMMUNITY * NATURE * SUSTAINABILITY



**ENVIRONMENTAL
DIVISION**

ARCHAEOLOGY * BUSINESS SERVICES * COMPLIANCE * ECOLOGY * HAZARDOUS MATERIALS * BEAUTIFICATION
HISTORIC PRESERVATION * MITIGATION * NEPA * PERMITS * AIR QUALITY & NOISE



SOLUTIONS * LAND * STEWARDSHIP * PROGRESS * PRESERVATION * WATER * AIR * OUTREACH * LITTER PREVENTION * COMMUNICATION

SOLUTIONS * LAND * STEWARDSHIP * PROGRESS * PRESERVATION * WATER * AIR * OUTREACH * LITTER PREVENTION * COMMUNICATION



The National Environmental Policy Act (NEPA) requires consideration of the effects that a federal action may have on the natural or human environment. This chapter discusses the process and documentation involved in complying with NEPA or, in the absence of a federal nexus, in completing a Tennessee Environmental Evaluation Report (TEER).

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NEPA

3.1 INTENT AND APPLICABILITY

The National Environmental Policy Act (NEPA) requires that prior to funding, authorizing, or implementing an action, federal agencies consider the effects that their action may have on the natural and human environment (42 USC 4321 *et seq.*). Though NEPA applies to federal agencies, for transportation projects in Tennessee that trigger NEPA compliance, the development or management of the NEPA process is conducted by TDOT's Environmental Quality and NEPA in coordination with and/or on behalf of the FHWA.

NEPA Nexus

NEPA is only applicable to federal actions, including projects and programs that:

- Are entirely or partially funded by federal agencies;
- Require a federal permit, authorization, entitlement, or approval; or
- Occur on federal land.

The FHWA NEPA process aims to balance transportation needs with social, economic, and natural environmental factors. This involves an interdisciplinary and interagency process wherein the lead federal agency works cooperatively with other federal, state, tribal, or local agencies during the environmental review process and may solicit input from the public to ensure all environmental regulations and other relevant issues are addressed.

Transportation projects that do not involve federal-aid funding and do not otherwise constitute a major federal action are exempt from the provisions of NEPA; however, TDOT is committed to a project development approach that provides for early and ongoing consideration of environmental effects, regardless of the funding source. To that end, TDOT's policy on the environmental evaluation and documentation of state-funded projects that do not constitute a federal action includes the development of a Tennessee Environmental Evaluation Report (TEER). Though not required under NEPA, additional information on the TEER process is available at the end of this chapter.

3.1.1 NEPA CLASSES OF ACTION

For compliance with NEPA, impacts to the human and natural environment are assessed in one of three classes of action. The determination of which class of action

is appropriate for a given project is based on the project's potential to have "significant" adverse environmental impacts. The term "significant," as used in NEPA, requires consideration of the potentially affected environment and the degree of the effects of the action. (40 CFR 1501.3) This assessment of the affected environment is based on the findings of technical studies such as ecology, cultural resources, air quality, noise, and several others.

The three basic classes of action which determine how compliance with NEPA will be carried out and documented are:

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The following discussion of NEPA classes of action is based on FHWA regulations. The determination of an appropriate class of action pursuant to another lead agency's NEPA regulations may differ somewhat.

3.1.1.1 CATEGORICAL EXCLUSION (CE)

A CE is developed for a project/action that is determined to fall within a category of actions that do not individually or cumulatively have a significant effect on the environment and thus are excluded from the requirement to prepare an EA or an EIS. A project or action may qualify for a CE if it meets the definitions contained in 40 CFR 1508.1(d) and 23 CFR 771.117(a) and does not involve "unusual circumstances" as defined in 23 CFR 771.117(b). The FHWA provides a listing within regulation of project types that have proven over the years to generally have no significant impact (see 23 CFR 771.117(c) and (d)). However, if the likelihood of significant impacts is uncertain even after CE-related studies have been conducted, TDOT should consult with the FHWA to determine whether an EA or an EIS should be prepared. If significant impacts are likely to occur, an EIS must be prepared (23 CFR 771.123(a)).

In addition to the two categories of CEs defined in 23 CFR 771.117 (c) and (d) (referred to as C-List and D-List CEs respectively), TDOT also processes Programmatic CEs (PCEs), the criteria for which are outlined in an agreement developed between TDOT and the FHWA with the most recent version having been signed in 2018. Criteria for each CE type (C-List, D-List, and PCE) are discussed below.

3.1.1.1.1 C-LIST CEs

C-List categories of actions consist of actions that, based on the FHWA's past experienced with similar actions, do not involve significant environmental impacts. If a proposed action matches one of the action types outlined in 23 CFR 771.117(c), and

- will not induce significant impacts as described in 23 CFR 771.117(a),
- does not have any unusual circumstances as outlined in 23 CFR 771.117(b), and
- for an action described in (c)(26), (c)(27), and (c)(28), does not involve any of the limitations described in 23 CFR 771.117(e),

then the action can be processed as a C-List CE and normally will not require any NEPA approvals by the FHWA, unless the FHWA specifically requests an opportunity to review the project.¹

Types of actions that normally qualify as C-List actions include (but are not limited to) non-construction actions, such as planning grants for training and research, or limited construction actions, such as construction of pedestrian facilities, landscaping, and fencing.

The FHWA conducts a yearly audit of NEPA documents approved in-house by TDOT to ensure that TDOT is following all regulatory requirements. This audit includes a review of select C-List CE documents.

3.1.1.1.2 D-LIST CEs

D-List categories of actions consist of actions that, based on the FHWA's past experienced with similar actions, do not tend to involve significant environmental impacts but have a higher potential for impact than actions that qualify as a C-List. If a proposed action matches one of the action types outlined in 23 CFR 771.117(d), and

- will not induce significant impacts as described in 23 CFR 771.117(a), and
- does not have any unusual circumstances as outlined in 23 CFR 771.117(b),

¹ In addition to project specific requests from FHWA, the *Programmatic Agreement Between the Federal Highway Administration, Tennessee Division and the Tennessee Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects* (PCE Agreement) outlines thresholds over which an action will require FHWA review and approval.

then the action can be processed as a D-List CE and will require review and approval by the FHWA unless the action meets the criteria outlined in the agreement between TDOT and the FHWA for programmatic CEs. Proposed actions that match one of the action types outlined in 23 CFR 771.117(c)(26), (c)(27), or (c)(28) that would qualify for documentation under a C-List CE but for the action involving one or more of the limitations outlined in 23 CFR 771.117(e) may be processed as a D-List CE.

3.1.1.1.3 PROGRAMMATIC CEs (PCEs)

As permitted in the FHWA NEPA regulations at 23 CFR 771.117(g), the FHWA and TDOT have entered into the “Programmatic Agreement Between the Federal Highway Administration, Tennessee Division and the Tennessee Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects” (PCE Agreement). Through this agreement, TDOT and the FHWA agreed in advance that certain projects qualifying as D-List CEs that do not surpass thresholds of minor impacts as outlined in the PCE Agreement could qualify as a PCE and, therefore, could be processed and approved by TDOT without a separate FHWA review and approval.

The PCE Agreement also establishes thresholds to direct when a C-List CE will require FHWA review and approval.

PCEs must document that the PCE Agreement criteria are met. The yearly FHWA audit of NEPA documents approved in-house by TDOT, referenced above, includes a review of select PCEs.

3.1.1.2 ENVIRONMENTAL ASSESSMENT (EA)

An EA is prepared when the proposed project does not qualify for development as a CE and when the significance of the project’s environmental impacts is uncertain (23 CFR 771.119). The purpose of an EA is to clarify any uncertainty and document the findings. If no significant impacts are identified, the EA process concludes with a Finding of No Significant Impact (FONSI) decision. If it is determined the consequences of the proposed federal undertaking are significant, despite proposed mitigation, an EIS will be required.

3.1.1.3 ENVIRONMENTAL IMPACT STATEMENT (EIS)

When a proposed action is likely to have a significant impact on the environment, an EIS must be prepared (23 CFR 771.123). The purpose of the EIS is to provide a full and open evaluation of environmental issues and alternatives and to inform decisionmakers and the public of reasonable alternatives that could avoid or minimize adverse impacts and enhance the quality of the environment. Generally, only 2 to 3 percent of state DOT projects require preparation of an EIS.

3.2 KEY LAWS, REGULATIONS, AND GUIDANCE

3.2.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (42 USC 4321 *et seq.*)

The National Environmental Policy Act (NEPA) was enacted by Congress in 1969 and signed into law on January 1, 1970. Pursuant to NEPA, the policies, regulations, and laws of the federal government must be interpreted and administered in accordance with the federal government's environmental protection goals. Through the NEPA process, federal agencies or their designees take a hard look at the potential impacts their actions may have on the human and natural environment and disclose those impacts through appropriate documentation.

3.2.2 COUNCIL ON ENVIRONMENTAL QUALITY (CEQ) NEPA IMPLEMENTING REGULATIONS (40 CFR 1500-1508)

The National Environmental Policy Act not only established a national policy for the environment, it also provided for the creation of a Council on Environmental Quality (CEQ) within the Office of the President of the United States. CEQ is tasked with developing guidance and regulations for NEPA implementation and coordinating the federal government's policies and actions relevant to the environment. CEQ regulations for the implementation of NEPA are found at 40 CFR 1500 *et. seq.* These regulations set a national standard for NEPA implementation that is binding on all federal agencies; however, each federal agency is also required to develop NEPA procedures that supplement these regulations and more directly relate to the functions and actions of that agency.

3.2.3 FEDERAL HIGHWAY ADMINISTRATION NEPA REGULATIONS (23 CFR 771.101 *et seq.*)

To address the NEPA responsibilities established by CEQ, three USDOT agencies, FHWA, FTA, and FRA, have developed regulations for applying NEPA to highway, railway, and transit projects. Those regulations are codified in 23 CFR 771, Environmental Impact and Related Procedures, as amended. While the regulations contained in 23 CFR 771 apply to all three agencies, the discussion regarding NEPA throughout the EG refers to projects developed under the jurisdiction of the FHWA.

3.2.4 THE NEPA UMBRELLA

Though the above are the key laws and regulations relevant to NEPA, many different federal laws, regulations, orders, and rules govern the environmental review of federal actions or projects. The FHWA adopted the policy of managing the NEPA project development and decision-making process as an "umbrella," under which all applicable environmental laws, executive orders, and regulations are considered and addressed prior to the final project decision and document approval. **Figure 3.1** illustrates the popularized concept of the "NEPA Umbrella," with a non-exclusive list of the various laws and regulations that agencies must consider and comply with, as appropriate to a specific project. Many of these laws and regulations are described in greater detail throughout this EG. Specific requirements that apply to a transportation project are discussed in each of the technical area chapters.

FIGURE 3-1: NEPA UMBRELLA



Source: Colorado Department of Transportation

3.3 KEY REGULATORY AGENCIES, RESOURCES, AND AGREEMENTS

TABLE 3-1: KEY REGULATORY AGENCIES AND RESOURCES

COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)	
https://www.energy.gov/nepa/ceq-guidance-documents	
Jurisdiction/Interests	Key Items
Housed within the Executive Office of the President of the United States and oversees the federal implementation of NEPA by interpreting the law and developing regulations and guidance.	<ul style="list-style-type: none"> CEQ Guidance Documents
FEDERAL HIGHWAY ADMINISTRATION (FHWA)	
https://www.environment.fhwa.dot.gov/default.aspx https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx	
Jurisdiction/Interests	Key Items
Lead Federal Agency for highway and transportation related infrastructure projects. Provides guidance on related processes, including the environmental review process for federally assisted transportation projects.	<ul style="list-style-type: none"> FHWA Environmental Toolkit Guidance for Preparing and Processing Environmental and Section 4(f) Documents
AASHTO CENTER FOR ENVIRONMENTAL EXCELLENCE	
https://environment.transportation.org/resources/practitioners-handbooks/	
Jurisdiction/Interests	Key Items
Provides guidance and tools aimed at streamlining the environmental review process for transportation projects.	<ul style="list-style-type: none"> Practitioner's Handbooks

TABLE 3-2: AGREEMENTS

Agreements			
Term	Type of Document	Parties Involved	Topic or Purpose
7/17/2023 – 7/16/2028	Programmatic Agreement Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects. (PCE)	TDOT and FHWA	Establishes thresholds within which TDOT may make a Categorical Exclusion (CE) and CE re-evaluation approval on behalf of the FHWA. Also, outlines TDOT and FHWA responsibilities with regards to CEs.

Executed 6/15/2015	Stewardship and Oversight Agreement on Project Assumption and Program Oversight	TDOT and FHWA	Outlines the roles and responsibilities of the FHWA and TDOT with respect to Title 23 project approvals and related responsibilities. Further, outlines standard FHWA review timeframes for environmental documentation.
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3.4 NEPA PROCESS

3.4.1 GENERAL PROCESS

The basic elements of the NEPA process are:

- Purpose and Need
- Development and consideration of alternatives
- Interagency coordination and public involvement
- Assessment of impacts of the proposed project
- Consideration of appropriate impact mitigation: avoidance, minimization, compensation
- Documentation and disclosure

3.4.1.1 PURPOSE AND NEED

The transportation planning process should establish the basic purpose and need for a project and provide data and information to support the development of a purpose and need statement for the NEPA document. This purpose and need statement plays a key role in determining the alternative(s) that will be considered in the NEPA document. If the purpose and need statement is too narrow it may cause difficulty in developing an acceptable alternative that sufficiently addresses the identified purpose and need. However, if the statement is too broad, it may not direct the project appropriately.

The purpose and need statement, at a minimum, is a statement of the transportation problem to be addressed by the proposed project (the need) and the degree to which the proposed project should address the stated problem(s) (the purpose). Although most transportation projects stem from a transportation-related need (e.g., congestion, lack of access, safety), in some instances, data may support that a transportation improvement could help to

address a need for economic development, particularly in rural or depressed areas. The purpose should not be a list of potential benefits of the project, but rather a clear and concise statement of how the project will address the demonstrated need(s).

SAFETEA-LU Section 6002, Efficient Environmental Reviews for Project Decision-making, requires lead agencies to give the public and participating agencies the chance to be involved in the development of the project purpose and need statement in a timely and meaningful way. This opportunity can occur early during the transportation planning process before an EIS is initiated if the project is sufficiently well defined at that time, or later during the scoping process. The opportunity for input must be widely publicized and the opportunity must be provided prior to the FHWA's final decision regarding purpose and need. The Section 6002 provisions are required for EIS documents, and discretionary for EAs and CEs.

Common components of a purpose and need statement are provided in the FHWA's 1987 Technical Advisory (T 6640.8A) – Guidance for Preparing and Processing Environmental and Section 4(f) Documents. General direction on developing purpose and need statements is found in the FHWA/FTA Joint Guidance on "Purpose and Need," issued July 23, 2003. Additional guidance is available in the AASHTO Practitioner's Handbook Chapter 07, "Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects" (August 2016).

3.4.1.2 DEVELOPMENT AND CONSIDERATION OF ALTERNATIVES

The minimum number of alternatives for each NEPA class of action are:

- CE – No Build +1 Build Alternative
- EA – No-Build + Build Alternative(s)
- EIS – No-Build + All reasonable alternatives (reasonable number/reasonable range)

A "reasonable" alternative meets the purpose and need of the project, connects logical termini, has independent utility or independent significance, does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements, and does not have unacceptable consequences. A "reasonable range" of alternatives is defined as a reasonable number of alternatives that cover the full spectrum of alternatives. A reasonable range of alternatives is used when there is an extremely large number of alternatives that make it unfeasible to study all alternatives (AASHTO

2016). Other criteria for defining reasonableness may apply to individual projects.

In addition to the build alternative(s), a no-build alternative is also reviewed. Review of the no-build serves two purposes. First, it may be a reasonable alternative, especially where the impacts are high and the need for the project is relatively minor. Second, the no-build serves as a baseline against which the impacts of the build alternative(s) can be compared. The no-build alternative assumes the existing roadway network remains in its current state, other than safety upgrades and routine maintenance as needed.

SAFETEA-LU Section 6002 requires lead agencies to give the public and participating agencies the chance to be involved in the development of the range of alternatives. After considering the input provided by these groups, TDOT, in consultation with FHWA, is responsible for deciding the range of alternatives to be considered in the NEPA document. The form and timing of the public and participating agency involvement is flexible, but the opportunity must be provided prior to FHWA's final decision regarding the reasonable range of alternatives. SAFETEA-LU's Section 6002 provisions are mandatory for EIS documents and optional for other classes of action.

During the early phases of project development, a set of preliminary alternatives or options are identified or may be confirmed from earlier studies, such as MPO Long Range Transportation Plans, State Transportation Improvement Programs (STIPs), and Transportation Improvement Programs (TIPs). The number of preliminary alternatives considered depends upon the type, size, and complexity of the project. For example, an intersection improvement is likely to have few alternatives, while a new roadway on new location could be expected to have many possible alignments that will ultimately be screened to a reasonable and representative range.

During the development of the preliminary alternatives, and throughout the project planning process, some of the alternatives may be revised and modified, while others may be dropped from further consideration because they are determined to be impracticable or infeasible, may have severe adverse impacts, or do not meet the project's purpose and need. New alternatives may also come to light as the process moves forward. Affected agencies and the public will be given opportunities to provide input into the development of alternatives that are considered.

CEQ regulations require that alternatives that were initially considered but eliminated from more detailed study be discussed in the EIS, with the reasons

for removing these alternatives from further consideration also explained. Although not specified in the Technical Advisory, for EAs and D-List CEs, TDOT generally discusses any alternatives that were initially considered but dropped from further study.

Beyond the CEQ requirements to evaluate alternatives to avoid or minimize impacts to the environment, other NEPA umbrella laws and rules require consideration of “avoidance” alternatives. Specifically, Section 4(f) of the USDOT Act of 1966; the Executive Orders on Wetlands (EO 11990), Floodplains (EO 11988), and Environmental Justice (EO 12898); and the U.S. Army Corps of Engineers Section 404 (b)(1) guidelines require agencies to develop alternatives that would avoid or minimize impacts to their respective resources.

Information regarding the development of alternatives is provided in the FHWA’s 1987 Technical Advisory (T 6640.8A) – Guidance for Preparing and Processing Environmental and Section 4(f) Documents. Additional guidance is available in the AASHTO Practitioner’s Handbook Chapter 07, “Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects” (August 2016).

3.4.1.3 INTERAGENCY COORDINATION AND PUBLIC INVOLVEMENT

Pursuant to 23 USC 139(g), the FHWA and TDOT must develop an early coordination plan within 90 days of the publication in the Federal Register of a Notice of Intent (NOI) to prepare an EIS or within 90 days of the initiation of an EA. The early coordination plan outlines the division of responsibilities, how opportunities for input from the public and other agencies will be provided, and a proposed schedule for completing the environmental review process. The intent of this early coordination is to streamline and inform the NEPA process and develop clear and concise communications with the public and participating agencies.

Pursuant to CEQ and FHWA statutes and regulations, TDOT’s statewide public involvement plan provides a general outline of how TDOT will provide early and continuous opportunities for public involvement in and comment on the NEPA process and the overall project development process. For EA and EIS level projects, the early coordination plan builds on this outline and provides a project specific plan for how the FHWA and TDOT will coordinate with agencies and how they will engage and seek the input of the public. CE level projects generally do not have a project-specific early coordination plan.

Agencies involved in the NEPA process are designated as either a “lead,” “cooperating,” or “participating” agency. The agency’s role in the NEPA process is based on this designation.

3.4.1.3.1 LEAD AGENCY

The lead agency has the responsibility to supervise the preparation of the environmental document when more than one federal agency is called upon to take action on the same project. Federal, state, and/or local agencies, including at least one federal agency, may act as joint lead agencies. FHWA is the federal lead agency when federal transportation funding is used for a highway project. TDOT, as the project sponsor for transportation projects in Tennessee receiving federal-aid funds, is a joint lead agency for projects where FHWA is the lead federal agency. If a Section 404 permit is required and a project is solely state funded, then USACE is the lead agency.

3.4.1.3.2 COOPERATING AGENCY

A cooperating agency is any Federal agency (or State, Tribal, or local agency with agreement of the lead agency) other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project that may significantly affect the quality of the human environment (40 CFR 1508.1(e)). Potential cooperating agencies are identified in the early coordination phase for EAs and EISs and FHWA’s NEPA regulations (23 CFR 771.111(d)) require that those federal agencies with jurisdiction by law or special expertise be requested to participate in the NEPA process as cooperating agencies. A Federal agency that declines to be a cooperating agency for a specific project must do so in writing. CEs do not require cooperating agencies.

Cooperating agencies are, by definition, participating agencies (see below), but not all participating agencies are cooperating agencies. Cooperating agencies have a slightly higher degree of authority, responsibility and involvement in the environmental review process. At the beginning of their involvement, the expectations and responsibilities of a cooperating agency should be clearly understood by the agency, the FHWA, and TDOT. One key role of the cooperating agency is to provide valuable input based on the agency’s relevant expertise early and

throughout the NEPA process to assist in the environmental review process. Additional requirements for cooperating agencies can be found in CEQ regulation at 40 CFR 1501.8.

3.4.1.3.3 PARTICIPATING AGENCY

23 CFR 771.107 defines a participating agency as “a Federal, State, local, or federally recognized Indian Tribal governmental unit that may have an interest in the proposed project and has accepted an invitation to be a participating agency or, in the case of a federal agency, has not declined the invitation.” Potential participating agencies are identified during the early coordination phase and are sent a formal invitation to participate in the environmental review of the project. One or more of these agencies may also be a cooperating agency for the project. Non-governmental organizations and private entities cannot serve as participating agencies.

Designation as a participating agency does not imply that the agency either supports the proposed project or has any special expertise with respect to evaluation of the project. The role of a participating agency is to identify, as early as practicable, any issues of concern regarding the project’s potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project. Specifically, participating agencies are asked to:

- Provide meaningful and early input on defining the purpose and need, determining the range of alternatives to be considered, and the methodologies and level of detail required in alternatives analysis;
- Participate in coordination meetings and joint field reviews, as appropriate; and
- Provide timely review and comment on the pre-draft or pre-final environmental documents to reflect the views and concerns of the agency on the adequacy of the document, alternatives considered, and the anticipated impacts and mitigation.

Non-Federal agencies are designated as participating agencies only if they affirmatively accept the lead agencies’ invitation. However, any Federal agency that is invited to participate is automatically designated

as a participating agency unless the agency declines the invitation in writing, outlining in the response that the agency:

- Has no jurisdiction or authority with respect to the project;
- Has no expertise or information relevant to the project; and
- Does not intend to submit comments on the project.

Additional information on the roles and responsibilities of cooperating and participating agencies and on the overall coordination process can be found in AASHTO's Practitioner's Handbook Chapter 09, "Using the SAFETEA-LU Environmental Review Process (23 U.S.C. § 139)" January 2008.

3.4.1.4 ASSESSMENT OF IMPACTS OF THE PROPOSED PROJECT

NEPA requires that prior to funding, authorizing, or implementing an action, federal agencies consider the effects that their action may have on the natural and human environment. Therefore, analyses are conducted within a defined study area to determine the potential effects or impacts of a proposed project or action and to determine if any identified impacts are "significant" (40 CFR 1501.3). Further, these studies also facilitate the coordination and consultation required for compliance with other statutes and regulations under the FHWA "NEPA umbrella."

Generally, impacts assessed in the NEPA process include direct, indirect, and cumulative effects (40 CFR 1508.1(g)):

- Direct effects are caused by the action and occur at the same time and place.
- Indirect effects are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable.
- Cumulative impacts result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.

3.4.1.5 CONSIDERATION OF APPROPRIATE IMPACT MITIGATION: AVOIDANCE, MINIMIZATION, COMPENSATION

The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences and take actions that

protect, restore, and enhance the environment. Therefore, mitigation must be considered regardless of the significance of impacts.

CEQ regulations (40 CFR 1508.1(s)) define mitigation in the context of NEPA as measures that avoid, minimize, or compensate for effects caused by the proposed action through measures such as:

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

3.4.1.6 DOCUMENTATION AND DISCLOSURE

Documentation (along with dissemination) is an essential component of the NEPA process which supports and complements public involvement and interagency coordination. NEPA requires that Federal agencies disclose the results of their analyses and the effects of project implementation on the environment and solicit comments on the proposals from interested and affected parties. The purpose of documenting the NEPA process is to provide for complete disclosure to the public; allow others an opportunity to provide input and comment on proposals, alternatives, and environmental impacts; and provide appropriate information for the decisionmaker to make a reasoned choice among alternatives.

Further information can be found at <https://www.environment.fhwa.dot.gov/nepa/documentation.aspx>.

3.4.1.7 ONGOING NEPA ACTIVITIES

Often, there are changes to the proposed action, new information or circumstances, or there is a lapse of time between preparation of the environmental document and implementation of the action. This may trigger the need to revisit the NEPA analysis through a reevaluation or by

supplementing the original NEPA document. 23 CFR 771.129 addresses environmental reevaluations. The purpose of a reevaluation is to determine whether an environmental document or decision remains valid for agency decision-making or if supplemental documentation pursuant to 23 CFR 771.130 is required. Additional information on reevaluations and supplemental documentation is provided below.

3.4.1.8 PROCESS BY NEPA CLASS OF ACTION

The basic elements of the NEPA process can apply to any NEPA class of action, but how they apply, and the depth of analysis and documentation required for the NEPA process depends on which NEPA class of action is applicable to the project or action under review. As discussed above, there are three basic classes of action which determine how compliance with NEPA will be carried out and documented:

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The determination of which class of action is appropriate for a given project is based on the project's potential to have "significant" adverse environmental effects. The NEPA process for each class of action is further outlined for each class of action below.

3.4.2 CATEGORICAL EXCLUSIONS (CE)

The level of analysis and documentation appropriate for a CE is dependent upon the action's potential level of impact, controversy, or inconsistency with other agencies' environmental requirements. Where adverse environmental impacts are likely to occur as a result of the project, the level of analysis should be sufficient to define the extent of the impact, identify appropriate mitigation measures, and address known and foreseeable agency and public concerns. The documentation should also address unusual circumstances associated with the project, if any. Where there are unusual circumstances, TDOT should undertake sufficient early coordination with agencies, public involvement, and environmental studies to determine whether there is the potential for significant impacts. If it is determined that the project is not likely to have significant impacts, the results of the environmental studies, coordination, and public involvement should adequately support that conclusion and should be included in the CE documentation with a clear statement or discussion on how the project meets the criteria for a CE determination.

Most C-List CEs and PCEs are approved in-house at TDOT, and the environmental document and key supporting documentation is maintained in TDOT files. As these approvals are made on behalf of the FHWA, the FHWA conducts a yearly audit of environmental documentation approved in-house by TDOT to confirm that TDOT is following all regulatory requirements.

D-List CEs and select C-List CEs are submitted to the FHWA Division Office for review and approval following internal reviews of the draft CE documentation by TDOT's NEPA Programs Office. Publication or circulation of final CEs to the public is not required. However, TDOT circulates the approved documents internally to project development staff to ensure others within TDOT know that the NEPA document has been approved. Copies of final CEs and all supporting documentation are maintained in the project files in the TDOT Environmental Division.

3.4.3 ENVIRONMENTAL ASSESSMENTS (EA)

As discussed previously, an EA is required when the significance of the environmental impacts are uncertain, where significant impacts are unlikely but the project does not qualify as a CE based on the criteria outlined in 23 CFR 771.117, or where any potentially significant impacts will be mitigated down to qualify for a FONSI. The purpose of the EA process is to clarify any uncertainty and provide concise documentation of evidence and analysis that supports either a FONSI or a determination that an EIS should be prepared. If no significant impacts are found or if the significant impacts can be mitigated to be less than "significant", the process is concluded with a FONSI. But if there are significant impacts or if significant impacts are likely to occur, an EIS must be prepared (23 CFR 771.123(a)).

3.4.3.1 PREPARATION OF AN EA DOCUMENT

Once TDOT determines that an EA may be warranted, TDOT sends written notice to the FHWA to formalize the start of the EA process. FHWA reviews this letter and provides a formal written response within 45 days. If the FHWA response concurs with the initiation of the NEPA action as recommended in TDOT's initial correspondence, the FHWA response "starts the clock" for the one-year time limit for EA development (40 CFR 1501.10(b)). At the earliest appropriate time thereafter, or based on pre-NEPA scoping and outreach, early coordination or scoping is required to ensure interested agencies and other stakeholders are involved and given the opportunity to provide input that could assist in:

- determining which aspects of the proposed action have potential for social, economic, or environmental impact;
- identifying alternatives and measures that might mitigate adverse environmental impacts; and
- identifying other environmental review and consultation requirements that should be performed concurrently with the EA (23 CFR 771.119(b)).

Ongoing coordination with participating agencies and relevant stakeholders should occur at appropriate times during the EA process to allow collaboration in determining the methodologies to be used and the level of detail required in the analyses for the EA (23 USC 139(f)).

The level of analysis and documentation should be based on the action's potential level of impact, potential for controversy, and/or inconsistency with other agencies' environmental requirements. Where adverse environmental impacts are likely to occur as a result of the project, the level of analysis should be sufficient to define the extent of the impact, identify appropriate mitigation measures, and address known and foreseeable agency and public concerns. Where more than one build alternative is under review in an EA, the level of analysis should be sufficient to allow an informed comparison of the alternatives and an ultimate selection of a preferred alternative.

Although there is no specific format requirement for an EA, the FHWA Technical Advisory 6640.8A provides a suggested format. Briefly, the subject areas to be addressed are: project description, purpose and need, alternatives considered and their impacts, comments and coordination, and a listing of agencies and persons consulted. Pursuant to 40 CFR 1501.5(f), the EA must be 75 pages or less, exclusive of appendices, unless a senior agency official at the FHWA approves in writing and establishes a new page limit.

3.4.3.2 EA APPROVAL PROCESS

Draft EAs are submitted to the FHWA Division Office and for review following internal reviews by TDOT's NEPA Programs Office. Once any comments are addressed, the final EA is prepared and submitted to the FHWA for approval.

3.4.3.3 PUBLIC AND AGENCY REVIEW AND COMMENTS

Once the FHWA has approved the EA, it is then made available to the public for review (23 CFR 771.119(c)). Though circulation of the EA to agencies and the

general public is not required, the EA must be made available for public inspection at TDOT's main office and relevant regional and/or district offices (23 CFR 771.119(d)).

A public hearing following the approval of an EA is not required; however, if TDOT elects to hold a public hearing, 23 CFR 771.119(e) requires that notice of the hearing be provided to the public at least 15 days in advance of the hearing and that the public be granted the opportunity to provide written comment for 30 days following the notice of hearing/notice of availability of the EA.

After the public/agency comment period is closed, the public involvement effort is documented in a public comment summary. This summary briefly describes the public hearing, comments received, and responses thereto. Copies of the transcript and comments received are attached to the summary. This summary is included in the FONSI if there are no significant impacts. If significant impacts have been identified, an EIS must be prepared.

3.4.3.4 SELECTION OF THE PREFERRED ALTERNATIVE

In selecting the preferred alternative, TDOT considers the analyses conducted and information gathered during the development of the EA along with agency input and public comments.

Alternatives under study will be assessed based on identified screening criteria, which often focus on: the extent to which each alternative addresses the stated purpose and need, the degree to which each may impact the human and natural environment (both based on analyses and on agency and public input), and on the feasibility of each alternative (e.g., cost and constructability).

If the EA included more than one build alternative, the decisionmaker assesses not only whether or not to build the project (no-build versus the build), but also which build alternative is preferred. If the EA addressed only the no-build and a build alternative, the decisionmaker simply decides whether or not to proceed with the proposed action.

3.4.3.5 FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Following review of the EA, comments submitted by agencies and the public on the approved EA, and any other additional supporting documentation or information, if TDOT and the FHWA determine that the proposed action would

have no significant impacts, a FONSI is prepared (23 CFR 771.121). A FONSI documents the conclusion by the FHWA that the alternative selected for the project has no significant impacts. The EA review process is not complete until either a FONSI is approved or, in the event that significant impacts are likely, an EIS is initiated.

Like the EA, there is not a designated format for a FONSI; however, the FHWA Technical Advisory 6640.8A provides a brief sample of the determination language that should be used in the FONSI. The FONSI should be supported by a concise discussion of which alternative is preferred and the basis for this decision along with any additional related findings, agreements, or determinations (such as a Section 4(f) Evaluation, a fully executed Section 106 MOA, etc.). In addition, if mitigation measures will be required to support the FONSI, those would also be discussed. The approved EA is either included in the appendices or incorporated by reference and supporting documentation is included in the appendices.

Included in the FONSI Document

- Identification of the preferred alternative and explanation of its selection over other alternatives that were evaluated in the EA;
- Description of changes in the proposed action and mitigation measures resulting from the comments received;
- Confirmation of the final mitigation measures for the project (the environmental commitments shall be printed on the green sheet and included at the front of the FONSI);
- The authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions;
- Any necessary findings, agreements, or determinations (e.g., Final Section 4(f) Evaluation and/or a fully executed Section 106 Memorandum of Agreement); and
- Discussion of the public and agency comments received and appropriate responses to those comments.

Following internal reviews by TDOT's NEPA Programs Office, draft FONSI are submitted to the FHWA along with a copy of the public hearing transcript and a request that a finding of no significant impact be made. Following FHWA approval, formal distribution of the FONSI is not required. Instead, the FONSI is made available for inspection at TDOT's main office and relevant regional and/or district offices and a digital copy of the FONSI is published on the TDOT project website. Pursuant to 23 CFR 771.121, an NOA, generally in the form of a letter, must be sent by TDOT to the affected units of federal, state, and local government and, pursuant to EO 12372, *Intergovernmental Review of Federal Programs*, to relevant State intergovernmental review contacts. Though not

required, TDOT may also publish a legal notice in local newspapers in the project area to advertise the availability of the FONSI at a local public facility (library, government office, etc.) near the project area, the TDOT Region Office, and on TDOT's website.

3.4.4 ENVIRONMENTAL IMPACT STATEMENTS (EIS)

When a proposed action is likely to have a significant impact on the environment, an EIS must be prepared. The purpose of the EIS is to provide a full and open evaluation of environmental issues and alternatives and to inform decisionmakers and the public of reasonable alternatives that could avoid or minimize adverse impacts or enhance the quality of the environment.

TDOT initiates the environmental review process by sending a notification letter to the FHWA prior to the issuance of the Notice of Intent (NOI) (23 USC 139(e)). The notification letter informs the FHWA of the type of work, termini, length, and general location of the proposed project, together with a statement of any federal approvals anticipated to be necessary for the proposed project. The timing of the notification is flexible and occurs when the project is sufficiently defined, and the project sponsor (TDOT) is ready to proceed with the NEPA phase.

As soon as is practicable after the decision has been made to prepare an EIS, TDOT and the FHWA coordinate on the development of an NOI for publication in the Federal Register. The Federal Register Document Drafting Handbook (August 2018 edition, revision 1.2 dated October 16, 2020) provides detailed instruction on preparing Notices for the Federal Register. The document, along with more recent supplements, can be found at <https://www.archives.gov/federal-register/write/handbook>.

Publication of the NOI in the Federal Register "starts the clock" for the two-year time limit for EIS development (40 CFR 1501.10(b)). The NOI also initiates the early agency coordination and public involvement process, also called "scoping," which is required to ensure interested agencies and other stakeholders are involved and given the opportunity to provide input that could assist in:

- Identifying the purpose and need
- Identifying the range of alternatives and their associated impacts
- Identifying the main issues to be addressed in the EIS (23 CFR 771.123)

Ongoing coordination with participating agencies and relevant stakeholders should occur at appropriate times during the development of the DEIS to allow collaboration

in determining the methodologies to be used and the level of detail required in the analyses for the DEIS (23 USC 139(f)).

The EIS is prepared in three stages – Draft EIS (DEIS), Final EIS (FEIS), and Record of Decision (ROD) - each of which are official documents under CEQ and FHWA regulations. Additional discussion on these documents is provided below.

3.4.4.1 DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

The DEIS provides the opportunity for government agencies and the public to review a proposed project, the need and purpose of the project, its alternatives, the affected environment, the environmental consequences of the proposed action, and potential mitigation measures. To the extent practicable, the DEIS should also identify the preferred alternative for a proposed project (23 CFR 771.123(e)). CEQ regulations establish a recommended format for the EIS, which would be followed for both the DEIS and the FEIS unless the FHWA and TDOT determine there is a more effective format (40 CFR 1502.10). In general, this format includes:

- Cover (40 CFR 1502.11)
- Summary (40 CFR 1502.12)
- Purpose and Need Chapter (40 CFR 1502.13)
- Alternatives Chapter (40 CFR 1502.14)
- Affected Environment Chapter (40 CFR 1502.15)
- Environmental Consequences Chapter (40 CFR 1502.16)
- Comments and Coordination Chapter (40 CFR 1502.17)
- List of Preparers (40 CFR 1502.18)
- Appendices (40 CFR 1502.19)

3.4.4.2 DEIS REVIEW AND APPROVAL PROCESS

Following the review of any comments received, TDOT revises and resubmits the DEIS to the FHWA for approval. FHWA Division Office comments as well as any FHWA legal sufficiency review comments, if applicable, are addressed before the FHWA approves the DEIS.

3.4.4.3 DEIS DISTRIBUTION AND CIRCULATION PROCESS

An NOA for the DEIS must be published in the Federal Register and made available to the public and relevant agencies. To publish the DEIS in the Federal

Register, TDOT, through the FHWA, submits copies of the signed DEIS to the Environmental Protection Agency (EPA) Office of Federal Activities, consistent with EPA's procedures (see 40 CFR 1506.10). Prior to or concurrent with the publication of the NOA, the DEIS must also be made available to the public and transmitted to agencies for comment (23 CFR 771.123(i)).

3.4.4.4 DEIS PUBLIC HEARING

Following approval of the DEIS, TDOT must either hold a public hearing(s) or offer the opportunity for the public to request one (23 CFR 771.111(h)). Generally, TDOT opts to hold the hearing, rather than just offering the opportunity to request one.

The intent of this hearing is to inform the public about the project and obtain public input on the project, its alternatives, and its environmental impacts. Notice of the hearing is often combined with the publication of the NOA for the DEIS.

The DEIS is made available for review at the public hearing. FHWA regulations (23 CFR 771.111(h)(2)(vi)) require a transcript for any hearings held. To account for this requirement, TDOT's Public Involvement Plan directs that one or more court reporters to be present at the public hearing(s) to record public comments. A transcript of the meeting must be generated and must incorporate any official oral comments provided at the public hearing as well as written comments submitted at the hearing or during the comment period into a public hearing transcript.

3.4.4.5 PUBLIC AND AGENCY COMMENTS ON DEIS

The public and agencies are given the opportunity to comment on the DEIS during a defined comment period. After the public/agency comment period is closed, the public involvement effort is documented in a public comment summary. This summary briefly describes the public hearing, comments received, and responses thereto. Copies of the transcript and comments received are attached to the summary. This summary is included in the FEIS. 23 CFR 771.111(h) requires a copy of the hearing summary, which includes the public hearing transcript(s) and all written comments, be submitted to the FHWA. TDOT includes this documentation in the FEIS for submittal to the FHWA, rather than providing a separate submittal.

3.4.4.6 SELECTION OF PREFERRED ALTERNATIVE

In selecting the preferred alternative, TDOT considers the analyses conducted and information gathered during the development of the DEIS along with agency input and public comments. Alternatives under study are assessed based on identified screening criteria, which often focus on: the extent to which each alternative addresses the stated purpose and need, the degree to which each may impact the human and natural environment (both based on analyses and on agency and public input), and on the feasibility of each alternative (e.g., cost and constructability).

If the DEIS included more than one build alternative, the decisionmaker assesses not only whether or not to build the project (no-build versus the build), but also which build alternative is preferred. If the DEIS addressed only the no-build and a build alternative, the decisionmaker simply decides whether or not to proceed with the proposed action.

3.4.5 FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

The FEIS is prepared to document the continued development and refinement of the proposed project. The FEIS addresses substantive comments on the DEIS, documents any updated information on the affected environment and/or modifications to the proposed project, as appropriate, and identifies the preferred alternative if one was not identified in the DEIS. Additional environmental and engineering studies may need to be completed on the preferred alternative to resolve substantive comments raised during the review of the DEIS.

In addition, the FEIS describes the mitigation measures that are to be incorporated into the proposed action and documents compliance, to the extent possible, with all applicable environmental laws and executive orders, or provides reasonable assurances that these requirements can be met. If significant issues remain unresolved, the FEIS must identify those issues and the necessary consultations and other efforts undertaken to resolve them (23 CFR 771.125 (a)).

Unless certain conditions exist, the FEIS should be combined into a single document with the ROD (23 USC 139(n)). Exceptions to this requirement include instances where the FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns and/or where there is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action. For example, if the preferred

alternative is not identified in the DEIS and is, instead, identified in the FEIS, separate FEIS and ROD documents should be developed to allow for a review period between the two documents.

As noted above, CEQ regulations establish a recommended format for the EIS, which would be followed for both the DEIS and the FEIS unless the FHWA and TDOT determine there is a more effective format (40 CFR 1502.10). Regardless, the format of the DEIS should be mirrored in the FEIS for consistency.

3.4.5.1 FEIS REVIEW AND APPROVAL PROCESS

In addition to the FHWA Division Office review, the FEIS is also reviewed for legal sufficiency by FHWA attorneys prior to FHWA approval (23 CFR 771.125(b)). FHWA Division Office comments as well as any FHWA legal sufficiency review comments are addressed before the FHWA approves the FEIS.

3.4.5.2 FEIS DISTRIBUTION AND CIRCULATION PROCESS

Following approval of the FEIS, or of a combined FEIS and ROD, an NOA is published in the Federal Register. If TDOT is not developing a combined FEIS and ROD, publication of the notice in the Federal Register initiates a required minimum 30-day review period before a ROD may be issued by the FHWA.

The FEIS must be transmitted to any persons, organizations, or agencies that made substantive comments on the DEIS or requested a copy. Further, an NOA is published in local newspapers and the FEIS is made available on the project website, in libraries in the counties and cities where the project is located, and at the appropriate TDOT regional office.

No public hearing is required for the FEIS.

3.4.6 RECORD OF DECISION (ROD)

The FEIS is not an Administration action and does not commit the FHWA to approve any future grant request to fund the preferred alternative (23 CFR 771.125(d)). To obtain final approval of the proposed action and complete the NEPA review process, the FHWA must indicate its acceptance in the form of a ROD (40 CFR 1505.2).

3.4.6.1 ROD FORMAT AND CONTENT

The ROD documents the decision made, and the alternatives considered in the development of the EIS and explains the basis of the decision as completely as possible. Further, the ROD summarizes any mitigation measures that will be incorporated in the project and documents any required Section 4(f) approvals. Where separate FEIS and ROD documents are developed, the ROD summarizes substantive comments received during the review period following the NOA for the FEIS and indicates how those comments were addressed.

3.4.6.2 ROD REVIEW AND APPROVAL

The ROD is reviewed by the FHWA Division Office and, at their discretion, may receive a legal sufficiency review by FHWA attorneys. However, in the event of a combined FEIS and ROD, the document will always be reviewed for legal sufficiency prior to approval (23 CFR 771.124). FHWA Division Office comments as well as any FHWA legal sufficiency review comments are addressed before the FHWA approves the ROD or the combined FEIS and ROD.

3.4.6.3 DISTRIBUTION AND CIRCULATION PROCESS

No public hearing or NOA is required for a ROD; however, it is standard practice to publish a copy of the ROD on the project website. As noted above, for a combined FEIS and ROD, an NOA is published in the Federal Register, but a 30-day review period (as would occur between a FEIS and ROD when developed separately) is not required.

In the event a revised or amended ROD is developed, the revised or amended ROD is subject to review by the FHWA offices that reviewed the FEIS. To the extent possible, the revised or amended ROD could be distributed to all persons, organizations, and agencies that received a copy of the FEIS. (23 CFR 771.127(b))

3.4.7 REEVALUATIONS

After the issuance of a FONSI, a ROD, or a CE designation, TDOT must review a project prior to requesting any major approvals or grants (i.e., ROW Funding Authorization or Construction Funding Authorization) to confirm that the approved environmental document remains valid (23 CFR 771.129(c)). Where necessary, at the FHWA's discretion, these reviews must be documented by a written

reevaluation. Otherwise, an informal notice is saved to the file indicating that a review was completed, and no written reevaluation was required.

While 23 CFR 771.129(c) applies to all NEPA classes of action, EIS level documentation has additional factors that could indicate that a written reevaluation is warranted. For EIS level documentation, additional reevaluation requirements are outlined in 23 CFR 771.129 (a) and (b):

- for a DEIS, if a FEIS is not approved within three (3) years from the date of the DEIS circulation, and
- for a FEIS, if major steps to advance the action, (for example:
 - authority to undertake final design,
 - authority to acquire a significant portion of the ROW, or
 - approval of the plans, specifications, and estimates)
- have not occurred within three (3) years of the approval of:
 - the FEIS,
 - the FEIS Supplement, or
 - the last major Administration approval or grant.

For all NEPA classes of action, other circumstances that could require at least a review, and potentially a written reevaluation, include (but are not limited to):

- Changes to the design, layout, or scope of the project
- Changes to environmental resources
- Changes in relevant laws, regulations, policies, or procedures

A reevaluation is a continuation of the project development process, though it does not necessarily re-open the NEPA decision. Although the reevaluation takes a second look at the information informing the NEPA decision, the approved document is not rewritten or amended. Instead, the reevaluation is documented separately, in TDOT's reevaluation template, and included in the project file.

A reevaluation focuses on changes to the project, its surroundings and impacts, and any new issues identified since the last approved environmental document. To determine the need for a reevaluation, TDOT reviews current plans (e.g., preliminary, right-of-way, or construction plans) and compares them to what was studied in the last approved document to determine the extent of any changes that may have occurred to the design of the project. If there have been changes, it may be necessary to conduct additional field reviews, write new technical studies documents, and recoordinate with the appropriate agencies.

Public involvement is not necessary for most reevaluations; however, if a long time has elapsed since previous outreach efforts on a project or if meaningful changes have occurred since the last outreach, the FHWA may request that public involvement be incorporated into a reevaluation effort. Any additional public involvement conducted since the approval of the previous environmental document, should be summarized in the reevaluation.

The reevaluation must either state that no significant changes have occurred, and that the original decision remains valid, or, if significant changes have occurred, recommend a new or supplemental environmental document be developed. See the Supplemental EIS section below for more information on supplemental documentation.

3.4.8 REEVALUATION REVIEW AND APPROVAL

Once completed, a written reevaluation is either approved in-house by TDOT or, where warranted, submitted to the FHWA Division Office for review and approval. A copy of the approved reevaluation is placed in the project files.

3.4.9 SUPPLEMENTAL EIS (SEIS)

A Supplemental EIS (SEIS) is completed when major changes, new information, or further developments related to the project would result in significant environmental impacts not identified in the most recently distributed DEIS or FEIS (40 CFR 1502.9(d) and 23 CFR 771.130). The need for an SEIS may be revealed through a reevaluation, as discussed above.

A SEIS is needed in the following cases:

- Changes are made to the proposed design or scope of the project after the approval of the DEIS or FEIS, and these changes would result in significant environmental impacts not evaluated in the EIS; or
- New information or circumstances relevant to the environment would result in significant adverse environmental impacts not evaluated in the DEIS or FEIS.

A SEIS is not needed if:

- The changes to the proposed action, new information, or new circumstances would result in a lessening of the adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

- the FHWA decides to approve an alternative that was fully evaluated in an approved FEIS but not identified as the preferred alternative. In this case, a revised ROD would be issued.

A SEIS may be required to address issues of limited scope, such as the extent of proposed mitigation, a location change, or a design variation for a limited portion of the overall project. In these situations, the preparation of the SEIS does not necessarily prevent the granting of new approvals, require the withdrawal of previous approvals, or require the suspension of project activities not directly affected by the supplement.

When the significance of the new impacts is uncertain, appropriate environmental studies or an EA may be prepared to determine the significance and/or to indicate if a SEIS should be developed (23 CFR 771.130 (c)).

3.4.9.1 SEIS FORMAT AND CONTENT

An SEIS is developed using the same process and format as the original document (i.e., DEIS, FEIS and ROD), except that scoping is not required. See the above sections describing DEIS, FEIS, and ROD documentation for additional information on process and formatting.

The SEIS should provide sufficient information to briefly describe the proposed action, the reasons why a supplement is being prepared, and the status of the previous environmental document.

The SEIS should reference the valid portions of the previous EIS rather than repeating them. Unchanged impacts may be briefly summarized and referenced. The SEIS should also address new environmental requirements that have become effective since the previous EIS was prepared, to the extent that the new regulations apply to the portion of the project that is being evaluated and are relevant to the subject of the SEIS. The SEIS should also summarize the results of any reevaluations completed for the project. The SEIS will thus represent an up-to-date consideration of the project and its environmental effects.

3.4.10 STATE-FUNDED PROCESS

As previously mentioned, transportation projects that do not involve federal-aid funding and do not otherwise constitute a major federal action are exempt from the provisions of NEPA. However, TDOT is committed to a project development

approach that provides for early and ongoing consideration of environmental effects, regardless of the funding source. The TDOT approach includes early identification and evaluation of potential environmental consequences, consultation with affected agencies, and the development of measures to avoid, minimize and/or mitigate the adverse effects of state-funded projects on the natural and human environments of Tennessee. State-funded transportation projects that require the acquisition of right-of-way and/or the construction of new roadways and other transportation facilities must undergo an environmental review. This environmental review is documented in a Tennessee Environmental Evaluation Report (referred to as a TEER).

Generally, a TEER is prepared for all state-funded transportation projects in Tennessee; however, certain exceptions do apply.

3.4.11 DETERMINATION OF NEED FOR TEER

When NEPA applies to a non-federal project per *Southwest Williamson County Community Association v. Slater (et al)* - 243 F.3d 270 (2001)

The Sixth Circuit Court of Appeals defined two alternative tests for determining whether a non-federal project might constitute a major federal action to the extent that the requirements of NEPA would apply. The two tests identified in this case are:

1. When the non-federal project restricts or limits the statutorily prescribed federal decisionmakers' choice of reasonable alternatives; or
2. When the federal-decision makers have authority to exercise sufficient control or responsibility over the non-federal project so as to influence the outcome of the project.

The Environmental Division is responsible for determining whether to prepare a TEER for a state-funded project or if a NEPA document is warranted because the state-funded project might constitute a major federal action to the extent that the requirements of NEPA would apply.

To make this determination, TDOT considers the applicability of two tests for determining whether the project might constitute a federal action to the extent that the requirements of NEPA apply. Where either of the following criteria are met, NEPA would apply:

- When the non-federal project restricts or limits the statutorily prescribed federal decisionmakers' choice of reasonable alternatives; or

- When the federal-decision makers have authority to exercise sufficient control or responsibility over the non-federal project so as to influence the outcome of the project.

3.4.11.1 TEER FORMAT AND CONTENT

While the format of a TEER generally follows the format of a NEPA document, due to the lack of federal funds or a federal decision, some requirements and processes may differ.

3.4.11.2 TEER REVIEW AND APPROVAL

TEERs are approved in-house at TDOT, and the environmental document and key supporting documentation is maintained in TDOT files.