IMPROVED LINKAGE BETWEEN TRANSPORTATION SYSTEMS PLANNING AND THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Requested by:

American Association of State Highway
and Transportation Officials (AASHTO)

Standing Committee on Planning

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January 2006

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Acknowledgements

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January 31, 2006

Mr. Ronald D. McCready
Senior Program Officer
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500 Fifth Street, NW
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Re: NCHRP 8-36A, Task 48

Dear Ron,

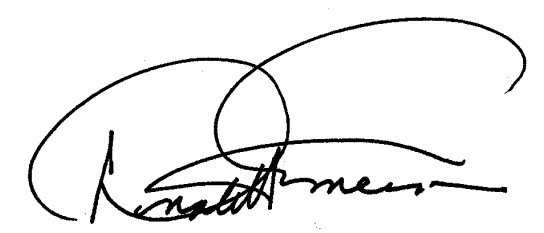
Enclosed are 20 paper copies and one electronic copy of the "toolbox" that PB Consult has developed under NCHRP 8-36A, Task 48, Improved Linkage between Transportation Systems Planning and the National Environmental Policy Act (NEPA) Process. I am also e-mailing electronic copies to the Advisory Panel and to AECOM Consult, Inc., the prime contractor.

In addition to posting this toolbox on the AASHTO website, other steps that might be taken to disseminate this research and promote implementation could include:

- An interactive CD-ROM version of the toolbox with internal and external links to other references;
- Conversion of the CD-ROM to a Planning and NEPA website with links to current examples and tools from across the country;
- A web-based discussion forum or listserv;
- National or regional workshops/conferences, offering an opportunity for transportation and environmental agencies seeking a more effective linkage to share experiences and lessons learned; and
- The development and distribution of more detailed written case studies.

Thank you for sponsoring this research, and thanks as well to the Advisory Panel for providing comments on draft versions of the toolbox. We hope that AASHTO and the industry will find the toolbox to be of value, particularly in view of the planning and environmental requirements in SAFETEA-LU.

Warm regards,



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Enclosures

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INTRODUCTION

This document is a resource or toolbox that can be used to streamline and enhance the transportation planning and project development process. The objective is to help transportation agencies establish of a seamless decision-making process that minimizes duplication of effort, promotes environmental stewardship, and reduces delays in project implementation. The toolbox offers a range of strategies – for integrating planning and project development, for increasing interagency collaboration, and for early consideration of social, economic and environmental factors – that may be carried out under existing laws and regulations.

The strategies in this toolbox are drawn from research, case studies, pilot projects, and experiences of states and metropolitan areas throughout the United States. Many of these strategies were identified in preparation for, or during the delivery of, a series of Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) seminars and workshops on Linking Planning and NEPA carried out in 18 states during 2004 and 2005. The strategies illustrate how many transportation and environmental agencies are:

- Identifying and considering environmental issues before project concepts are defined;
- Incorporating and relying on planning information, analyses, and products in NEPA documents; and
- Using the NEPA process to support decision-making on transportation plans and programs.

This toolbox is especially relevant to major capital projects and programs that are likely to require an Environmental Impact Statement (EIS) and/or extensive permitting. It offers ideas for meeting the intent of Section 6001 and 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and the FHWA/FTA Guidance on Linking the Transportation Planning and NEPA Processes (February 2005).

OVERVIEW OF TRANSPORTATION PLANNING AND NEPA

Within the United States, transportation planning is carried out at the statewide and metropolitan levels pursuant to Federal laws and regulations. Products of the planning process (Figure I-1) include transportation plans covering 20 or more years and transportation improvement programs (TIPs) identifying priority projects to be advanced during the next 3 to 5 years. Statewide transportation plans, developed by State Departments of Transportation, are often “policy plans” that do not specifically identify proposed projects. Metropolitan transportation plans are developed by Metropolitan Planning Organizations (MPOs), in cooperation with the State and public transportation operators. These plans, particularly in urbanized areas with a population of more than 200,000, and in air quality non-attainment areas, typically identify specific policies and transportation investments that the region has chosen to pursue.

Section 6001 of SAFETEA-LU updates Federal law on transportation planning. Under the Act, metropolitan and statewide transportation planning are to promote and enhance the environment, and transportation plans are to be developed in consultation with Federal, State, and tribal agencies responsible for wildlife and land management. The law further requires that transportation plans be compared with State conservation plans or maps, and with inventories of natural or historic resources, when available. In metropolitan areas, transportation plans are to discuss potential environmental mitigation activities.

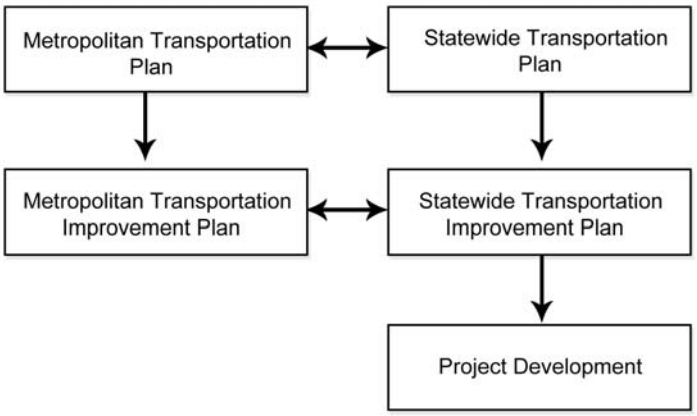


Figure I-1 Products of the Transportation Planning System

The National Environmental Policy Act (NEPA) of 1969 spells out

- National policy to protect and enhance the environment;
- A process for developing major Federal actions (where an "action" might entail project funding and/or other approvals); and
- A requirement for environmental documents.

Required elements of the NEPA process include the consideration of alternatives and their environmental effects, as well as public involvement and interagency collaboration. Environmental documents, as further described in Council on Environmental Quality (CEQ) regulations, may include Environmental Impact Statements, Environmental Assessments, and Categorical Exclusions depending on the nature of a project and the significance of its impacts (Figure I-2). Historically, highway agencies have tended to prepare NEPA documents during project development, while transit agencies have developed NEPA documents in both planning and project development.

Section 6002 of SAFETEA-LU includes provisions for efficient environmental reviews under NEPA. Topics covered include agency responsibilities, project initiation, purpose and need, alternatives analysis, coordination and scheduling, comment deadlines, and dispute resolution. Under SAFETEA-LU, the formal NEPA review for a project may not begin until basic project features—termini, length, general location—have been determined.

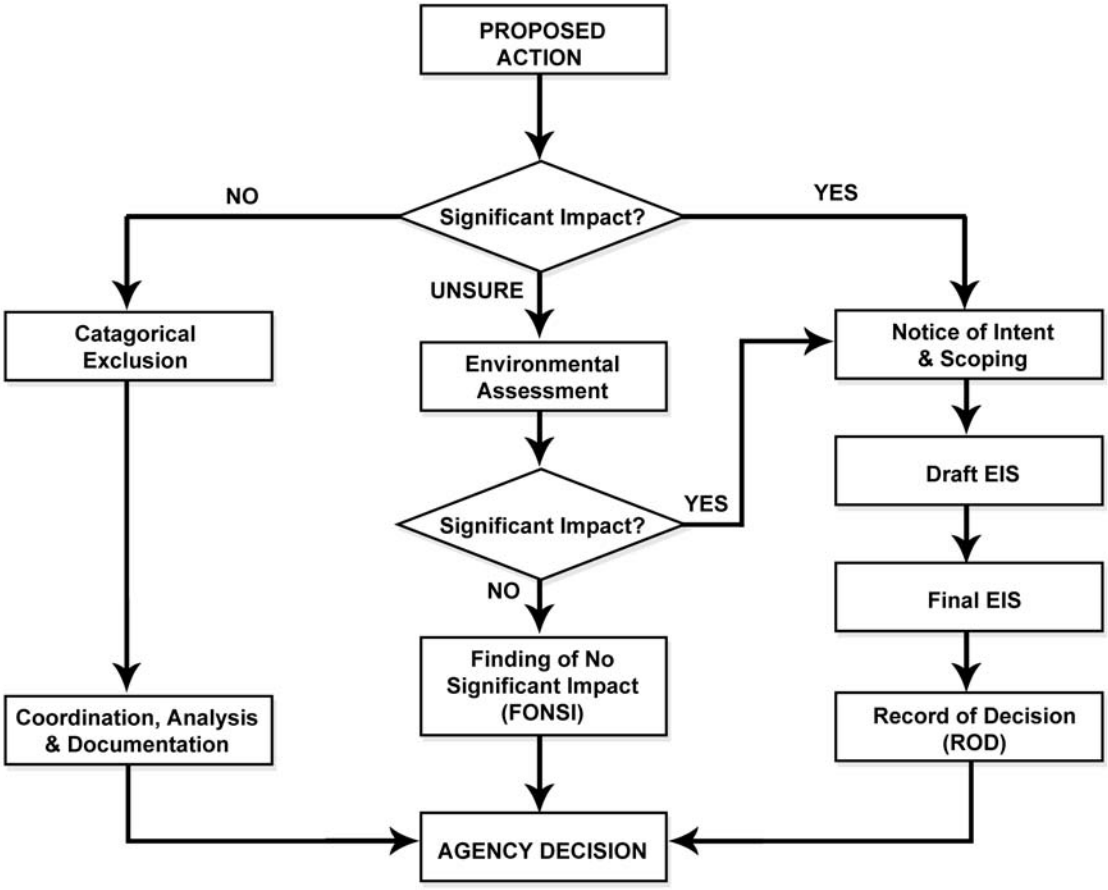


Figure I-2 NEPA Process

THE BENEFITS OF LINKING PLANNING & NEPA

Both transportation planning and the NEPA process are intended to help local, state and Federal officials reach informed decisions on what transportation improvements to make, and how to make them. Planning and NEPA both embrace similar requirements – the consideration of alternatives and their environmental effects, interagency collaboration, public involvement, and the like – yet planning and NEPA are often treated as separate and independent processes carried out sequentially. In many cases, planning and NEPA are addressed by different agencies, or by different departments or offices within the same agency. Environmental resource and regulatory agencies may not become involved until a project has been selected for development.

Often, as a consequence,

- Planning does not effectively consider environmental factors;
- Environmental agencies have little influence on transportation plans and programs;
- Planning decisions are revisited in NEPA;
- The NEPA process fails to take advantage of planning; and
- Public and elected officials are impatient, confused, frustrated by the process.

Taking active steps to integrate planning and NEPA decision-making can streamline the overall process and make it more sensitive to environmental considerations. The benefits may include:

- Projects that reflect the goals of multiple agencies;
- Planning decisions that "stick" and do not need to be revisited later in project development; and
- Faster and more efficient project delivery.

While those agencies that have tried integrating planning and NEPA report that the benefits are real, they also note that the benefits are difficult to quantify. The benefits are not achieved quickly or without effort, cooperation, and high-level commitment.

KEY THEMES, CONCEPTS, AND DEFINITIONS

In this toolbox, planning and NEPA are viewed as part of a decision-making continuum that identifies regional or statewide needs, selects policies and projects to meet these needs, and then refines the projects through more focused project studies leading to project implementation. This concept is graphically depicted in Figure I-3. In an ideal world,

- Each step in the decision-making continuum would build upon the decisions reached in prior steps; and
- Decision-makers would get the right information at the right time to make good choices at each step.

The decision-making continuum can be more efficient when planning and NEPA are structured into a single continuous and systematic process. Some types of alternatives and environmental factors may be most effectively assessed at an early stage and at a conceptual level. Once a preferred project concept (mode, general location, capacity, etc.) is chosen, more focused studies might be performed to consider alternative ways (detailed alignments, interchange configurations, station locations, and the like) to carry out the selected concept. This more focused look, like the earlier conceptual level studies, would include environmental studies suitable for the range of detailed alternatives that remain.

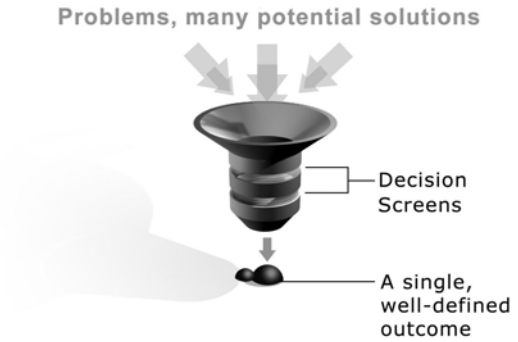


Figure I-3 The Decision Making Continuum

The agencies involved in planning and NEPA may not share a common perception of the process or the meaning of words and phrases. Often, terms that are commonly used and well understood within one agency are used very differently within another. Thus, when transportation and environmental agencies seek to improve their working relationships, an early step may involve defining basic terms. In this spirit, this toolbox begins by identifying some of these basic terms and explaining how they are used here.

What is "planning"?

As used in this toolbox, "planning" includes activities that lead up to decisions on a transportation project's concept – e.g., its mode, general location, capacity (degree of access control, number of lanes, etc.), and termini. Under this definition, planning is not necessarily limited to the activities of planning agencies or those who work within the planning section of a transportation agency, nor is it limited to activities undertaken with planning funds. An activity that supports decisions on a project concept is referred to as planning, regardless of who carries it out or the type of funding used.

What is "project development"?

As used herein, a "project" is a transportation improvement or a package of improvements that has been adopted into a transportation plan. Once decisions on a project concept have been reached in planning, a project is further refined in project development to reach decisions on design and other detailed characteristics. Different transportation agencies may refer to the project development phase by different names, such as preliminary engineering.

What is "the NEPA process"?

When this toolbox refers to the "NEPA process", it means activities that a transportation agency may undertake to meet the policy, process, and documentation requirements of the National Environmental Policy Act. The NEPA process often culminates with decisions on detailed project characteristics such as alignment, design, phasing, and impact avoidance, minimization and mitigation measures. The outcome of NEPA is a project that was developed with consideration of its environmental impacts and the adoption of measures to avoid, minimize and mitigate adverse impacts.

FHWA and FTA advocate that NEPA be the "umbrella" process under which all federal environmental requirements are addressed. Thus, this toolbox uses the term NEPA process to encompass these other laws, regulations and executive orders that are typically addressed concurrently and in a coordinated manner with NEPA.

What are "environmental impacts"?

References to the environment in this toolbox are meant to be interpreted broadly. Rather than repeated use of the more wordy "social, economic, community and environmental impacts" phrase, the single word "environmental" is used to cover all of these and similar kinds of impacts. Similarly, environmental impacts may generally be read to include direct, secondary and cumulative effects.

USER'S GUIDE

This remainder of this toolbox is organized into eight chapters, reflecting the challenges of linking planning and NEPA as well as the techniques being used:

Chapter 1	Understanding Your Decision-Making Process
Chapter 2	Overcoming the Barriers between Planning and NEPA
Chapter 3	Laying the Groundwork for NEPA in Planning
Chapter 4	Enhancing the Planning Process
Chapter 5	Determining the Appropriate Level of Analysis
Chapter 6	Collaboration
Chapter 7	Data Sharing
Chapter 8	Getting Started
Appendices	SAFETEA-LU Planning Provisions and FHWA/FTA Guidance

Chapters 1 through 3 focuses on broad concepts, principles and emerging philosophy associated with the planning and environmental analysis processes. Chapters 4 through 7 offer specific techniques to advance from the concepts and principles to practical implementation. Chapter 8 provides advice on how begin. Although the user can progress through the toolbox sequentially, each chapter was developed to function as a resource for addressing specific challenges to linking the transportation planning and NEPA processes. Users should feel free to go directly to the topic that is of interest to them. Users should also recognize that there is some redundancy from one chapter to another, owing to the integrated and iterative nature of a truly continuous planning and environmental process. To reinforce the need for developing an integrated approach, cross-references are provided among certain chapters and subchapters as appropriate.

Each chapter starts with an introductory section that summarizes the general issues and concepts associated with the topic. Later subsections offer more specific discussions of useful strategies or techniques that can be applied to establish a more integrated planning-NEPA process. The basic organizing principle is a series of questions, such as "What are the benefits?", "What are the major steps?", and "What are the pitfalls to avoid?" In addition, the chapters highlight specific examples of how a strategy has been successfully employed.

1. UNDERSTANDING YOUR DECISION-MAKING PROCESS

The Introduction suggested that planning and NEPA can be viewed as part of a decision- making continuum. Implementing this concept depends on a broad understanding of the sequence of decisions leading to a project — who makes them, when they are made, and on the basis of what information.

The FHWA/FTA workshops and seminars on Linking Planning and NEPA involved managers of State DOT, MPOs, transit agencies, and environmental resource/regulatory agencies in a particular State or metropolitan area. As a first step, the participants were asked to describe the existing planning and project development process within their area. This led to discussion of the strengths and weaknesses of the existing process, strategies to capitalize on what is working well, and steps to address aspects of the process that could be improved. Each workshop produced an Action Plan listing steps that the participants would take to improve their process.

This Chapter offers some of the tools that were used in the seminars and workshops to help participants describe and evaluate their existing process. It answers such questions as:

How can agencies improve understanding of the overall decision-making process?

Process "mapping" can help an agency's employees, as well as others involved in the process, to understand and explain how transportation decisions are reached. In its simplest form, mapping might involve listing all of the procedural steps, from planning though project design, perhaps illustrating them with a flow chart. Mapping may include decisions by all participating agencies – State DOTs, MPOs, transit agencies, environmental resource/regulatory agencies, local governments, etc. – identifying who decides what, and when within the process they decide it.

How can agencies identify the strengths and weaknesses in their existing process?

Once the existing process is well understood, strengths and weaknesses can be identified by considering a series of questions, such as those provided later in this chapter. Such an evaluation might be done by one or by multiple agencies that may be interested in making the process more efficient and effective. Discussions on strengths and weaknesses may begin to suggest steps that participating agencies can take to build on those aspects of the process that work well and to address any weaknesses.

UNDERSTANDING THE OVERALL PROCESS

Many transportation agencies have laid out a multi-step decision-making process for planning and developing major projects, such as those that tend to require an EIS. State DOTs in Maine and Pennsylvania, for example, have a 10-step process covering planning through implementation, while Indiana DOT's process has nine steps. Such descriptions can help the

agency's staff to understand the overall process and their role in it. They are also useful for explaining the process to other participating agencies and the public.

The FHWA/FTA seminars and workshops found that in many States and metropolitan areas, transportation and environmental resource/ regulatory agency managers do not fully comprehend the overall process from transportation planning through project design. For example:

- Staff from one agency may be very familiar with their own agency's processes, but far less familiar with the requirements and constraints placed on their counterparts in other agencies;
- Staff working in one part of an agency may not comprehend the role that others within their agency play in the overall process; and
- Where process descriptions exist, they tend to be limited to what the agency itself does, and do not incorporate actions taken by others such as MPOs and environmental agencies.

Linking planning and NEPA in a systematic and streamlined manner is likely to work best when all participants start from a common and comprehensive understanding of the entire process, and the roles and responsibilities of each agency. Thus, a starting point may be the development of a "map" of the overall process. Process mapping need not be elaborate or highly detailed, at least at the outset. One might focus on the high-level decisions using a table or flowchart.

Figure 1-1 offers an example of one State's 15-step decision-making process that covers the major aspects of planning and project development. Another State, MPO, or transit agency might

EXAMPLE OF ONE STATE'S DECISION-MAKING PROCESS FOR MAJOR PROJECTS	***MAJOR STEPS IN YOUR DECISION-MAKING PROCESS FOR MAJOR PROJECTS***
1. Conduct regional/statewide/ corridor planning 2. Initiate refinement planning 3. Prepare Purpose and Need for Location EIS 4. Select range of alternatives for Location EIS 5. Conduct location alternatives analysis and develop DEIS 6. Select preferred location alternative 7. Complete Location FEIS and ROD 8. Add project to State TIP 9. Initiate preliminary design 10. Select design alternatives 11. Conduct alternatives analysis and DEIS/EA on design alternatives 12. Select preferred design alternative 13. FEIS/ROD or EA/FONSI 14. Conduct final design, obtain permits 15. Construction	1. ? 2. ? 3. ? 4. ? 5. ? 6. ? 7. ? 8. ? 9. ? 10. ? 11. ? 12. ? Etc.

Figure 1-1 Mapping the Decision-Making Process

use the template at the right to list the basic steps in its overall decision-making process.

Once the basic steps are identified, the process map might be fleshed out with further details by answering such questions as:

- Under the current process, when are project concept decisions made? (Project concept might include mode, general location, amount of capacity, degree of access control, and termini.)
- Who makes these decisions?
- Who else is involved?
- What do decision-makers know when they reach these decisions in terms of costs, benefits, and environmental impacts of alternative strategies or concepts?

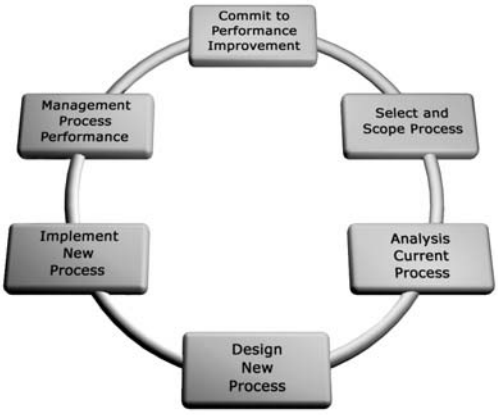
For the FHWA/FTA seminars and workshops, the host agency(ies) was invited to use a matrix similar to Figure 1-2 to answer these questions. The rows in the matrix represent the major steps of an agency's transportation decision-making process as identified in Figure 1-1. The columns in the table represent key elements of a project concept. Each element is then matched to a step or steps in the process to identify when decisions occur – for example, the step during which decisions are made on the capacity to be provided or the degree of access control.

PLANNING AND PROJECT DEVELOPMENT STEPS	***MODE***	***GENERAL LOCATION***	***CAPACITY***	***DEGREE OF ACCESS CONTROL***	***TERMINI***	***OTHER***
Step 1						
Step 2						
Step 3						
Step 4						
Step 5						
Step 6						
Step 7						
Step 8						
Step 9						
Step 10						
Step 11						
Step 12						
Step ?						

Figure 1-2 Sample Framework – Mapping Your Current Process
What Do You Decide and When Do You Decide it?

By design and by necessity, decision-making in planning and in NEPA involves multiple agencies. Each agency follows a decision-making process that is aligned with its mission and objectives. Resource/regulatory agency responsibilities extend beyond transportation and their internal processes may not align with those of transportation agencies. Strategies to link planning and NEPA work best if the overall transportation decision-making process acknowledges the processes of other agencies. Since cooperation and participation among agencies can be enhanced through mutual definition of roles, responsibilities, and expectations, this mapping exercise might best be done in a collaborative way involving all agencies involved in the process.

PROCESS IMPROVEMENT AT THE NORTH CAROLINA DOT



North Carolina's Process Improvement Initiatives were multi-agency efforts to improve and streamline the state's planning and project development process. The initiatives were initiated and sponsored by the North Carolina Department of Transportation (NCDOT), the North Carolina Department of Environment and Natural Resources (DENR), and the U.S. Army Corps of Engineers (USACE), with participation from other environmental resource/regulatory agencies.

Goals of the Permit Improvement Process Initiative were to develop better permit applications, issue permits that support timely delivery of the transportation program, and minimize disruption to the environment. Participating agencies analyzed the existing permitting process, identified trouble spots, and redesigned the process. Over 30 recommendations were developed for project programming, project development and NEPA compliance, legislation and regulations, and applications/permits.

The Mitigation Process Improvement Initiative was designed to develop a structured mitigation process to support the timely delivery of projects while compensating for wetland, stream, and buffer impacts. The initiative began with three facilitated workshops that analyzed the current process, identified issues and problems, and designed a new process and program.

Workshop participants redesign the process in North Carolina.

EVALUATING THE CURRENT DECISION-MAKING PROCESS

In the Linking Planning and NEPA workshops, participants performed a self-assessment exercise once the overall decision-making process had been mapped. In a collaborative manner, representatives from each agency were asked a series of questions to elicit a list of the strengths and weaknesses within the existing process. The exercise was similar to North Carolina's collaborative Process Improvement Initiative[1] described on page 1-4.

Understanding the strengths and weaknesses of the existing process helps pinpoint those aspects that might be improved to forge stronger linkages between planning and NEPA. Some questions to consider include:

- What problems occur on major transportation projects that are most apt to stall the overall process? What are the underlying causes?
- To what degree are environmental factors considered in planning?
- Once made, do planning decisions stand up over time? Why? Why not?
- To what extent are resource agencies able to participate effectively in transportation planning? In the NEPA process?
- What would have to happen before a transportation agency's environmental staff and resource/regulatory agency staff would accept and rely on the results of planning?
- In what ways is planning being used to establish a foundation for NEPA?
- Are products developed in planning that are never utilized in NEPA? Why not?
- What planning work is currently being redone in NEPA? Why?
- What do NEPA people want from planning that they do not currently receive?

In some of the workshops, the self-evaluations considered whether the information needed to support sustainable decision-making is being developed. And, if it is being developed, whether this information is developed in the most appropriate step, and if it is being made available to all of those interested. The self-evaluations also examined the timing of data collection and dissemination. Relevant questions include:

- Are decision-makers getting the right information at the right time?
- What planning information is already available that might be used within the NEPA process?
- What information is missing or ought to be developed earlier in the overall process?
- What reallocation of resources would this require?

[1] For more information on process improvement at the North Carolina DOT, see http://www.ncdot.org/environment/development/improvement/

STRENGTHS	***WEAKNESSES***
• State DOT has a documented process • Collaborative efforts have been undertaken to recommend process improvements, develop agreements • State DOTs and environmental agencies have developed cooperative working relationships for NEPA	• State's process is not well understood either internally or externally • State organization structure and coordination mechanisms do not foster an effective link between planning and NEPA • Project scope changes in design are not fed back to planning and environmental staff • Projects are driven by schedules and budgets more than by documented process
• Most EIS projects have a corridor study or other planning-level assessment to help scope NEPA and estimate costs	• There is no systematic process for looking at environmental factors in planning and corridor studies • Federal resource/regulatory agencies are not involved in MPO planning
• State DOT encourages MPOs to define Purpose and Need in planning	• MPOs do not understand what is needed to define Purpose and Need • Implementing agencies define Purpose and Need without using planning studies • Resource/regulatory agencies see Purpose and Need at the project stage and do not understand regional context

Table 1-1 Examples of Strengths and Weaknesses Identified in FHWA/FTA Workshops and Seminars

2. OVERCOMING THE BARRIERS BETWEEN PLANNING AND NEPA

Understanding and assessing the existing decision-making process can provide a starting point for improving the linkage between transportation planning and NEPA. When trying to address any weaknesses in their existing process, agencies may encounter a number of institutional, cultural, procedural and technical barriers or challenges to be overcome. This chapter of the toolbox seeks to answer such questions as:

What Are the Most Significant Challenges to Linking Planning and NEPA?

Common challenges to integrating planning and NEPA include differing agency missions and goals, lack of trust, long-standing agency cultures and process, fear of litigation, insufficient resources, and the like. Recognizing and explicitly identifying these challenges is an important early step in addressing them.

What Are Some Approaches Used to Overcome These Challenges?

Effectively addressing the challenges may require fundamental change in procedures, organizations and relationships. These are most easily accomplished when certain basic conditions are in place – such as a willingness to make change, management commitment, and trust – as discussed later in this chapter. Without these conditions, the more tactical strategies presented in Chapters 3 through 7 may be short-lived and limited in their effectiveness.

SIGNIFICANT BARRIERS

As is apparent from the text box on the following page, the FHWA/FTA workshops and seminars have revealed a range of challenges to linking Planning and NEPA. They include:

- Different missions (among agencies and within agencies) and organizational cultures;
- Lack of trust;
- Perception of federal requirements;
- Fear of litigation;
- Lack of planning resources.

These are discussed further below.

Different Missions and Cultures (Among Agencies/Within Agencies)

Decision-making processes and procedures within different agencies are geared towards fulfilling their respective missions. Transportation implementing agencies are charged with quickly and cost-effectively delivering needed transportation facilities and services. Environmental impacts may be among the factors considered – indeed, some transportation agencies have signed environmental stewardship agreements – but many transportation agencies do not see environmental stewardship as a primary mission. Resource agencies, on the other hand, are

WHAT AGENCY STAFF HAVE TO SAY ABOUT BARRIERS TO LINKING PLANNING AND NEPA

Inconsistent process for keeping resource agencies involved and informed at the early consultation stage – *Minnesota*

Resource agencies feel their concerns are ignored and perceive that planners give more heed to local government issues than environmental issues – *Utah*

The state highway department and MPO's have no mechanism to invite resource agency participation in planning studies – *Arkansas*

Staff is not necessarily empowered to act on behalf of their agencies – *Minnesota*

Not doing environmental fieldwork early enough – *Tennessee*

Need to bring NEPA principles (e.g., environmental resource considerations) into the MPO process/Pre-STIP stage – *Utah*

There is a lack of environmental analysis in planning, especially cumulative impacts – *Arkansas*

There is a lack of funding for data collection and data sharing. Or existing data is not utilized well – *Minnesota*

Need tools (e.g., knowledge-based tools.) to better manage sheer volumes of data – *Utah*

Documentation of public involvement carried out in Corridor Studies is not carried through to NEPA – *Utah*

Public involvement is not done in planning studies to determine project feasibility – *Arkansas*

Occasionally, resource agencies want to revisit early decisions (e.g., Purpose & Need, Alternatives) on particularly controversial projects right before the permit – *Minnesota*

responsible for protecting important natural or cultural resources and safeguarding the public health, although some recognize the importance of mobility or economic issues as well. The mission of metropolitan planning organizations may be different as well – perhaps focusing on maximizing the flow of transportation resources to a particular part of the State, economic development, and/or the protection of neighborhoods.

This variety of missions can set up inherent conflicts. Transportation agencies are apt to prefer alternatives that increase highway or transit performance, while resource agencies may focus on ways to avoid or minimize impacts to sensitive environmental resources. Agencies may not see eye-to-eye on the need for the project, the alternatives to consider, the methods and levels of environmental analysis, the evaluation criteria, the amount of documentation required, and the anticipated effectiveness of proposed mitigation. These differences can be especially challenging when they arise late in project development, when the transportation agency has expended considerable resources and lined up project funding.

Differences in missions can also occur within agencies. Within a large transportation agency, planners are more likely to engage in activities that are conceptual in scope such as policy initiatives, travel demand forecasting, economic development, programming and financing, and developing broad-based systems plans or corridor studies. In comparison, environmental analysts within transportation agencies are more apt to be involved at the project level. Their work can be specialized and tends to focus on shepherding individual projects through the implementation process by ensuring environmental compliance, reviews, and approvals.

Differences can develop between the planning staff and the environmental staff based on their respective roles and responsibilities within the agency. These can pose a very real barrier to linking planning with the NEPA process, particularly where there are well-defended or long-held

territorial boundaries between different departments. Project level environmental staff may not know what factors were considered during planning or may not believe that environmental factors were properly considered. They may not know about or take advantage of planning-level analyses when developing the purpose and need statement. Or they may not know what decisions and commitments have already been made by the agency. Similarly, planners may not be familiar with the NEPA process and what it requires, and may not conduct their planning analyses in such a way that the results can be readily incorporated into the NEPA process and documents. Early planning decisions may set up environmental conflicts later in the NEPA process.

Organizations that are highly compartmentalized and that tend to be territorial in outlook may have a more difficult time linking their planning process with their NEPA process. Some agency cultures encourage their staff to interface with and communicate with personnel from other agencies (or other departments within the agency). Some organizational cultures resist change, especially if change entails risk and uncertainty.

Lack of Trust

Lack of trust among agencies and individuals can block their ability to reach agreement on a process or a project. Mistrust can result from personality conflicts, bad experiences with difficult or problematic projects, perceived attempts to short-cut the process, perceived attempts to use the process to stall or block certain projects, and philosophical differences stemming from differences in agency missions and cultures. Poor relationships often involve a lack of communication or a lack of understanding of each agency's processes and constraints. In addition, if communication only occurs when there is already a problem or when the participants are already entrenched within their positions (i.e., under pressure-driven circumstances late in the process), the situation can be exacerbated.

Perception of Federal Requirements

In some transportation agencies, the planning and NEPA process has been in place for many years with little change. Staff have been trained to follow the longstanding procedures, and may resist change for many reasons, possibly including their perceptions (and misperceptions) of Federal requirements.

For the Linking Planning and NEPA workshops, FHWA and FTA prepared a paper, *Federal Laws and Regulations: Exploding the Misperceptions* (October 2003), to help participants realize the flexibility that exists within existing laws and regulations (Appendix D). Issues that generated considerable discussion in the workshops were:

- When, and under what circumstances, alternatives may be dropped from consideration prior to a NEPA document;
- The necessary level of detail for a NEPA document; and
- What the NEPA process requires and when it begins.

This paper was followed, in February 2005, by further guidance and a supporting legal opinion (Appendix B and C).

Fear of Litigation

NEPA practice has been shaped in part by litigation. As a result, agencies may be wary of the risks involved in deviating from practices that are "tried and true", even if these practices may not be particularly efficient or promote sound and environmentally sensitive decisions. The consequences for linking planning and NEPA include:

- A tendency to keep the planning process separate and distinct from the NEPA process;
- A sense of obligation to carry forward inferior alternatives due to fear of being sued if they are dropped; and
- Over-analysis of alternatives – more than may be necessary to reach sound decisions.

Lack of Planning Resources

Environmental resource/regulatory agencies tend to become involved late in the process (EIS or permitting stage), once considerable work has been devoted to planning and developing a project. Planning decisions often do not have the benefit of resource agency input or environmental impact analyses by transportation agency staff.

The most commonly cited barrier to environmental resource agency involvement in planning, and to considering environmental issues in planning, is the lack of staff resources. Many public agencies have faced zero budget growth or budget cuts, hiring freezes, and mandates to do more with existing staff. Transportation agencies may lack the staff resources or technical expertise to complete more detailed analyses, particularly environmental analyses, in the planning process. Resource agencies often note that they must give priority to their permitting and other statutory responsibilities, and that their ability to participate in planning or projects that are not well defined is severely limited by funding.

DEVELOPING WORKABLE SOLUTIONS

In many parts of the country, transportation and environmental agencies are finding ways to overcome these barriers. This section identifies conditions that, when they occur, provide a climate where the barriers can be overcome. Later chapters of the toolbox describe more specific techniques.

Systematic Approach

A systematic approach for linking planning and NEPA involves a comprehensive assessment of the overall process (see Chapter 1), possibly focusing on the early steps and decisions in planning while anticipating the needs of later phases. The goal is to develop an approach that is logical, consistent, efficient, and widely understood and accepted. Strategies to link planning and NEPA are more effective if they are not limited to one-time events or single, isolated applications. Agencies may also seek to avail themselves of the flexibility that exists within Federal laws and regulations.

Utilizing a systematic approach requires the involvement and cooperation of all parties with a significant role in the decision-making process – transportation agencies, transportation providers, metropolitan or regional planning agencies, resource/regulatory agencies, local jurisdictions, and tribal governments, where applicable. If active support, approval, or a permit is

ultimately needed to move a project forward for construction/implementation, then there may be good reason to engage the responsible entity as part of decision-making from its earliest stages. The same may apply to others with a technical role in the process – planners, programming staff, environmental analysts, engineers, project managers, and management.

Willingness to Change

Linking planning and NEPA may entail significant change in the current decision-making process, analytical approaches, and institutional relationships. Such change can be threatening, open up turf issues, involve risk, and require resources. In general, agencies that have made the greatest strides toward linking planning and NEPA have had support and encouragement from the highest levels of management. But change can be started from within the agency as well, based on individual initiative, or can be frustrated where individuals, organizational units, or agencies choose not to participate.

The literature on change management offers techniques that may be helpful in fostering change within or among agencies.[1]

EXAMPLES OF EXECUTIVE MANAGEMENT COMMITMENT FOR LINKING PLANNING AND NEPA

- North Carolina's Process Improvement Initiatives (Chapter 1) was guided by an implementation plan signed by the Secretaries of the North Carolina DOT, the North Carolina Department of Environment and Natural Resources (NCDENR), and the Commander of the U.S. Army Corps of Engineers (USACE) Wilmington District.
- Florida's Efficient Transportation Decision-making Process was the result of a Summit Meeting attended by leaders from 23 federal, state, and local transportation and environmental agencies. The agency leaders committed their support and assigned responsibility to key staff, who then worked with Florida DOT to form a shared vision for Florida's transportation decision-making process.
- The Riverside County (CA) Integrated Project sought to integrate all aspects of land use, transportation, and conservation planning and implementation. The project included preparation of several NEPA documents, including two Tier 1 draft EISs for proposed transportation corridors. Leadership came from a county supervisor who had previously worked for the California Transportation Commission.

Management Commitment

Real, meaningful change rarely can occur unless management is supportive. Integrating the transportation planning process with the NEPA process is likely to require top level management from each of the planning, implementing, and resource agencies involved.

This does not mean that all strategies to link planning and NEPA must be initiated at the very top levels of each agency. But the effectiveness of any proposed changes is dependent, in part, upon management's awareness and commitment to help make it happen. Executive leadership can provide a culture or environment where strategies for linking planning and NEPA can be developed, tested, and adjusted within and among their respective agencies. Change may require an investment or reallocation of resources. Without management support, agency personnel may be unwilling to stray beyond the scope of their assigned duties and perceived

[1] See for example Harvard Business Review on Change, Harvard Business School Press, Boston (1998)

responsibilities either because they are already stretched thin by existing workload or because the organizational culture does not reward such behavior.

Building Trust

Trust takes time to develop. Some transportation agency personnel have reported that getting to know their environmental agency counterparts on a personal level, over lunch during a site visit, was instrumental in developing a trusting relationship. Getting together to candidly discuss problems and to identify steps to improve the overall process can also help. Other strategies include mutual establishment of a set of rules that everybody can live by, and the development of conflict resolution procedures to use when disagreements occur. Seeing and acknowledging the tangible benefits of collaboration through a series of successes can enhance trust and understanding over time.

Ability to Demonstrate Results/Outcomes

Developing real, workable solutions involves a measure of practicality. Success is reinforced by meaningful progress towards a goal. Improvements to an organization's decision-making process to link planning and NEPA should be developed with concrete results and outcomes in mind. The results should be measurable, and celebrated when they are achieved.

Participating agencies are more apt to commit to developing a solution if their participation pays off in a tangible way – e.g., project reviews are easier, fewer agency resources are tied up in resolving problematic projects -- or if their participation leads to a better project. Likewise, executive management and political leadership are more apt to fund and support a new, integrated process if it leads to efficiencies and lower costs in the long run.

Communication and Education

Where planning and NEPA have been successfully linked, transportation planning and environmental staff communicate and collaborate with each other to build trust, share concerns, and solve problems. Chapter 6 offers specific techniques to facilitate collaboration and understanding, including memoranda of understanding, working groups, concurrence points, funding of environmental agency position, and cross training.

FOR MORE INFORMATION:

North Carolina DOT Process Improvement Initiatives
http://www.ncdot.org/environment/development/improvement/

Florida DOT Efficient Transportation Decision Making Process
http://fdotenvironmentalstreamlining.urs-tally.com/

3. LAYING THE GROUNDWORK FOR NEPA IN PLANNING

Chapter 2 identified the most significant barriers to linking planning and NEPA, and described a climate in which they might be overcome. This chapter will begin to identify more specific steps that can be taken in statewide and metropolitan planning – before a project concept has been chosen – to lay a foundation for NEPA documents prepared later in project development. This chapter of the toolbox addresses such questions as:

What does it mean to follow the basic principles of NEPA in the planning process?

As outlined in the Introduction, NEPA sets forth several decision-making principles that are intended to help Federal agencies create and maintain "conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans". Key principles, as highlighted by FHWA and FTA in their Linking Planning and NEPA seminars and workshops, are:

- Consider alternatives and their social, economic, and environmental impacts; and
- Involve other agencies and the public.

Following these principles during planning may expand the scope and cost of planning studies, but planning decisions may be more sustainable and the project development process may be completed more efficiently.

What planning analyses and products can help support the NEPA process?

Analyses performed during planning, such as needs studies, can also be useful in addressing NEPA requirements. These analyses can lay a foundation for later stages of project development, and save time and effort during the formal NEPA process, provided they use sound technical methods, involve the right people, and are well documented. A clearly articulated project problem statement (purpose and need) and a well-reasoned range of alternatives are products that can shape the subsequent NEPA analysis and documentation effort.

The answers to these questions set the stage for the next three chapters of the toolbox, which explore more specific strategies to enhance the planning process (Chapter 4), to determine the appropriate level of analysis (Chapter 5), and to engage environmental resource/regulatory in planning (Chapter 6).

FOLLOWING NEPA PRINCIPLES IN PLANNING

Laying the groundwork for NEPA in planning starts by applying the basic principles of NEPA in planning. Planning level decisions – mode, capacity, general location and the like – are less likely to need revisiting in subsequent phases of project development when it can be demonstrated that they were based on a process that followed NEPA principles. However, there

are no hard and fast rules for neither applying NEPA principles in planning, nor are there guarantees that money or time will be saved.

Documentation of the procedures followed, the analyses performed, and the decisions reached in planning are critical if those decisions are to be accepted and carried through to the NEPA process. The NEPA process involves the development of an "Administrative Record" – the official, project record upon which legal challenges to a project are mounted and defended. Where planning analyses and decisions are to be relied upon through the NEPA process, planners should take care to thoroughly document:

- The alternatives considered;
- The environmental analyses performed to support each phase of decision-making;
- Evidence of federal agency oversight at key project milestones;
- Coordination among federal, state and other agencies;
- Public involvement; public comments and responses; and
- Formal planning or decision documents.

Considering Alternatives and Their Impacts

The Council on Environmental Quality's Regulations for implementing NEPA[1] requires agencies to "rigorously explore and objectively evaluate all reasonable alternatives". Further, the EIS is to "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public."

FHWA and FTA guidance (see box) allows agencies to rely on planning analyses to meet these requirements. If the planning analyses meet the conditions outlined in this guidance, alternatives considered and rejected in planning need not be revisited in subsequent NEPA documents.

Sufficient data and analysis are needed to consider alternatives and their impacts in planning, and to provide enough information to reach sustainable decisions. When evaluating environmental impacts at the planning phase, the analysis should be of sufficient depth to identify significant trade-offs or differences among alternatives, as well as to identify fatal flaws. (See Chapter 5 for further discussion on level of detail.)

FHWA/FTA GUIDANCE

In February 2005, FHWA and FTA released guidance and a legal opinion on Linking Planning and NEPA (Appendix B and C). These describe the flexibility inherent in Federal laws and regulations, and describe situations where planning studies may be relied upon in NEPA.

Appendix D provides another guidance paper – *Federal Laws and Regulations: Exploding the Misperceptions* – that was developed in October 2003 for discussion in the FHWA/FTA Linking Planning and NEPA workshops. This paper explains how the range of alternatives can be narrowed before the NEPA process is officially started.

[1] 40 CFR Section 1502.14

Involving Other Agencies and the Public

It can be difficult to engage and hold the interest of members of the public, resource agencies and other stakeholders during planning. The public may show little interest until a project is imminent. Resource agencies may give higher priority to projects that are well defined and expected to require permits or other agency actions in the short term. The public and agencies may be more willing to participate if they realize that real decisions are being made in planning, that the lead agency does not intend to revisit these decisions later in project development, and that their early involvement can have a significant influence on shaping the outcome. Where transportation agencies are unsuccessful in involving the public and agencies, their ability to reach decisions that will stand up through the NEPA process can be compromised.

A seamless public and agency involvement process – encompassing both planning and project development – may be of benefit if one is seeking to link planning and NEPA. To the participant, the involvement process would appear to be part of a logical decision-making continuum covering both planning and NEPA. Chapter 6 describes efforts that can be undertaken to increase agency involvement during planning.

PLANNING-LEVEL ANALYSES AND PRODUCTS THAT CAN SUPPORT THE NEPA PROCESS

A second way to lay the groundwork for NEPA in planning is to collect data and perform analyses that will be useful in establishing the purpose and need for future investments, and for understanding their impacts, either as stand-alone projects or as part of a broader program of projects. Environmental issues that are regional or area-wide in scope and transcend the influence area of any one project may be more effectively addressed at a broader planning level as well.

This section identifies some of the products that can be developed in planning and some issues to consider if these products are to be helpful during the NEPA process. In many cases, the usefulness of planning products is likely to hinge on:

- The soundness of the analytical approach;
- The adequacy of documentation;
- The degree to which the products were prepared in a collaborative manner and involved the Federal lead agency for the project (typically FHWA and/or FTA), interested resource/regulatory agencies, and the public;
- The amount of time that has passed since the planning study and corresponding decisions were made; and
- Changes that have occurred in the project, the project area or the region, and planning tools and data since a study was completed.

Planning-level analyses that can support the NEPA process include regional development and land use planning, natural resource planning, regional air and water quality planning, travel demand forecasting, transportation needs studies, alternatives analyses, and cumulative impacts analyses as described below.

Regional Development and Land Use Planning

Land use planning is carried out by local governments in most parts of the country, usually pursuant to State legislation. Land use plans may identify the growth that the local area desires to achieve, including the type and location of future development. In most cases these plans do not have the force and effect of law, but they reflect a local government's deliberate efforts to define and achieve its aspirations for future growth and development.

Regional planning usually relies on an aggregation of local land use plans and reflects regional population and employment forecast. Some regions go further by establishing policies and tools for shaping the development of a region.

Regional land use plans and/or forecasts serve as a basic input to transportation planning. They are used in predicting future transportation demands, identifying future transportation problems and needs, and analyzing potential solutions. They may also embrace land use strategies designed to reduce trip making, shorten trips, reduce conflicting vehicle movements (access management), or encourage transit usage.

RIVERSIDE COUNTY, CA INTEGRATED PROJECT (RCIP)

The RCIP integrated land use, transportation, and conservation planning and implementation to develop a comprehensive vision plan for the County's future. The RCIP, begun in 1999, had three components:

- A Multiple Species Habitat Conservation Plan (MSHCP), which forms the nucleus of an open-space plan for the western part of the county.
- An updated General Plan for the unincorporated portion of the County, addressing land use, circulation, housing and open space, conservation and other mandatory elements in conformance with state statute.
- The Community and Environmental Transportation Acceptability Process (CETAP) identified future transportation corridors in the western part of the county and provided environmental documentation to allow early preservation of the rights-of-way.

In a parallel planning effort, a Special Area Management Plan (SAMP) planning process addressed watershed management and water quality issues in the region.

How can regional development and land use planning lay a more effective foundation for NEPA?

Growth and land use issues often arise during the project development stage, when there are fewer opportunities to address them effectively. The planning process can lay a foundation for NEPA and reduce the likelihood of regional land use issues arising during the project stage by:

- Identifying and assessing growth scenarios, including their associated transportation requirements and environmental consequences;
- Seeking the involvement of outside agencies, including environmental agencies;
- Coordinating land use with resource planning;
- Conducting indirect and cumulative impact assessment during planning;
- Covering the land use and development impacts of the plan or a package of improvements; and
- Adopting growth and development strategies that reduce travel or that are compatible with planned infrastructure investments.

Natural Resource Planning

Natural resource plans may be developed to protect plants and wildlife (particularly threatened/endangered species), preserve and increase wildlife habitat, improve water quality, protect and enhance water supplies, reduce soil erosion, and reduce damages caused by floods and other natural disasters. Plans are typically prepared by a federal or state natural resource agency, often in collaboration with State and local governments, to protect or restore an environmental or natural resource. Federal agencies that develop resource plans include the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Environmental Protection Agency, and the Army Corps of Engineers. State resource agencies include state departments of natural resources or departments of environmental quality or protection. Section 6001 of SAFETEA-LU, found in Appendix A, requires that transportation and natural resource planning be coordinated.

ANTELOPE VALLEY PROJECT

The Antelope Valley Project identified a set of public infrastructure projects that are being built in the historical center of Lincoln, Nebraska. Sponsored by the City of Lincoln, University of Nebraska-Lincoln and the Lower Platte South Natural Resources District, the Antelope Valley Project addresses three goals:

- Flood control,
- Transportation improvements, and
- Community revitalization

The EIS, prepared jointly by the FHWA, Nebraska Department of Roads and the City of Lincoln, evaluated alternative packages of improvements that addressed each of the three goals.

How can resource plans be used to facilitate transportation planning and project development?

Where transportation planning and resource planning are coordinated, sensitive resource areas can be avoided and overall environmental impacts minimized and mitigated from the early planning stages. Ideally, new development and transportation projects can be located in areas that are more suitable for infrastructure development.

By linking decision making to multiple goals – transportation, environmental, economic development – transportation and resource agencies can partner to find win-win solutions that benefit multiple users. The Antelope Valley project in Lincoln, Nebraska, for example, was developed to meet flood control, transportation, and revitalization goals (see box).

Regional Air Quality and Water Quality Analyses

Some environmental analyses are performed on a regional basis to address system-wide environmental goals and requirements. Air pollutants such as ozone are a product of regional emissions and are best studied and controlled at a regional level. Similarly, water quality planning is often carried out on a watershed basis.

By conducting corridor or regional air quality and water quality analyses, in conjunction with planning, steps can be taken to address the impacts of many projects at the same time, saving agency resources and time. For example, air quality conformity analyses assess whether or not the transportation plan and program are consistent with the goals of the Clean Air Act. If not,

steps can be taken at a broad geographic level to reduce pollutant emissions. Where these analyses find that the regional transportation plan and program do conform to clean air goals, project level studies can focus on the potential for more localized hot spot impacts.

Travel Demand Forecasting

The transportation planning process relies on land use projections to predict travel demand on the transportation system. These forecasts provide a basis for assessing transportation performance, identifying needs, and evaluating alternative solutions. Environmental analyses, such as air pollutant emissions, also rely on these projections.

Should travel demand forecasts from planning be used for NEPA?

Ideally, demand forecasts developed in planning would not need to be changed or updated at the project stage. Frequently, however, there are changes to the models or to input assumptions (growth and development projections, land use policies, other transportation facilities and services), or a significant period of time has passed between the initial planning process and preparation of project-level NEPA documentation. In such cases the forecasts may need to be reviewed and revisited to see if they are still valid. In any case, new forecasts may be needed at the project level to support the finer grained decisions that are made in the project development stage – e.g., number of turning lanes, signal timing, or the size of a park-and-ride lot.

Where separate forecasts are developed at the project stage, they should be compared with prior planning level forecasts. Significant discrepancies should be identified and explained. There may be reason to revisit decisions reached in planning if the forecasts on which they were based change significantly.

Providing federal or state agencies the opportunity to participate in the planning process and to comment on forecasts and underlying assumptions, relative to their frame of reference, is one way to build early agreement and consensus and may save time and money in the project development process by eliminating the need to 'redo' forecasts or revisit decisions.

Needs Studies

Needs studies identify areas within a State, region, or other study area where transportation system performance is or is likely to become deficient. Such studies may provide a starting point for preparing the Purpose and Need section of a NEPA document, and for identifying and evaluating alternatives.

What data from the planning process can be used in developing Purpose and Need statements for NEPA documents?

The transportation planning process can serve as a source of information for establishing purpose and need for individual projects. For example:

- Goals and objectives identified in the transportation planning process can provide the basis for a project's purpose and need;

- Where planning studies compare travel demand with capacity, or assess travel time and other indicators of system performance and condition, the results can provide a basis for defining purpose and need;
- Many States and MPOs have established management systems (e.g., congestion, pavement, bridge, safety) which can provide quantitative data that support problem definition and help to shape the purpose and need;
- Planning analyses may identify travel markets or origin/destination pairs that lead to significant amounts of travel, helping to explain the underlying causes of performance deficiencies and narrow the range of reasonable alternatives; and
- If the financial component of a long-range transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the Purpose and Need statement.

What are the advantages and disadvantages of developing Purpose and Need in planning?

Since most transportation projects have roots in the planning process, it seems natural that planners draft the rationale for projects included in the plan and program. An agency's planners are apt to have valuable insights into the reasons for a project, and the considerations that led to its being chosen for advancement into NEPA. However, planners may not fully comprehend the specific requirements for Purpose and Need statements and the expectations of funding and permitting agencies.

If a Purpose and Need statement is prepared in planning, wouldn't it need to be modified during the NEPA process?

While the basic need for a transportation improvement is likely to be consistent throughout the planning and project development phases, the Purpose and Need statement may, and probably should, evolve as information is developed and more is learned about the project. Conditions may change over time, and new data and forecasts may become available that enhance understanding of transportation problems and their underlying causes.

What guidance is available to help planners develop Purpose and Need statements?

Many planners are unfamiliar with what is expected and required, including the proper format and content to satisfy NEPA and lead agency requirements. Federal guidance can be found at FHWA's web site[2] and in FTA's Annotated Outline for an Alternatives Analysis/DEIS[3]. Many State DOTs also have guidance manuals on NEPA documents, including Purpose and Need.

[2] http://environment.fhwa.dot.gov/projdev/tdmelements.htm
[3] http://www.fta.dot.gov/grant_programs/transportation_planning/major_investment/technical_guidance/16352_ENG_HTML.htm

Materials developed for the Linking Planning and NEPA workshops identified some pitfalls to avoid when crafting a problem statement in the planning process that will form the basis for a project's purpose and need. They include problem statements that:

- Lead to only one alternative;
- Do not explain the underlying causes for a performance deficiency;
- Are too vague to guide the identification of alternatives and issues;
- Are stated as the absence of something (i.e., absence of a new highway or transit); and
- Are driven by the inflexible need to "meet" a specific level of service.

Planners may also benefit from guidance on the process for developing Purpose and Need statements, including collaboration with interested parties. Section 6002 of SAFETEA-LU (Appendix A), which applies to EISs developed in many States, sets out a process for consulting with environmental resource and regulatory agencies as Purpose and Need is defined.

Alternatives Analyses

The FHWA and FTA guidance memos (Appendices B and C) describe "alternatives" as including anything from major modal and location alternatives to minor design changes that would mitigate adverse impacts. The memorandums also identify conditions under which alternatives analyses conducted in planning can be used to limit the range of alternatives that must be evaluated in a NEPA document.

Where planning and project development are viewed as parts of a single decision-making continuum, planning is apt to consider a broader range of alternatives than project development, with less detail. Corridor planning studies, for example, often consider such alternatives as mode, facility type, general location, and termini. Once one of these "concept alternatives" is selected, subsequent project development studies might focus on design options within the chosen concept – e.g., precise alignment, interchange configurations, and station locations.

In such situations, the planning analysis may be used to satisfy multiple statutory and regulatory requirements. For example, if a potential project would require a Section 404 permit, ideally there would be coordination with the U. S. Army Corps of Engineers and some level of agreement from them that the alternatives considered are broad enough to allow for the ultimate development of a Least Environmentally Damaging Practicable Alternative. In this case, screening of alternatives for the presence of important wetlands based on geographic information systems (GIS) or other planning-level data sources would be appropriate to support this early determination.

When can alternatives be eliminated from detailed consideration based on information and analysis from transportation planning?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: by shaping the purpose and need (as discussed on the previous pages) or by evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to the start of the project-level NEPA process. The FHWA/FTA guidance memos in the appendix describe the requirements for eliminating alternatives prior to NEPA.

When alternatives are screened out prior to the official start of NEPA,

- The subsequent NEPA Scoping process can provide a check on the adequacy of the planning analysis and the degree of consensus for the planning decisions;
- The NEPA document, as part of a section often titled Alternatives Considered and Eliminated from Further Consideration, would identify any alternatives eliminated during the transportation planning process and briefly explain why they were dropped; and
- Documentation of the alternatives analysis may be incorporated by reference or appended to the NEPA document.

When alternatives analysis is done in planning, are there no alternatives left to be considered in project development and the NEPA document?

While the alternatives analysis done in planning may eliminate alternative concepts, it is likely that more focused alternatives or options within the selected concept(s) will remain for further analysis and evaluation during the NEPA process and in the NEPA document. Thus, the NEPA document would include options for review and comment, although it would focus on one or a small number if project concepts.

Cumulative Impact Analysis

Under council on Environmental Quality (CEQ) regulations, NEPA documents are inspected to include a discussion of "cumulative impacts." CEQ offers guidance on the meaning of cumulative impacts and how to access them.[4] The FHWA Environmental Guidebook website contains additional information on environmental impacts, including cumulative and indirect impacts.[5] The planning process, with its broad scope, offers an appropriate venue for assess the cumulative impacts of a plan and program. The results of this assessment can lay the groundwork for the cumulative impacts discussion in the NEPA documents for individual projects.

What is cumulative impact analysis?

Cumulative impact analysis may be thought of as a comparison of the past, present, and reasonably foreseeable health or condition of a specific resource. Cumulative impact analysis is resource specific and generally performed for the environmental resources directly impacted by a Federal action under study, such as a transportation project. The resources subject to a cumulative impact assessment should be determined on a case-by-case basis early in the NEPA process, generally as part of early coordination or scoping.

Analyzing cumulative effects is conceptually straightforward but practically difficult. Cumulative effects reflect impacts that derive from multiple sources, so that the analysis of local and regional plans is essential. Impacts may occur to resources that function as integral parts of a larger system. Therefore, an examination of cumulative consequences should include the functional relationships of resources within larger systems. If these relationships are understood, then

[4] Council on Environmental Quality, Considering Cumulative Effects Under the National Environmental Policy Act http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm

6/40 CFR 1508.7

[5] http://environment.fhwa.dot.gov/guidebook/gbvol1.htm

conclusions on a plan and program's likely indirect and cumulative impacts to the overall system should be possible.

What information from planning can be useful for the NEPA analysis of cumulative impacts?

The transportation planning process looks broadly at future land use, development, population, and other growth factors, as well as transportation system, needs, policies and facilities and their effects. Planning activities can explore the links or synergies among all of the planned projects, and between transportation plans/programs and environmental resources.

To be used in the analysis of cumulative impacts, planning information should, as appropriate:

- Be sufficiently detailed to reveal the trade-offs between different alternatives;
- Be based on current data (e.g., data from the most recent Census) or be updated by additional information;
- Be based on reasonable assumptions that are clearly stated; and
- Rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

FOR MORE INFORMATION:

Antelope Valley Project
http://www.ci.lincoln.ne.us/city/pworks/antelope/

Riverside County Integrated Project
http://www.rcip.org

Cumulative Impacts
http://environment.fhwa.dot.gov/guidebook/chapters/v2chb.htm

Purpose and Need
http://environment.fhwa.dot.gov/projectdev/tdmelements.htm

4. ENHANCING THE PLANNING PROCESS

State and metropolitan transportation agencies across the country are changing their planning processes in significant ways to link planning and NEPA more effectively. This chapter describes procedural approaches that are being used, and offers suggestions on how to decide whether or not these approaches might be useful.

What procedural approaches are transportation agencies using to improve the link between planning and NEPA?

Three procedural approaches in use today are:

- Consideration of environmental factors in system planning and programming;
- Corridor and sub-area studies; and
- Tiering of NEPA documents.

By considering environmental factors before transportation plans and programs are adopted, often in collaboration with environmental agencies (see Chapter 6), some transportation agencies are able to identify projects for future development that have already avoided or minimized adverse effects. This can facilitate the project development stage by reducing the potential for controversy and delay on environmental grounds. Corridor and sub-area studies, focusing on the transportation needs and potential solutions within a portion of a state or metropolitan area, provide opportunities to consider alternatives and their impacts in more detail than is possible at the statewide or metropolitan level. Corridor studies can support decisions on a project concept or the range of alternatives to be covered in a project-level NEPA document. Tiering provides a mechanism for developing NEPA documents at an early stage, often during planning. Each of these techniques provides opportunities to coordinate and integrate transportation planning with land use and environmental planning.

How well do these techniques fit my situation?

Some of the approaches summarized in this chapter may fit a practitioner's needs better than others, depending on the situation in any particular State, metropolitan area, or other setting. This toolbox summarizes each technique's advantages and disadvantages, along with sample applications, to help practitioners decide which techniques best fit their needs.

CONSIDERATION OF ENVIRONMENTAL FACTORS IN SYSTEM PLANNING AND PROGRAMMING

During system planning, transportation plans are developed to guide the evolution of the transportation system for the next 20 years or more. The States, metropolitan planning organizations, transit agencies and many local governments conduct system planning and adopt transportation system plans. Such planning often involves:

- Development of goals and objectives,
- Assessment of current conditions and performance,
- Projection of future population and employment,

- Identification of transportation needs;
- Evaluation of alternative strategies for meeting those needs; and
- Public and agency involvement.

Once plans are adopted, programming identifies priorities and matches projects with funding.

A growing number of States, metropolitan areas, and local governments are considering environmental factors as part of transportation plan and program development. Early consideration of environmental factors may allow planners to screen out alternatives or projects that are expected to have adverse effects or generate controversy, as in Florida (see box).

Transportation planning is frequently coordinated with air quality, land use, habitat and watershed protection, and other resource planning. Environmental factors may enter into the transportation agency's goals and objectives, and environmental needs may be expressed and addressed along with transportation needs. Early coordination/collaboration with other agencies that have their own planning process (e.g. State Wildlife Action Plans) can help to identify joint initiatives to protect or preserve important environmental resources.

In some cases, States are assessing environmental impacts for a program of independent but similar projects. Oregon's bridge program (see box) was an early application of the State's Collaborative Environmental and Transportation Agreement on Streamlining, which is further described in Chapter 6.

MPOs are also enhancing their planning processes to consider environmental factors at an early stage. Merced County, California offers one example (see box). Transportation planning is also carried out by counties, cities, and other local governments as part of comprehensive planning, and may be integrated with functional plans for land use, housing, parks, schools, and environmental resource protection.

FLORIDA DOT'S EFFICIENT TRANSPORTATION DECISION-MAKING (ETDM) PROCESS

Florida's ETDM Process links land use, transportation, and environmental resource planning initiatives through early, interactive agency and community involvement. Florida DOT expects that this linkage will greatly improve decisions and reduce the overall time and cost to reach transportation decisions. The ETDM process includes two screening steps:

Planning Screen. This screen allows agencies to comment on the impact of projects very early in the planning process. Planners may then adjust project concepts to avoid or minimize adverse impacts, consider mitigation alternatives, and improve costs estimates. Secondary and cumulative impacts may be evaluated on a project and system-wide basis in connection with the Planning Screen. The interrelationship between land use, ecosystem management, and mobility could then be considered in integrated agency planning.

Programming Screen. This screen occurs before projects enter the FDOT Work Program – i.e., the statewide program of projects. The NEPA process begins at the Programming Screen with the development of the Advance Notification (AN) package by FDOT. ETAT input provides "agency scoping" requirements to satisfy NEPA and other pertinent laws that are addressed during NEPA. At the Programming Screen stage, ETAT members are offered an opportunity to accept or comment on the Purpose and Need Statement, update the environmental reviews conducted at the Planning Screen, identify required technical studies, and opt out of further involvement.

OREGON BRIDGES

ODOT's bridge program includes more than 400 bridges to be repaired or replaced by 2011. Site environmental regulations are complex, and the requirements of various agencies often overlap. As a result, ODOT decided to address regulatory requirements, as much as feasible, on a programmatic basis and address permitting needs for the bridge program as a whole. The goals were:

- To reduce bridge design and environmental permitting times;
- To reduce cost and schedule impacts from re-design, and
- To maintain ODOT's strong commitment to environmental stewardship.

The key elements in ODOT's approach include baseline environmental studies, environmental performance standards, and a comprehensive program for mitigating environmental impacts.

NCHRP Project 8-38, *Consideration of Environmental Factors in Transportation Systems Planning*[1] is developing an approach for integrating environmental factors into systems planning and decision-making. The final report is expected to offer examples of how state DOTs and metropolitan planning organizations consider environmental factors in planning. A conceptual framework for incorporating environmental concerns into planning is being developed, and strategies to implement change are being identified.

MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MAG) PARTNERSHIP FOR INTEGRATED PLANNING (PIP)

The Merced County PIP sought to integrate transportation, land use, and environmental planning through collaboration among Federal, State, and regional areas. Merced County's PIP contained five components:

- Cumulative Impact Advisory Panel composed of County officials, Caltrans, FHWA, and Federal environmental resource/regulatory agencies;
- UPlan – a GIS system with transportation and environmental data layers supplied by a number of agencies and organizations;
- Public outreach;
- Development of Regional Transportation Plan ("RTP Plus!") based on an evaluation of alternative scenarios and their impacts; and
- Evaluation of the PIP planning process.

MAG's evaluation concluded that PIP entailed high staff time and effort, and led to increased public awareness and agency participation. While the benefits were found to be unclear, the County concluded that the local effort was worthwhile. Caltrans cites the PIP as a model process that could be emulated elsewhere in the State.

[1] See http://www4.trb.org/trb/crp.nsf/e7bcd526f5af4a2c8525672f006245fa/be05f4b4718a21ef85256826005072c2?OpenDocument

What are the benefits of considering environmental impacts in planning and programming?

When environmental factors are considered in planning and programming, transportation planning and decision-making may benefit in a number of ways including:

- Transportation and environmental plans can be coordinated and made to support each participating agency's goals;
- The cumulative effects of the plan and program can be considered at the system level and incorporated into subsequent NEPA documents;
- Projects with significant adverse impacts can be identified early, before significant resources are spent on project development;
- Projects can be modified to avoid, minimize or mitigate adverse impacts at an early stage when there is still decision-making flexibility;
- Mitigation can be dealt with on a programmatic basis, where it may be more effective; and
- Project development and NEPA documentation can be completed more quickly.

What are the challenges?

Transportation agencies seeking to consider environmental factors in planning and programming may face the following challenges:

- At the planning level, projects may be defined only in concept, and there may be significant uncertainty about impacts;
- Environmental resource and regulatory agencies may not be willing to commit staff to planning activities, since the permitting activities they are required to perform often receive priority for limited staff time;
- Resource and regulatory agency staff that are involved may be uncomfortable dealing with projects or alternatives that are defined only in concept; and
- Planning funds may need to be augmented to cover the cost of additional data collection, analyses and coordination.

SCENARIO PLANNING

Scenario planning is a process in which transportation professionals and citizens work together to analyze and shape the long-term future of their communities. Using a variety of tools and techniques, participants in scenario planning assess trends – such as transportation and congestion, land use, safety, demographics, health, economic development, and the environment – and develop future scenarios that reflect different trend assumptions and tradeoff preferences. Participants seek consensus on a policy framework that can set the stage for decision-making during the NEPA process. Scenario planning can:

- Provide an analytical framework and process for analyzing complex issues and responding to change;
- Facilitate consensus building by giving communities the capacity to participate actively in planning;
- Assess transportation's impact on communities;
- Improve communication and understanding in a community; and
- Yield an enhanced decision making framework for a community and ensure better management of increasingly limited resources.

Can impact mitigation be considered during system planning?

Planning for mitigation can begin at the system planning and programming stage, prior to the official start of NEPA. Many states, for example, have created wetlands banks in anticipation of future projects. If mitigation is considered and implemented early, at the system level or program, it may be more effective than mitigation done on an individual project basis, and the benefits may accrue sooner. Section 6001 of SAFETEA-LU requires that metropolitan and statewide transportation planning

> …include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.[2]

Early communication between agencies can encourage parties to think beyond the boundaries of their own resource areas or geographic boundaries by considering regional approaches to mitigation. Instead of reading to individual projects, agencies have the opportunity to act proactively to enhance environmental resources and improve conditions. Concerns may be identified at the planning stage to avoid later conflicts in project development and construction.

CORRIDOR AND SUB-AREA STUDIES

Many transportation agencies have completed corridor-level planning studies to analyze and evaluate alternative transportation concepts in a more focused way than is possible in statewide or regional planning. With the added focus and detail that is possible in a corridor study, agencies are able to more precisely define the alternatives and estimate their costs, benefits, and impacts. Corridor studies often lead to decisions on a preferred project concept, or at least narrow the range of alternatives carried forward. They can offer a forum for addressing transportation and land use relationships in greater detail than is possible in system planning. This can lead to local actions (comprehensive planning, zoning, access management, incentives, etc.) that complement transportation improvements and minimize adverse impacts.

Corridor studies are typically performed when:

- There is perceived to be value in looking at and transportation and community needs in a more focused way than is possible in system planning, but on a broader scale than a single facility or project;
- There is no consensus on purpose and need or project concept;
- The number of reasonable alternatives is high;
- A fixed guideway transit project is being considered[3]; or
- A proposed project is large, controversial and/or multi-modal.

Corridors are typically defined broadly and may be defined to include a “travel shed” composed of both trip origins and destinations.

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[2] Amendments to 23 USC 134(i)(2)(B) and 23 USC 135(f)(4)(A) contained in Section 6001 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

[3] For fixed guideway transit projects proposed for Section 5309 New Starts funding from the Federal Transit Administration, as well as for Small Starts funding, a corridor-level Alternatives Analysis is required by law and regulation.

As illustrated in Figure 4-1, corridor studies tend to be performed within the context of a statewide or metropolitan plan that establishes growth and development forecasts, defines statewide or regional policies, evaluates system performance, and establishes needs and priorities. Once completed, the corridor study results may be evaluated to see how well any recommended actions align with the regional transportation plan in terms of system performance, financial constraints, air quality, and other factors. Other aspects of the system plan may need adjustment to reflect the corridor study results.

Table 4-1 provides examples of corridor studies, the lead agencies involved and the special features or unique approaches of each.

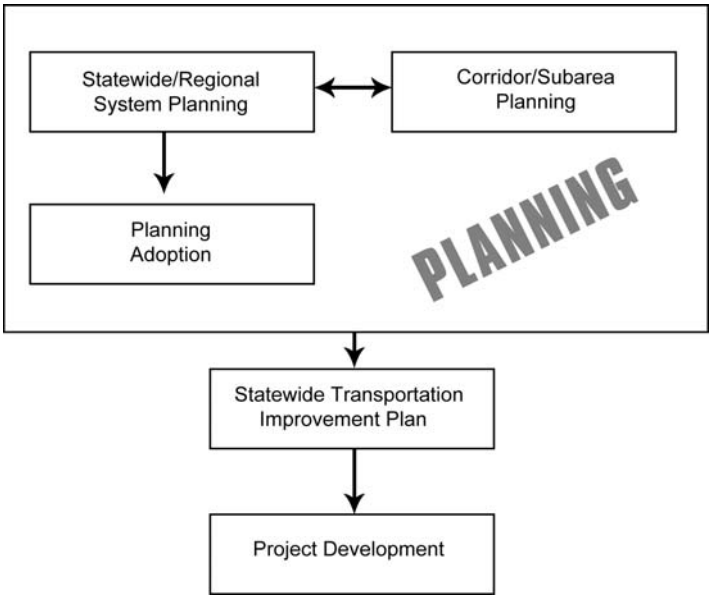


Figure 4-1 Corridor Studies in the Transportation Decision Making Process

What are the advantages of corridor studies?

Corridor studies provide a means of assessing a broad range of alternatives and considering their social, economic, and environmental effects at an early stage. The level of analysis possible in corridor planning can foster informed and sustainable decisions on a project concept, narrowing the range of options remaining for consideration at the project stage. The process can foster greater cooperation among state, MPO, and local agencies and extend the participation of these parties through the NEPA process.

EXAMPLE	LEAD AGENCIES	SPECIAL FEATURES
I-10 (Katy) Major Investment Study	FHWA TxDOT	The public involvement program provided opportunities for the public and various interest groups to be involved throughout the process, which increased the credibility and defensibility during later phases of the project. A total of 14 public meetings were held in multiple locations throughout the corridor, and nearly 1,400 individuals participated.
St. Louis Major Transportation Investment Analysis (MTIA)	East-West Gateway Coordinating Council Bi-State Development Agency Missouri DOT	Three separate studies were completed concurrently. The studies identified the issues in the corridor areas, the goals and objectives for dealing with the problems, and a full range of reasonable alternatives. At the conclusion of the MTIAs, a preferred transportation alternative(s) was recommended for inclusion in the MPO plan.
S.R. 9	FHWA INDOT	The feasibility of improvements and/or other alternatives to SR 9 from SR 234 to US 52 along a ten-mile corridor was assessed. Recommendations to INDOT were made for projects of independent utility (if any) which should be programmed for future development and study.
North County Combined Highway Study	MTA Metro	The North County Combined Highway Corridor Study developed feasible, implementable and cost-effective solutions for alleviating traffic congestion in northern Los Angeles County. From the corridor study, both short-term (2010) and long-term (2025) strategies were designed to improve travel speeds, reduce trip times, provide new transit options and improve safety conditions along three study corridors. The selected strategies also addressed the issues of needed truck routes, support for increased economic activity and better access to job opportunities for North LA County residents.
State Road Corridor Study (Washtenaw County, Michigan)	MDOT Washtenaw County Road Commission	A Project Partners Committee was formed of representatives from the public and stakeholder organizations. Committee work sessions were held to: agree on the sources and data used as the foundation for the study; react to the preliminary corridor alternative concepts and identification of any other reasonable alternatives that should be considered; discuss non-motorized options to evaluate as part of the study; and agree on the initial performance objectives upon which the alternatives would be evaluated.

Table 4-1 Corridor Study Examples

What are the disadvantages of corridor studies?

Corridor studies can add another layer of analysis, and cause delays, if the corridor study results cannot be sustained through the NEPA process. This could happen where:

- There is not widespread participation and buy in on the results;
- The study did not give sufficient consideration to all reasonable alternatives, including their environmental effects;
- New alternatives are discovered later as part of NEPA;
- There is a significant time lapse between the corridor study and subsequent project level NEPA studies; or
- Agencies perceive that all reasonable alternatives must be carried through the NEPA documentation stage.

How can corridor studies be linked to NEPA documents?

Three approaches are often used for linking corridor studies to NEPA documents:

- A Draft EIS or EA is prepared as part of the corridor study, serving to document the results and seek input on alternative project concepts. Following circulation, a preferred concept is adopted or confirmed within the statewide or metropolitan transportation plan. This approach is frequently used in corridor-level Alternatives Analysis studies performed under the FTA New Starts program.
- The NEPA document is prepared later in project development, but draws upon the analyses and decision-making within the corridor study. This is done most effectively when the corridor study follows NEPA process principles – consideration of alternatives and their environmental impacts, collaboration with other agencies, public involvement – and is well documented (See Chapter 3).
- The formal NEPA process is initiated during the corridor study, perhaps with a Notice of Intent and scoping, but the NEPA documents are not completed until later in project development. NEPA scoping may help to establish the corridor study as a part of the NEPA process, and help to allay concerns about dropping alternatives prior to scoping.

I-10 (KATY) MAJOR INVESTMENT STUDY (MIS)

Beginning in 1995, the Texas Department of Transportation (TxDOT) initiated a corridor study to analyze the I-10 Katy Freeway Corridor, a 38-mile corridor with complex trip patters and multi-modal alternatives. Based on the adopted study goals and objectives, a range of conceptual level alternatives was developed to meet the needs of the corridor through 2020. From a wide range of planning concepts (i.e., various combinations of HOV, bus, highway, arterial improvements, etc.), eleven corridor-wide conceptual alternatives were developed. These were then screened and revised, resulting in seven refined alternatives and one more detailed analysis. A locally preferred alternative was adopted by the Metropolitan Planning Organization (MPO) into the Regional Transportation Improvement Plan (TIP) in 1997. NEPA documentation followed.

As a result of the corridor planning study, the NEPA team had a concept decision that remained credible through the environmental process. Sections of the corridor planning report were incorporated into the early chapters of the DEIS, which improved efficiency and streamlining. In addition, the actions taken during the corridor study gave TxDOT a more credible and defendable process in later project phases.

In February 2005, FHWA and FTA offered guidance and a legal opinion (see Appendix B) to explain the conditions under which planning decisions can be incorporated into subsequent NEPA documents.

Can impact avoidance, minimization and mitigation be addressed in corridor planning?

Avoidance, minimization and mitigation can be considered at a level of detail that is commensurate with other aspects of the study and the decision at hand. Before selecting a preferred concept based on the corridor study, agencies are likely to want to know whether or not adverse impacts can be avoided/minimized/mitigated and at what cost. Collaboration with environmental resource/regulatory agencies helps transportation agencies to gain this understanding.

TIERED NEPA DOCUMENTS

Council on Environmental Quality (CEQ) regulations allow environmental documents to be "tiered". First tier documents might cover a broad study area in which a program of related projects is contemplated, while the subsequent second tier documents might focus on a specific action included within the entire program. Second tier documents need only summarize the issues discussed in the broader first tier statement, and may incorporate discussions from the broader statement by reference.[4]

MITIGATION IN CORRIDOR PLANNING

In Seattle, Washington, a corridor study evaluated transportation and environmental mitigation alternatives along I-405. The corridor study evolved into a Master Plan to guide the implementation of 300 smaller projects along the corridor over the ensuing 20 to 30 years. Through early environmental coordination, the I-405 project team took a watershed based approach to planning for natural resource mitigation, seeking ways to achieve the greatest long-term benefits for the watershed rather than the traditional on-site spot mitigation. In addition, the project team and corridor jurisdictions worked to identify "early environmental investment" areas, or sites that provide opportunities for up-front mitigation investments

In the **Newburg Dundee** corridor study, Oregon DOT established a Project Oversight Steering Team, composed environmental and transportation officials, to evaluate alternatives for relieving congestion on Highway 99W. The study led to decisions on the best route to bypass Newberg and Dundee, as well as decisions on mitigation measures that made the bypass route acceptable to environmental agencies. As corridor planning was being completed, ODOT worked with Yamhill County and the cities of Newberg, Dundee and Dayton to control land use and protect sensitive environmental resources. Specifically,

- Yamhill County amended its Comprehensive Plan to include the bypass.
- The communities along the Bypass route approved land use policies to protect farms and other undeveloped lands near the bypass interchanges from unplanned development.
- ODOT worked with local governments to retain the existing zoning and restrict expansion of urban growth boundaries around the interchanges. The restrictions on zoning changes were in effect until more detailed Interchange Area Management Plans could be prepared and adopted in the design phase.

[4] http://ceq.eh.doe.gov/nepa/regs/ceq/1502.htm#1502.20

What are the benefits of tiering?

Tiering offers a formal mechanism, within the NEPA process, for analyzing alternatives and their environmental impacts at a conceptual level, and for involving other agencies and the public. This can lead to decisions on preferred project concepts without carrying the analysis to the level of detail needed to complete the NEPA documentation process. Tiering also:

- Offers a way to look comprehensively at related projects and their cumulative impacts;
- Helps to eliminate repetitive discussions of the same issues in multiple NEPA documents, allowing each document to focus on the issues ripe for decision at each level of environmental review; and
- Offers a tool for corridor preservation. In most cases, a transportation agency is precluded from acquiring right-of-way prior to receiving a ROD or a FONSI. A Tier 1 NEPA document, leading to a Tier 1 ROD or FONSI, may offer sufficient detail to support right-of-way acquisition while other project details are being resolved.

How are transportation agencies using tiering?

Missouri DOT followed a classic tiering approach when evaluating alternatives for the 200-mile I-70 corridor crossing the state from Kansas City to St. Louis. A Tier 1 DEIS, Tier 1 FEIS, and Tier 1 ROD were used to select a preferred project concept for the entire route, based on an analysis of seven alternatives:

1. "No-Build"
2. Transportation System and Demand Management (TSM/TDM).
3. Widen Existing I-70.
4. New Parallel Facility.
5. New Parallel Toll Road.
6. High-Occupancy Vehicle Lanes.
7. High-Speed Passenger Rail.

Tier 1 also led to decisions on how the 200-mile corridor might be split into sections for the more focused look in Tier 2. Seven sections were chosen as well as the appropriate type of NEPA documents for each section (see Figure 4-2).

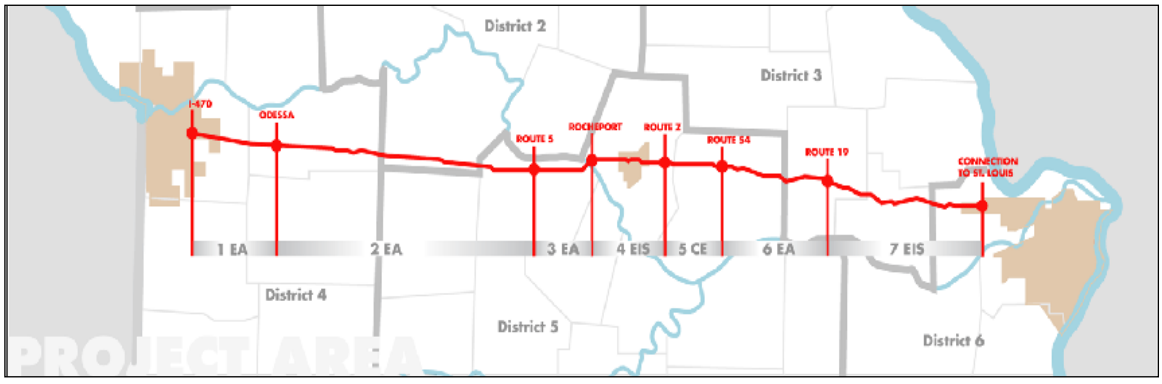


Figure 4-2 Segmentation of I-70 and Types of NEPA Documents for Tier 2

The tiering of NEPA documents does not always follow these same steps. Table 4-2 identifies other ways that transportation agencies have used tiering.

The tiering of NEPA documents is not appropriate in all situations. It may be worth considering for large, complex cases where transportation agencies seek to:

- Avoid duplication of effort between planning and subsequent project-level studies; and
- Involve environmental resource/regulatory agencies and resolve broad planning issues early.

Does tiering cost more or take longer?

It depends. Compared with a "typical" project, multiple NEPA documents can seem to be more costly and take longer. For highly complex or controversial situations, however, a tiered decision process may make sense because agreement on an overall project concept or program of projects may occur sooner. Individual projects within the program can then proceed at their own pace, independent of other projects in the program.

How should we decide whether to use tiering?

Transportation agencies should think strategically about how tiering might best fit within the overall planning and project decision-making process. First, decide upon an appropriate sequence of decisions, then think through ways in which the NEPA process and NEPA documents can most effectively support the various decisions. Other factors to consider might include:

- Tiered decision-making can occur without tiered NEPA documents.
- Federal funding and resource/regulatory agencies may have preferences on how the process is structured.
- NEPA imposes a formal structure on decision-making, and flexibility can be lost once NEPA is formally initiated.
- An agency's ability to preserve right-of-way can be limited once a formal NEPA process has begun.

When tiering is used, transportation and environmental agencies ought to seek early agreement on the decisions to be made on the basis of Tier 1 documents and the level of detail necessary. Some agencies are accustomed to a specific level of detail for project-level NEPA documents and may be uncomfortable with a "programmatic level of detail."

EXAMPLE	LEAD AGENCIES	TIERING STEPS	SPECIAL FEATURES
Charlotte (NC) Area Transit System	FTA Charlotte Area Transit System	DEIS FEIS ROD Tier 2 DEIS Tier 2 FEIS Tier 2 ROD	FTA and CATS signed a MOU under which the DEIS will cover an entire transit corridor. The FEIS will focus on an initial construction segment but will include Tier 1 level of detail for subsequent segments. Upon receipt of ROD, CATS will be able to protect right-of-way and local governments will be able to plan land use for all segments. Tier 2 documents will complete NEPA for subsequent construction segments.
Corridor H, West Virginia	FHWA WVDOT	Tier 1 DEIS Tier 2 DEIS Tier 2 FEIS ROD	WVDOT used Tier 1 DEIS to select a new highway corridor and used Tier 2 to select alignment within the corridor. Following the Tier 1 DEIS, FHWA sent WVDOT a letter stating that NEPA had been satisfied for corridor selection.
Indiana DOT Streamlined EIS Procedures	FHWA INDOT	Tier 1 EA Tier 2 DEIS Tier 2 FEIS ROD	Under INDOT procedures, tiering is used when: the need or the design concept and scope are unclear or not well-defined, or it is unclear whether an agreed-upon design concept and scope will require an EIS or other type of NEPA document. These uncertainties are resolved through a corridor level planning study and Tier 1 EA.
Riverside County (CA) Integrated Project	FHWA Caltrans Riverside County	Tier 1 DEIS	The Riverside County Integrated Project (RCIP) attempted to integrate all aspects of land use, transportation, and conservation planning and implementation to develop a comprehensive vision plan for the County. Ten agencies signed a Partnership Action Plan to support elements of the RCIP. Several NEPA documents were developed, including two Tier 1 draft EISs for proposed transportation corridors. The RCIP was one of the first projects considered by the USDOTs Interagency Streamlining Task Force under EO 13274.
Salt Lake City South I-15 Corridor	FHWA FTA UDOT Utah Transit Authority	DEIS FEIS (Highway) ROD (Highway) SDEIS (Transit) FEIS (Transit) ROD (Transit)	In one of the first multi-modal corridor studies in the US, a corridor level DEIS presented highway and transit alternatives leading to a coordinated decision on highway and transit project concepts. The NEPA process was completed separately for each mode, allowing each mode to proceed at its own pace.

Table 4-2 Tiering Examples

FOR MORE INFORMATION:

Florida DOT Efficient Transportation Decision Making Process
http://www.dot.state.fl.us/emo/

Katy Freeway MIS
http://www.katyfreeway.org/

Oregon Bridges
http://www.oregon.gov/ODOT/HWY/OTIA/odotbridgesee_stewardship.shtml

Scenario Planning
http://www.fhwa.dot.gov/planning/scenplan/index.htm.

I-405
http://www.wsdot.wa.gov/projects/i405

Newburg Dundee
http://egov.oregon.gov/ODOT/HWY/REGION2/newbergdundee.shtml

5. DETERMINING THE APPROPRIATE LEVEL OF ANALYSIS

By their very nature, planning analyses are less detailed than analyses performed later in project development, when fewer alternatives remain on the table and project studies are more focused. Planning analyses and products lack the detail necessary to complete the NEPA process, define specific mitigations, and secure agreements and permits. Nevertheless, this toolbox offers strategies that transportation agencies can use to lay the groundwork for NEPA in planning, and to involve environmental resource/regulatory agencies in the planning process. Where planners seek to apply these kinds of strategies, questions they often face are:

How much environmental analysis is enough in planning?

The answer – "It depends" – requires the planner to think further about the type of planning being performed, the nature of the decision at hand, and the risks of overestimating or underestimating an impact. Other considerations may include the interests and concerns expressed by the public and by participating environmental resource/regulatory agencies. "How much is enough" often requires negotiation among the involved parties.

How can I deal with the uncertainties that are inherent in planning?

Planning relies on forecasts that are built on assumptions of future conditions. It takes place within a constantly changing legal and regulatory framework, and the time between initial project planning and implementation inevitably means turnover in staff. Under such conditions, how can environmental analyses and decisions reached during planning be sustained through the completion of NEPA?

The chapter seeks answers to these questions by acknowledging two different levels of planning that may occur, both statewide and in metropolitan areas – system planning and corridor planning.

LEVEL OF DETAIL

System Planning

System planning takes a statewide or regional view of transportation needs and solutions, is long range (20 years or more), and encompasses multiple types of travel, modes and facility types. System plans typically articulate goals, objectives and policies, and list and/or describe strategies and projects that have been adopted as part of the plan (often based on more detailed studies, including NEPA studies, previously completed). System plans offer a snapshot of adopted policies and the totality of projects being planned, the interactions among the projects, estimates of costs and financial resources, and priorities for implementation.

It is rare for system planning to take a fresh look at the transportation needs of a state or metropolitan area, starting as if there were a blank slate. Most often, the transportation plan is largely composed of "legacy" projects that have been planned for some time. System planning

also provides little opportunity to focus on a particular geographic area, to identify the underlying causes of performance deficiencies, or identify and evaluate alternative solutions. Thus, when new projects are included in the plan, it is often with the expectation that more detailed corridor and/or project level studies will follow.

In this setting, the appropriate system-level analysis may consist of:

- Identification of transportation needs and potential alternatives;
- Overlays of environmental resources/constraints;
- Programmatic impact assessments;
- Advance mitigation agreements/mitigation banks;

ENVIRONMENTAL ANALYSIS IN SOUTH EAST WISCONSIN PLANNING

The Southeastern Wisconsin Regional Planning Commission (SEWRPC) is making efforts to link planning and NEPA by collecting environmental resource data at the planning level. A biologist on staff at SEWRPC works directly with the Department of Natural Resources and the Army Corps of Engineers to identify and confirm existing wetlands in the region. As the regional transportation plan is prepared, the GIS database is referenced to determine where potential impacts may exist. In their process of preparing the regional transportation plan, SEWRPC is bringing together a group of resource agencies, including the DOT, FHWA, EPA, DNR, ACOE and others, every few months to discuss the projects under consideration and the potential impacts to environmental resources.

Statewide and regional system planning may identify environmental resources that are likely to be impacted by transportation facilities and services. Investigations can be initiated at the regional level to determine resources of concern. Background data may be consolidated into an environmental constraints map or similar overlays to identify potential impacts. Environmental data may be reviewed with environmental regulatory/resource agencies and revised as necessary to maintain a current and reliable database of information.

A GIS or similar database of information can consolidate environmental information and make it readily available for planning (see Chapter 7). Overlays of this sort can help a transportation agency to assess the overall impacts of a plan or program, including programmatic or cumulative impacts, and engage in early cooperative discussions with cognizant environmental agencies.

To determine the level of appropriate detail at the system planning stage, planners might ask the following questions:

Why are we performing environmental analysis in system planning?

There are many possible reasons for performing environmental analysis in system planning – to help identify and evaluate alternative transportation solutions, to engage environmental agencies in early discussions, to address environmental issues raised by other agencies and the public, to avoid conflicts with and/or support resource protection initiatives, to assess cumulative impacts of the plan, to satisfy Federal planning requirements, etc. The level of detail that is appropriate will reflect the goals of the analysis, and what it takes to satisfy them.

What is the decision at hand?

Adoption of the plan may entail changes in policy, the selection of new projects, or changes in priority. The appropriate level of environmental analysis may hinge on understanding the decision to be made and what decision-makers need to know to make informed choices.

Decisions to screen out alternatives or to select from among conceptual alternatives require less detail than decisions among more detailed project alternatives. For an evaluation of conceptual alternatives, such as mode and facility type, impacts are often expressed in ranges (5 to 10 acres of wetlands, for example) and are usually sufficient to differentiate among alternatives. Where quantification is not possible, subjective assessments are often performed, perhaps using a high/medium/low scale and relying on expert opinion. This is less than the analysis for project level decisions (such as alignment, interchange configuration, and station location) when the more precise level of analysis typically associated with NEPA is expected.

Is the intent for this decision to stick, or will the decision be revisited later?

Agencies may adopt projects into a plan as a "placeholder", knowing that future, more focused corridor and/or project analyses will provide an opportunity to revisit the decision. In this situation, it may be logical to defer some environmental analyses to that later stage.

To reach decisions at the system planning level that are likely to stick over time, without reopening later, more detailed analyses of alternatives and their impacts are apt to be necessary. Such situations are covered in the next section of this chapter.

Corridor/Sub-Area Planning

With a more focused geographic scope, corridor and sub-area planning allows for more focused analyses into purpose and need, alternatives, and their costs, benefits and impacts. Corridor planning – often viewed as a "bridge" between system planning and detailed project planning – provides a way to sort through alternative project concepts in sufficient detail to make an informed choice. Whether or not a NEPA document is developed (see Chapter 4), corridor and sub-area planning is often undertaken in the hope that the decisions will "stick" and be sustainable through the NEPA process. There are also procedural and institutional barriers, real or perceived, that may need to be overcome (see Chapter 2).

Assuming that these barriers are overcome, this section of the toolbox offers suggestions for reaching decisions on project concept that will hold up over time. The suggestions are organized along the lines of the major technical elements of these studies, particularly those that relate to NEPA documents, including purpose and need, alternatives, and environmental impact analysis. While there is no simple answer to the question "How much is enough?" planners might continually ask themselves:

- Would more detailed analysis help decision-makers make better choices for the decision at hand?
- What would be the consequences of overestimating or underestimating costs, benefits, or impacts at this stage of the process?
- How can the inherent risks and uncertainties be managed?

In theory, the level of detail for a corridor study that includes a NEPA document should be no greater than the level for a similar study without a NEPA document.

What level of analysis is sufficient to determine the purpose and need?

To reach a sustainable project concept decision in corridor/sub-area planning, one must first define purpose and need in a way that will be sustainable. Problem statements should be based on thorough analyses and reflect conditions that are not likely to change over time. Changes in population and employment forecasts, regional policies and plans, demand forecasting models, and other factors can cause purpose and need to become stale over time.

Tips for developing a solid purpose and need statement in corridor planning include:

- Seek to understand the underlying causes of performance deficiencies. Highway congestion, for example can have many causes – supply/demand imbalances, merging and weaving, frequent incidents, outdated design standards, conflicting land uses, etc. – each of which may lend itself to a different set of solutions.
- Use trip table data, select link analyses, and similar techniques to identify and analyze travel markets to gain an understanding of the underlying travel patterns.

Federal guidance on purpose and need can be found on FHWA's web site.[1] In addition, FTA's Procedures and Technical Methods for Transit Project Planning[2] contain an Annotated Outline for Alternatives Analysis/Draft EISs. The outline provides a structure and identifies topics for purpose and need statements prepared in corridor/sub-area planning.

What level of definition is appropriate for the alternatives?

In the early stages of corridor/sub-area planning, alternatives tend to be defined very conceptually (e.g., mode, number of lanes, termini). Facility locations may be defined as broad corridors, perhaps a mile or more wide, within which there may lay multiple alignment options. The description of each alternative tends to become more detailed and more refined as a corridor/sub-area study progresses, as some alternatives are screened out, and as the remaining ones are fleshed out in greater detail. Ultimately, the study may focus on a small set of the most promising alternatives or concepts, defined in sufficient detail to develop information on their relative costs, benefits and impacts. This can include typical sections (often different sections for different sections of the route), plan and profile drawings (1"=200' scale is typical), and an approximate footprint for interchanges, transit stations, and the like.

The analysis of design options within a concept – such as interchange configurations and transit station locations – can often be left for later stages of project development. However, some alternatives, or some aspects of a particular alternative, may warrant more detailed development in order to provide a sufficient understanding of costs, benefits and impacts to support the selection of a preferred concept that can be sustained through project development.

[1] http://environment.fhwa.dot.gov/projdev/tdmelements.htm

[2] http://www.fta.dot.gov/grant_programs/transportation_planning/major_investment/technical_guidance/16352_ENG_HTML.htm

What level of environmental analysis is appropriate in corridor/sub-area planning?

Environmental information is needed at each step of decision-making, starting with screening and extending to the selection of a preferred concept. Procedurally, decisions are subject to challenge under NEPA if environmental factors are not considered. There is also a risk that unrecognized environmental impacts would cause decisions to be revisited.

The environmental analysis in corridor/sub-area might be described as comprehensive and sufficiently detailed or precise for the decision at hand. Relative comparisons between the concept alternatives often provide sufficient information for informed choices on a preferred concept. For each alternative concept, the environmental analysis might address such questions as:

- Does an alternative have any fatal flaws?
- Does this alternative have greater or lesser impacts than the other alternatives?
- Can the impacts be avoided, minimized or mitigated, and at what cost?
- What procedural hurdles – Section 4(f), Section 106, Section 404, etc. – would be triggered by this alternative, and how might these hurdles affect prospects for timely implementation?
- What are environmental resource/regulatory agencies telling us about this alternative?

A corridor/sub-area study may lead to the selection of a program of projects, with each project to be advanced through NEPA separately. In such cases the corridor/sub-area study might provide an analysis of cumulative impacts that can be included in each of the project-level documents.

How should mitigation measures be identified at the corridor planning level?

While specific mitigation commitments are not normally made before NEPA documentation is underway, the potential opportunities to avoid, minimize and mitigate adverse impacts are likely to be greater in corridor planning than in subsequent, more focused project studies. In corridor planning, the cost of avoiding, minimizing, or mitigating an impact may sway a project concept decision from one alternative to another. Environmental resource/regulatory agencies may be more comfortable with the selection of a project concept alternative if discussions on mitigation have begun, even if formal mitigation agreements have not been struck.

Pursuant to SAFETEA-LU, future statewide and metropolitan transportation plans will be expected to include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.[3] Federal guidance on the implementation of this requirement can be expected soon.

[3] Sections 6001(a) of SAFETEA-LU amended 23 USC 134 (Metropolitan Transportation Planning) and 23 USC 135 (Statewide Transportation Planning), effective July 1, 2007.

DEALING WITH RISK AND UNCERTAINTY

In planning there are multiple risks and unknowns that can threaten the sustainability of decisions. These may result from the inherent uncertainty of planning estimates, or the passage of time between planning and project development. Decisions reached in planning may need to be revisited when:

- New alternatives are identified later in project development, perhaps during scoping for the NEPA document;
- New or more severe environmental impacts are discovered as the project becomes more fully defined;
- The affected environment changes;
- Public support wanes, or controversy emerges;
- Project costs increase, or revenues decline, forcing the agency to seek less costly solutions
- Travel forecasting models or input data are updated; or
- Environmental laws and regulations change;

Planning studies can be managed with these risks in mind, and include strategies for minimizing them.

What strategies are transportation agencies using to reduce the likelihood that planning decisions will need to be reopened in project development?

One set of strategies seeks to improve the quality of planning, to reduce the risk that new alternatives will emerge or that new impacts and costs will be revealed. Specific strategies include:

- More detailed analyses at the corridor/sub-area level to more fully develop the alternatives and obtain better estimates of costs, benefits and impacts;
- Conducting NEPA scoping as part of the planning study, even if a NEPA document is not part of the study scope;
- Use of peer reviews and other quality assurance tools;
- Risk assessments and mitigation plans;
- Involving resource agencies in planning (see Chapter 6).

NEPA RISK ASSESSMENT IN UTAH

The Utah Department of Transportation convened a Risk Management Team to offer advice on the Mountain View Corridor NEPA process. The team's suggestions included risk management strategies for:

- Land use projections,
- Purpose and need,
- Alternatives screening,
- Stakeholder involvement, and
- Decision process

Even in the best of situations, uncertainties will remain given the very nature of planning – limited resources, limited information, many alternatives, etc. It may be prudent to target scarce resources to address those aspects of an alternative that pose the most significant questions or risks, including environmental aspects that may undermine an alternative's viability or significantly increase its cost. While such expenditures increase the cost of planning, they may reduce the total cost of planning and project development.

Another set of strategies is designed to reduce the amount of time between the planning study and completion of NEPA. Strategies include:

- Viewing the planning and project development phase as part of a single continuum of decisions, and developing schedules for each phase based on the overall continuum; or
- Delaying the planning study until funding to complete project development can be foreseen.

Good documentation of the planning analysis also helps to reduce risk. As a project moves from planning to project development, the lead agency may change, and transportation and environmental agency staff can be expected to turn over. Planning documentation not only preserves institutional memory, but also can show that NEPA principles were followed within planning, and environmental factors were an inherent part of planning decisions.

FOR MORE INFORMATION:

Southeastern Wisconsin Regional Planning Commission (SEWRPC)
http://www.sewrpc.org/

6. COLLABORATION

Effective transportation planning and project development hinge on the participation and involvement of many public agencies, as well as the public at large. Non-transportation agencies, whether they have approval or permitting responsibilities or less formal opportunities to comment, exert considerable influence and can slow or stall project delivery. As noted in Chapter 3, involvement of other agencies and the public is one of the fundamental principles of NEPA. Additionally, SAFETEA-LU includes new consultation requirements for transportation planning, as outlined later in this chapter. Simply put, a successful foundation for NEPA cannot be laid in planning without the early and effective involvement of many agencies.

This chapter addresses techniques for facilitating early collaboration and coordination among transportation planners and environmental specialists. It addresses such questions as:

What is collaboration, and what are its benefits and challenges?

A variety of terms are used to describe different forms of interaction – coordination, consultation, cooperation, collaboration – some of which are defined in law and regulation. Collaboration tends to refer to the act of working jointly to achieve a shared vision or mission, using shared resources. Collaboration can enable agencies to accomplish something jointly that one agency could not accomplish alone. Challenges to collaboration may be individual, organizational, and systemic.

What techniques are being used to foster collaboration between transportation and environmental agencies?

Transportation and environmental agencies are using a wide range of techniques. This toolbox organizes them into five categories – environmental stewardship, interagency agreements, committees and working groups, decision points, and the funding of resource agency positions.

What techniques are used to foster collaboration between the planning and environmental units within a transportation agency, and between MPOs and implementing agencies?

A variety of techniques are being used to foster collaboration between the planning and environmental units of a State DOT, and between MPOs and implementing agencies. This toolbox discusses agency reorganization, cross-functional training, rotational assignments, pilot studies, checklists and manuals.

COLLABORATION BASICS

Before discussing specific techniques, it may be helpful to review what collaboration means, what its benefits can be, and some of the challenges it poses.

LEVELS OF JOINT ACTION

Networking: exchange information

Coordination: exchange information and link existing activities for mutual benefit

Cooperation: share resources for mutual benefit and to create something new

Collaboration: work jointly to accomplish shared vision and mission using joint resources

What is Collaboration?

There is no standard definition of collaboration. Agencies and individuals engaged in addressing transportation planning, project development, and environmental protection and compliance may have their own unique definitions. Common characteristics include such notions as working together, a shared purpose or goal, and joint ownership of the work, risks, results, and rewards.

Government agencies will partner or collaborate with one another or with other organizations when they recognize that mutual benefits may be achieved. Collaboration usually involves one agency making an initial offer to work jointly with other agencies. This initial offer gets other players to the table. Once the partners are convened, the second task is getting everyone to realize that they have to contribute something themselves for the partnership to succeed.

Interagency collaboration represents one of the most challenging aspects of environmental streamlining and stewardship efforts. It often involves forming new relationships and altering established ways of doing things. The key to success is not formal and rigidly defined institutional structures, but informal negotiation and compromise. Collaborative planning also requires resources and time, as the collaborating organizations have to learn about and establish trust with one another. The results of such efforts may not be readily perceived, but can become apparent over time as the plans are implemented more quickly and result, ultimately, in improved decisions and system performance.

Many factors can influence the success or failure of collaboration. Each effort must find its own best way to proceed, and no two efforts will progress in exactly the same way. The following checklist might be used as a guide:

- Involve all key players;
- Choose a realistic strategy;
- Establish a shared vision;
- Agree to accept disagreement during the process;
- Make promises you can keep;
- Keep your eyes on the overall vision and don’t lose sight of the forest for the trees;
- Build ownership at all levels of the agency or organization;
- Do not let "technical difficulties" impede the development of a shared vision;
- Institutionalize change; and
- Publicize your success.

What are the benefits of collaboration?

Collaboration can enable agencies to accomplish jointly something that one agency alone could not accomplish. A generalized list of benefits might include:

- Better use of scarce resources'
- Higher quality, more integrated outcomes;
- Integration of diverse perspectives to create a better appreciation and understanding;
- Better cooperation for solving problems;
- Increased trust and understanding among individuals and organizations;
- Potential for organizational and individual learning;
- More timely results; and
- Better ability to achieve desired outcomes.

What are the challenges of collaboration?

Many agency officials and staff are aware of the challenges and failures of collaborative efforts. Interagency collaboration can break down as a result of turf battles or agency/individual self-interests. Four levels of "hurdles" or challenges to collaboration are:[1]

- Individual;
- Organizational;
- Societal; and
- Systemic.

The challenges most applicable to collaboration between or among transportation and environmental resource agencies are individual, organizational and systemic.

SAFETEA-LU AGENCY CONSULTATION PROVISIONS

For state and metropolitan transportation planning activities, states and MPOs will be required to:

- consult, "as appropriate" with State and local agencies responsible for:
  - » land use planning,
  - » natural resources,
  - » environmental protection,
  - » conservation, and
  - » historic preservation
- consider, state conservation plans and maps and inventories of natural or historic resources, if available, as part of the planning process

Metropolitan and statewide transportation plans must include a discussion of types of potential environmental mitigation activities, to be developed in consultation with federal, state and Tribal wildlife, land management, and regulatory agencies. In developing the Long-Range Statewide Transportation Plan, states must also consult with federally-recognized Tribal agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

In addition, the USDOT is mandated to "encourage" MPOs, as part of planning activities, to consult with officials responsible for other types of planning activities that are affected by transportation in the area, including state and local officials responsible for:

- planned growth,
- economic development,
- environmental protection,
- airport operations, and
- freight movements

or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

[1] Linden, Working Across Boundaries: Making Collaboration Work in Government and Nonprofit Organizations (2002).

Individual Hurdles. One of the primary hurdles often identified as a barrier to collaboration is "turf" – an individual's or unit's desire to define and protect it's position in the agency and its fear of losing control, autonomy, authority, and resources. Unless checked by management, turf issues and personal agendas can supplant agency policies and philosophies.

Organizational Hurdles. Transportation and environmental agencies have unique missions, goals, and authorities, as do different departments or divisions within an organization. Ideally, the differences will be complementary; however, when coupled with different rules, cultures and values, collaboration can be challenging. Differences in the professional background, expertise, and perspective of agency staff can create challenges in both understanding and valuing the contribution of the other agencies. Additionally, agency officials often do not want to give up control over resources and may fear that their missions will be compromised. These concerns can greatly impact the sharing of information, causing agencies to communicate only when necessary, be guarded with information, and worry that information could come back to haunt them.

AGENCY VIEW POINTS

"The costs of delay are enormous! Get the key people, including the resource agencies to the table as early as possible."
Environmental Planning Manager
Washington State DOT (WSDOT)

"Relationships are critical, and they must be ongoing. A transportation agency can't expect as much help if it only talks to the resource agencies when they need them. The resource agencies are just like the rest of us – they don't like nasty surprises."
Environmental Planner
Oregon DOT

"We work best when we work together."
North Carolina Natural Resource Commission

"With the Efficient Transportation Decision-Making (ETDM) process in place transportation systems in Florida will be cleaner, smarter and cheaper. We'll be able to cost effectively address mobility and accessibility issues while protecting the environment."
U.S. EPA

Systemic Hurdles. Environmental compliance or regulatory responsibilities applicable to transportation planning and project implementation are fragmented among and within federal, state and, sometimes, local agencies. This fragmentation can create both a barrier to and greater need for collaboration. The following factors may pose challenges to collaboration efforts.

- Substantial differences in ideologies, values, and/or beliefs;
- Either no one has enough power to bring the "right" players together or the "wrong person" leads the meetings;
- Power must be shared even if it is not equal among members;
- History of past conflict among collaborators;
- Lack of commitment to the process;
- Competition among potential collaborators; and
- Lack of necessary personnel, time, skills or funding to contribute to the effort.

The challenge of limited funding and staff resources, both at transportation and environmental agencies, was frequently cited in the Linking Planning and NEPA seminars and workshops.

What should collaboration in planning strive to accomplish?

Ideally, collaboration in the transportation planning process will result in agreement on project concept and scope. At a minimum it may lead to concurrence that the planning process provides reasonable basis for proceeding with more focused project refinement.

Why should transportation agencies invite environmental resource agencies to participate in planning?

In addition to complying with SAFETEA-LU provisions, the broader purpose is to integrate environmental values into the decision-making process at all levels, from system planning through project-specific design, construction and maintenance. To achieve this objective, transportation agencies must reach beyond their normal processes and search for solutions that better coordinate the transportation development process with the environmental protection and enhancement processes. Success will be reflected in higher quality decisions, greater consensus, and timelier project delivery.

The integration of environmental values into transportation decision-making is given priority in Executive Order 13274[2], Environmental Stewardship and Transportation Infrastructure Project Reviews, which emphasizes the importance of expedited transportation project delivery while being good stewards of the environment. The Executive Order directs Federal departments and agencies to take appropriate actions, to the extent consistent with applicable law and available resources, to promote environmental stewardship in the nation's transportation system and expedite environmental reviews of high-priority transportation infrastructure projects. It also tasks the U.S. Secretary of Transportation, in coordination with other agencies as appropriate, to advance environmental stewardship through cooperative actions with project sponsors to promote protection and enhancement of the natural and human environment in the planning, development, operation, and maintenance of transportation facilities and services.

Are environmental resource/regulatory agencies interested in participating in planning?

Environmental agencies in many states are willing and active participants in efforts to achieve greater integration of transportation and environmental goals and objectives in the decision making process. In virtually every one of the Linking Planning and NEPA seminars and workshops that FHWA and FTA sponsored during 2004 and 2005, environmental agencies expressed both willingness and a desire to participate in planning. Environmental agencies recognize that their participation in planning would give them greater opportunities to:

- Influence land use, development, and transportation policies on a broader scale;
- Proactively address environmental concerns and promote environmental stewardship;
- Affect early decisions on transportation projects and priorities; and
- Secure mitigation on a programmatic basis, where it may be more effective.

While expressing a willingness to participate in planning, environmental agencies also noted funding and resource limitations that make it difficult for them to be involved to the degree they might desire (see Chapter 2).

[2] http://www.fhwa.dot.gov/stewardshipeo/eo13274.htm

TECHNIQUES FOR INTERAGENCY COLLABORATION

Techniques that foster collaboration between transportation and environmental resource/regulatory agencies tend to fall into seven categories – environmental stewardship, interagency agreements, committees and working groups, concurrence points, programmatic approvals, conflict resolution, and the funding of resource/regulatory agency positions. Each of these is described in this section along with examples. When initiating some form of collaboration, agencies may want to consider starting their work together with less intensity or at lower levels of collaborative action (e.g. through networking and sharing of information) to build the necessary relationships and trust prior to engaging in more active forms of collaboration.

Environmental Stewardship

Agencies that embrace environmental stewardship seek to develop plans, programs and projects that meet both transportation and environmental goals. By so doing, they can build trust that may result in quicker program delivery.

STEWARDSHIP IN OREGON

The goal of the Collaborative Environmental and Transportation Agreement on Streamlining (CETAS), signed by Oregon DOT and 10 other agencies in 2001, was

"to identify and implement collaborative opportunities to help each participating agency realize its mission through sound environmental stewardship, while providing for a safe and efficient transportation system."

There is no single definition of transportation environmental stewardship. Individuals and agencies involved in transportation arrive at a working definition of stewardship based on their own experiences, interests, and unique needs. However, underlying any definition of environmental stewardship is a commitment by transportation agencies to make environmental protection and environmental enhancement an integral part of their mission. This commitment may be met by:

- Making decisions based on an understanding of the consequences to natural, human-made, and social environments;
- Instilling and promoting individual and organizational attitudes, ethics, and behaviors that support protecting and enhancing the environment;
- Enhancing environmental conditions, aesthetics, and quality of life when possible; and
- Integrating environmental protection as a "core business value".

The American Association of State Highway and Transportation Officials (AASHTO) created an organizational structure for the discussion of environmental stewardship efforts around the country. The three categories or levels of environmental stewardship, described in the box to the right, are intended to assist state transportation professionals to frame their thinking about the various paths to effective stewardship.

In addition to the State Practices Database found on the FHWA Environmental Streamlining and Stewardship web site[3], the AASHTO Center for Environmental Excellence[4] web site highlights efforts in the three stewardship categories submitted to its Best Practices in Stewardship competition. While specific agency techniques vary, common goals of environmental stewardship for transportation agencies typically include:

- Development of an agency-wide commitment to environmental excellence;
- Improvements in the relationships of transportation agencies with resource and regulatory agencies, the public, and others involved in transportation; and
- Achievement of environmental streamlining goals through better environmental performance.

Can transportation agency missions be broadened to include goals other than transportation?

The primary mission of transportation agencies is to provide transportation facilities and services, and to do so in a way that avoids, minimizes, and mitigates adverse environmental impacts. Many transportation agencies have accepted a broader mission that integrates environmental, transportation, and possibly other goals. For example:

- The Antelope Valley Project in Nebraska – a collaborative effort of the City of Lincoln, the University of Nebraska-Lincoln, and the Lower Platte South Natural Resources District – developed a program of projects to meet transportation, flood control, and urban revitalization goals (see Chapter 3).
- The I-405 corridor study in Washington State was a collaborative effort to meet both transportation and environmental goals, including habitat protection for endangered salmon. It used a watershed-based strategy to achieve the greatest environmental benefit, identified environmental resource protection needs and issues, and where possible, sought to remedy previous actions that had negatively impacted the environment (see Chapter 4).

Interagency Agreements

Interagency agreements are formal, written agreements between two or more agencies or organizations. The agreements can be simple or complex. Agreements may be broad-based and document a shared understanding on a subject or shared goals among various agencies. Conversely, they may be process-oriented and focus on one element of the transportation decision making process, such as integrating the Section 404 permitting process with other planning and project development processes, and focus on specific agency roles and responsibilities.

[3] http://environment.fhwa.dot.gov/strmlng/index.asp
[4] http://www.environment.transportation.org/indexnew.asp

What do interagency agreements achieve?

Interagency Agreements can foster the early involvement of environmental, regulatory, and resource agencies in the planning and project development process. Agreements can address numerous topics, including:

- Integrated/coordinated process;
- Exchange of data;
- Establishment of formal and informal consultation and review schedules;
- Process for resolving conflicts or disputes;
- Adoption of performance objectives; and
- Development of mitigation strategies.

Interagency agreements are intended to be used as a framework for cooperation, and a useful tool to document cooperation and cooperative efforts. The development of an agreement is a way for agencies to work together to resolve differences and create an official statement championing their ideas on a subject(s). The agreement becomes formal evidence of the agency's level of commitment to change and can foster further cooperation.

What different types of agreements are used?

Interagency agreements can take a variety of forms and be referred to by a variety of names – memoranda of understanding (MOU), master agreements, operating agreements, funding agreements, and programmatic agreements (PA).

Memorandum of Understanding. A MOU is usually the first step to agreeing to work together and to develop the framework of a decision-making process involving several agencies. In this type of agreement, the involved parties may state that they agree to support the development of a process that is currently under development, or they may agree to initiate the development process. It is at this time that they agree that their agency will support this framework and provide the necessary staffing, time, and budget to complete the process. A MOU may outline shared goals among all agency signatories. It should also clearly outline an overall process that the agencies can agree on to avoid later conflicts regarding responsibility and direction of the process.

INTERAGENCY AGREEMENT EXAMPLES

Oregon's Collaborative Environmental and Transportation Agreement on Streamlining (CETAS) involves a Charter Agreement signed by 11 agencies and a Major Transportation Project Agreement.

Florida's Environmental and Transportation Decision Making (ETDM) process relies upon a Memorandum of Understanding, Agency Operating Agreements, and Inter-local agreements with MPOs.

State and Federal transportation and environmental agencies from the Mid-Atlantic region developed a Cooperative Agreement that defined common goals, endorsed collaboration, and directed staff – through the Mid-Atlantic Transportation and Environment (MATE) Task Force – to develop a streamlined process and state-specific interagency agreements.

Multiple MOU may be developed to help speed the change process and move forward on those topics or processes where parties have reached consensus. Separate agreements can be implemented for those areas that are more complex and may require more time to resolve. This approach has been utilized by the Florida DOT in the development of interagency agreements

related to the Efficient Transportation Decision-Making (ETDM) process. Three distinct types of agreements have been developed in Florida to speed the process: master agreements, agency operating agreements and funding agreements. If the development of one comprehensive agreement had been attempted, it could have taken much longer to reach consensus and ensure that all ETDM components would be achieved.

Master Agreements. Master agreements are often signed by the agency executive or staff below the executive level. They may outline a process in more detail than the MOU. General roles and responsibilities of all agencies who are party to the agreement may be outlined as well. The Florida DOT executed master agreements with each of the federal and state resource agencies participating in the ETDM process.

Operating Agreements. Operating agreements are similar to master agreements but focus on the specific roles, responsibilities and process for individual agencies. In the Florida ETDM example, operating agreements have been implemented on an agency-by-agency basis that detail specific agency commitments at each step of the ETDM process.

Features that could be covered in a Master or Operating Agreement include:

- The length of time for which the agreement is valid;
- The authority that is granted through the agreement to each participating agency (if no authority per se is granted, the agreement might clearly state the role of each participating agency and how they will work together);
- Performance or other standards addressing the level of agency participation and/or resource requirements;
- Dispute resolution procedures;
- Language regarding the process by which the agreement may be modified or terminated; and
- Procedures and milestones associated with agency participation.

Funding Agreements. A funding agreement documents the amount or level of funding one agency (such as the state DOT) will provide to another agency (often a resource agency) to reimburse them for costs incurred during their participation in the interagency collaboration process. The reimbursement may cover purchase of equipment or materials needed to facilitate resource agency participation (e.g., computer hardware or software) or travel or training costs. Most commonly, a funding agreement is the means by which the lead agency in the decision making process (e.g., transportation agency) funds a resource agency staff position or reimburses the resource agency for staff time to participate in the expedited decision making process. Funding of resource agency positions is further discussed later in this chapter.

A funding agreement helps to promote agreement between agencies regarding how and by whom crucial decision-making positions are funded. They allow the agencies to come to consensus about financial issues before actual implementation of the plan outlined in a master or operating agreement.

Programmatic Agreements. Two types of programmatic agreements are used – process and project agreements. Process agreements establish a custom-designed compliance process for particular agency programs, common kinds of undertakings, common kinds of resources, and/or frequently encountered effects. They can establish processes based upon anticipated level of environmental effect (e.g., categorical exclusions, EA, EIS), by category of projects (e.g., bridge projects) or standard treatments, or resource-specific (e.g., resource programs such as

threatened and endangered species/Section 7 or wetlands) rather than case-by-case consultation processes. They can also allow an agency to fit the compliance process to the agency mission, existing environmental procedures, and the kinds of resources that the agency encounters most often.

Project programmatic agreements establish a custom-designed compliance process for a single undertaking or project. They are useful for large, complex, or controversial undertakings; for undertakings involving many parties; for phased undertakings; and for undertakings whose effects cannot be determined at the early stages of planning. Project-level programmatic agreements allow the parties to establish timeframes, expedited procedures for review and dispute resolution, cost-effective procedures for discoveries, and a process tailored to the exact nature and requirements of the particular undertaking.

A programmatic agreement may also be used as a tool to form creative partnerships that allow agencies to stretch or supplement resource agency staff positions.

How might programmatic agreements be used in planning?

While programmatic agreements have been most commonly used in the project development stage, they may be useful tools for planners as well. For example, the Ecosystem Enhancement Program (EEP) in North Carolina provided for the movement of compensatory mitigation from the Transportation Improvement Program into earlier stages of planning. Oregon's DOT took a programmatic approach to plan for the replacement of nearly 400 aging bridges, securing planning-level permits.

Committees and Working Groups

Committees and working groups are the means by which both intra- and inter-agency collaboration often takes place in the transportation planning and decision-making process. This collaboration technique can require the commitment of staff resources over an extended time period, which may be a drawback for departments or agencies with limited staffing and/or funding resources. Therefore, committee and working group meetings should focus on utilizing techniques that make plan or project information relevant to each participant's mission and role in the decision-making process. Decision-making should be organized to take maximum advantage of people's time when gathered together. The lead or implementing agency should also demonstrate follow-through on how participant input is being utilized in the process.

UTAH'S LINKING PLANNING AND NEPA COORDINATING COMMITTEE

In Utah, a Coordinating Committee has been formed to guide the implementation of measures for linking planning and NEPA. The seven-member committee includes representatives of UDOT's planning and environmental sections, the Utah Transit Authority, and the Wasatch Front Regional Council (MPO for Salt Lake City metropolitan area). Among the techniques considered by the Coordinating Committee are:

- Integrate planning and environmental staff at UDOT and FHWA;
- Involve UDOT's Regions in discussions on linking planning and NEPA; and
- Enhance GIS for planning and environmental purposes, including possible test of merging planning and environmental GIS layers.

State Coordinating Committees. Some states have formed interagency committees with representatives from each of the federal, state and local resource agencies that are involved in environmental decision making. This form of collaboration is most easily implemented in smaller states where there may be fewer projects and the same organizations or individuals are typically involved in a number of projects.

In Maine, for example, an Interagency Group meets monthly to review, discuss, and reach concurrence on projects as they advance through the State DOT's 10-step planning and project development process. The group includes the Army Corps of Engineers, EPA, US Fish and Wildlife, National Marine Fisheries, State Department of Environmental Protection, Inland Fish and Wildlife, Marine Resources, Sea Run Salmon Commission, Historic Preservation Commission, and the State Land Use Regulation Commission.

Regional Coordinating Committees. Technical committees and similar groups are often established to foster coordination as part of the regional transportation planning process. These typically include representatives of the MPO, State DOT, transit agency, and local governments. Federal agencies often participate, as well. Following a Linking Planning and NEPA workshop in Salt Lake City, the Wasatch Front Regional Council and Utah DOT set up a committee to coordinate the implementation of the workshop recommendations (see box).

Project and Corridor Teams. Coordination teams are often created for specific corridor studies and/or projects. Under its Streamlined NEPA Process, Indiana DOT (INDOT) forms a Project Coordination Team at the beginning of the EIS process to provide input to the development of the consultant scope of services and guidance to the project consultant at each step of the project development process. The Project Coordination Team includes a representative from INDOT (and another State DOT if applicable), FHWA, FTA (if an FTA New Start may be involved), and the MPO (if the project study area is in an MPO area). The Project Coordination Team is intended to improve coordination among planning agencies (the MPO and INDOT), the agencies with primary responsibility for the NEPA process, and resource agencies.

Washington State's I-405 corridor study offers another example. For this complex three-year study, a formal decision-making structure was established to include an Executive Committee, a Citizens Committee, and a Technical Steering Committee. Staff representatives from the five co-lead agencies, local governments in the corridor, and state and federal resource agencies were part of the Technical Committee.

The advantage of project teams is that the informational materials, decision and concurrence points, and analysis can be tailored to the unique characteristics of a particular study or project. This works best where the regulatory-based analyses (e.g., permitting requirements) can be anticipated in advance, and where participants and agencies have the resources to devote to participating. A disadvantage is amount of staff time required. In the I-405 case, resource agencies suggested afterwards that they were not sure they added value throughout the study, and that resource agency issues might have been prioritized better.

Concurrence Points

A number of transportation agencies have developed processes through which environmental resource agencies are asked to sign off or concur at milestone decisions points during the life of a project, sometimes starting in planning. Typical concurrence points for a project have included:

- Purpose and need;
- Evaluation criteria;
- Screening and selection of alternatives for detailed analysis;
- Results of environmental analysis;
- Selection of the preferred alternative; and
- Mitigation

Such concurrences do not guarantee that the resource agency will ultimately issue a permit or give other approvals that may be required. Nevertheless, they have been seen to offer several benefits to transportation and environmental agencies alike. For transportation agencies, they give reason to expect that environmental agencies will participate and raise issues early, at a point when the transportation agency can most easily respond. For environmental agencies, they offer an official and potentially influential role in the decision-making process.

Formal concurrence points have fallen out of favor. Transportation agencies contend that environmental agencies use them to hold up projects, even when resources under the environmental agency's protection are not threatened, and that environmental agencies usurp transportation agency authority. Resource agencies claim that they are pressured to concur even when they are not comfortable doing so, and that staffing limitations prevent them from giving projects sufficient attention at the early stages. In 2003, CEQ addressed the matter of concurrence on purpose and need in a letter to FHWA (see box).

CEQ LETTER ON PURPOSE AND NEED

In May 2003, the Chairman of CEQ wrote to Secretary of Transportation Norman Mineta to offer guidance on Purpose and Need. The letter states, in part:

"The lead agency – the federal agency proposing to take action – has the authority for and responsibility to define the 'purpose and need' for purposes of NEPA analysis…. Federal courts generally have been deferential in their review of a lead agency's 'purpose and need' statements…

"In situations involving two or more agencies that have a decision to make for the same proposed action…, it is prudent to jointly develop a purpose and need statement that can be utilized by both agencies."

Section 6002 of SAFETEA-LU further speaks to concurrences by establishing requirements for efficient environmental reviews (box on next page). The statute clarifies lead agency responsibilities and requires the preparation of a coordination plan for projects that initiate the preparation of an EIS subsequent to enactment.

When establishing a coordination plan, the transportation agency may wish to consider such questions as:

- What is the strength of the agreement that you seek from resource agencies?
- What kind of a commitment does that entail?
- What do you want to achieve and what is reasonable to expect?

- Who has the authority to decide within each agency?
- What resources will be required to achieve this level of agreement?

Programmatic Approvals

Programmatic approvals are employed where multiple actions of a similar type or location are batched together under one process to capitalize on economies of scale. Programmatic approvals are more common in the project development process, but these concepts can be initiated at the planning level. One example is Oregon's Statewide Bridge Delivery Program, where over 400 bridge repair and replacement projects were evaluated utilizing a comprehensive mitigation and conservation strategy and batched biological assessment with programmatic elements (see Chapter 4).

Conflict Resolution, Negotiation, Mediation

It may be advisable to have a dispute resolution process in place so that disagreements can quickly be elevated to higher levels in the respective agencies. Otherwise, the overall process may stall. Dispute resolution procedures may be mutually determined up front, before disagreements occur and positions have hardened.

In Oregon DOT's Newburgh-Dundee project (see Chapter 4) the Collaborative Environmental and Transportation Agreement on Streamlining (CETAS) partners reached agreement on purpose and need, alternatives, and evaluation measures, but initially disagreed on the preferred alternative. Dispute resolution procedures in the CETAS agreement were used, ultimately leading to agreement on the project and associated mitigation measures.

SAFETEA-LU PROVISIONS ON EFFICIENT ENVIRONMENTAL REVIEWS

Section 6002 of SAFETEA-LU speaks to the role of lead and participating agencies in defining purpose and need and establishing the range of alternatives as follows:

(f) PURPOSE AND NEED.—
(1) PARTICIPATION.—As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.
(2) DEFINITION.—Following participation under paragraph (1), the lead agency shall define the project's purpose and need for purposes of any document which the lead agency is responsible for preparing for the project.

(4) ALTERNATIVES ANALYSIS.—
(A) PARTICIPATION.—As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.
(B) RANGE OF ALTERNATIVES.—Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

The act also calls upon the lead agency to develop a coordination plan:

(A) IN GENERAL.—The lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

Section 6002 of SAFETEA-LU (see Appendix A) offers a procedure for issue resolution that may be used where necessary.

Funding of Resource Agency Positions

Recognizing that environmental resource/regulatory agencies are constrained in their ability to participate in transportation planning and project development due to staffing and other resource limitations, some State DOTs have agreed to fund environmental agency positions. The review of NEPA documents and the processing of permits can be sped up when resource agencies have staff dedicated to work on transportation projects.

Under Florida's funding agreements, for example, a resource agency's funded staff is required to give priority to FDOT projects (or work exclusively on FDOT projects) and to provide expedited coordination, technical assistance, and documentation review. The funding of environmental agency positions was eligible for Federal-aid participation under Section 1309 of TEA-21[5], provided the funds were used:

- To meet environmental review time frames established for a specific project or projects.
- For the additional resources that are needed for the Federal agency to meet the time limits established for environmental reviews; and
- For work that is necessary to meet an agreed-upon time limit for those projects that is shorter than a customary time limit.

The use of Federal-aid funding to support environmental agency positions was discussed at many of the Linking Planning and NEPA seminars and workshops. It is not apparent that such assistance is being offered to support environmental agency involvement in planning.

Eligibility for Federal funding was broadened under Section 6002 of SAFETEA-LU and now includes "transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements".

Resource agencies may also seek additional funding in their own budgets so that they can sufficiently staff their agencies. Just as transportation agencies have recognized a broader mission, resource agencies might marshal the resources needed for a collaborative effort.

TECHNIQUES FOR COLLABORATION WITHIN TRANSPORTATION AGENCIES

Within a State DOT or other transportation agency, planning and environmental staff may be located in different units, each with its own sets of responsibilities, procedures, and priorities. Some state DOT's, for example, have organized in such a way as to include environmental staff within a project development/ engineering department. DOT environmental staff may not become involved in a project until it reaches project development and a NEPA document is required.

MPO planners are apt to be in regular contact with planners at the State DOT and transit agency, but they may have far less contact with the NEPA staff. Similarly, environmental resource/regulatory agencies may have separate planning and permitting staff.

[5] http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm

Techniques that have been used or considered to increase collaboration within transportation agencies, or between transportation planning and implementing agencies, include reorganization, cross-functional training, rotational assignments, pilot studies, checklists, and manuals.

Agency Reorganization

A number of State DOTs have reorganized to put their planning and environmental staff in the same unit. In Maine, for example, an Environmental Coordination and Analysis unit was created within Maine DOT's Bureau of Planning. Responsibility for EIS and EA preparation was moved from the Project Development and Design unit into Planning, along with associated staff resources. This was intended as a very visible action to institutionalize Maine DOT's determination to become more environmentally conscious. NEPA documents are now seen as a decision tool, rather than an attempt to justify past decisions. When a project leaves the Planning Bureau, it has a ROD, FONSI or CE and is ready for design. MDOT top management moved people from environment and design into planning, which made their commitment to change more visible.

In Idaho, the State Transportation Department is considering ways to redesign staff positions to make a more seamless transition between planning and project work. The State may reestablish corridor planning and environmental section positions.

Cross-functional Training and Rotational Assignments

In their Linking Planning and NEPA Action Plans, State DOTs and MPOs in California, Tennessee, Minnesota, South Carolina and Utah identified training and rotational assignments as tools they intend to use to help planners become more conversant in NEPA, and vice versa.

Pilot Studies

When a new approach seems to involve risk, pilot studies offer a less risky way to determine whether the new approach should be used more broadly. Lessons learned from pilot studies afford opportunities to change the approach and/or develop guidelines. Many States and MPOs are using pilot studies to improve collaboration and information sharing between planning and project development:

- In Arkansas, the State DOT is using GIS tools on a pilot basis to identify environmental impacts early in project planning. The pilot project has fostered better coordination between the Department's planning and NEPA units.
- New Jersey DOT experimented with a more collaborative, conceptual planning approach for the I-295 project in Southern New Jersey. It plans to document the experience and assess its applicability elsewhere in the state.

Training, Checklists and Manuals

To help State DOT and MPO planners become aware of and start to address environmental laws and requirements, environmental staff can prepare checklists and manuals offering guidance. In South Carolina, for example, the State DOT intends to develop a template that identifies the information needed from planning and NEPA to make sure decisions are sustainable. The template is to be field tested with MPOs and councils of government for feedback. Similarly, the Action Plan for Washington State calls for the development of environmental checklists that will become part of the Planning Guide. Resource agencies are to be contacted to elicit critical environmental values, potential planning-level checklists and questions, and ideas related to level of detail for planning-level evaluation.

Florida DOT's Efficient Transportation Decision Making (ETDM) process creates linkages between land use, transportation, and environmental resource planning initiatives through early, interactive agency and community involvement. In support of the new process, FDOT developed a manual and a training course to educate FDOT, resource agency and MPO staff on the intent of the new process and procedures. Training is also available in the use of the Internet-accessible, GIS-based software application that supports agency participation and community involvement in the transportation decision-making process. The application provides tools to input and update information about transportation projects, perform standardized analyses, gather and report comments about potential project effects, and provide information to the public.

FOR MORE INFORMATION:

CEQ Letter on Purpose and Need
www.fhwa.dot.gov/stewardshipeo/connaughtonmay12.htm

Florida DOT Efficient Transportation Decision Making Process
http://fdotenvironmentalstreamlining.urs-tally.com/

Interagency Collaboration
Bruner, C., L.G. Kunesh, and R.A. Knuth. What Does Research Say About Interagency Collaboration? Oak Brook, IL: North Central Regional Educational Laboratory, 1992. Available from http://www.ncrel.org/sdrs/areas/stw_esys/8agcycol.htm. Accessed November 2, 2005.

Levels of Joint Action
National Association of County and City Health Officials, A Guide to Building Interagency Collaboration at Hazardous Waste Sites, available at
http://www.naccho.org/topics/environmental/PullingTogetherTool.cfm

7. DATA SHARING

Inter-agency and intra-agency collaboration will often involve the sharing of environmental and other information among and within agencies Information sharing helps to ensure that all participants are working with the same basic data – and reduces the chance that new issues will emerge late in project development and cause earlier decisions to be reopened. By sharing, agencies can also reduce the cost of data gathering, maintenance, and storage. In many of the Linking Planning and NEPA workshops, participants discussed the potential benefits – and challenges – inherent in geographic information systems and other data sharing techniques. This chapter of the toolbox addresses such questions as:

What types of information might agencies consider sharing?

To the extent that MPOs and State DOT planners can access good data on the location and significance of sensitive natural and cultural resources, the better equipped they are to factor these considerations into their planning. Other sharing opportunities include data on demographics, traffic and transportation system performance, design standards and processes, proposed projects, and agency priorities. Agencies might also share data on the status of mitigation commitments.

What techniques are being used to share environmental and other information?

Geographic information systems (GIS) offer an excellent platform for planners to access and use data on a wide variety of topics, including the transportation system and environmental resources. Some agencies are using the Internet to give other agencies access to GIS databases. Internet web sites are also being used to share other information among agencies.

TYPES OF INFORMATION

There is no limit to the types of information that can be shared, both within and among agencies, to facilitate collaboration on transportation and the environment. A partial list might include:

- Population and employment, both existing and projected, by location;
- Income and auto ownership;
- Location of population subgroups, e.g., low income, minority, transit dependent, etc.;
- Transportation system and its performance;
- Transportation plans, programs, and project status;
- Environmental and cultural resources – locations and quality of sensitive resources including wetlands, historic and archeological sites, watersheds, floodplains, habitat, etc.;
- Public comments tracking;
- Mitigation commitments and their status;
- Documents on individual studies and projects, including environmental documents; and
- Environmental and transportation agency processes and standards

Simply providing access to available information may not facilitate collaboration, however. Busy agency staff may not have time to sift through reports, data sets, and so on to find the information that is most relevant to their needs at the time. Tailoring the information to the audience – knowing what they need, making it easy for them to find what they need, and explaining what is most relevant and important – can do more to facilitate collaboration than a "data dump".

Some information, while useful to have, may not be readily available. Environmental agencies may have incomplete or out of date mapping of the resources they are charged to protect. Agencies may need to protect certain data, although it would be of value in planning and developing transportation projects. Some State Historic Preservation Officers, for example, are reluctant to release information on archeological sites for fear that the resources will be put at risk.

How might a public comment and environmental mitigation tracking system be of benefit?

Because there may be a variety of stages in a project's life where public comments and responses are required, it may be useful to keep a record of these for other project members who may need to respond to similar comments. When comments are provided during the transportation planning process, they are most likely still relevant in the NEPA stage. If the comments and responses are tracked, they may be duplicated instead of the need to recreate work.

Environmental commitments may be made at various phases of the process. In corridor planning, the decision to build a roadway may also include an agreement to some type of environmental mitigation. Later in project development, this environmental commitment needs to be reflected in the design plans. If early agreements are not remembered or kept, a project can be delayed or kept from proceeding. South Dakota is one State that included environmental mitigation tracking in its Linking Planning and NEPA Action Plan.

DATA SHARING TECHNIQUES

Environmental databases can be shared within or among agencies. With GIS and a well-maintained database, environmental resource information can be readily accessible to planners and NEPA staff alike. Users can share the cost of data collection, and all can be working with the latest information.

To one degree or another, many State DOTs, transit agencies and MPOs have GIS (or have access to it) and are using GIS as a tool to store, manage and disseminate information. The Arizona DOT and the Southeastern Wisconsin Regional Planning Commission, for example, have their own GIS. To facilitate data sharing, Arizona DOT is developing a data warehouse and has formed a GIS Users Group, while the State has a Geographic Information Council to coordinate among different agencies. In Arkansas, the State DOT is using GIS tools on a pilot basis to identify environmental impacts early in project planning. The pilot project has fostered better coordination between the Department's planning and NEPA units.

Two approaches are used for data sharing:

- A centralized approach, where one unit or agency hosts all of the data layers on a single server, and access is shared, and
- A network approach, where each unit or agency has access to multiple other databases maintained by others.

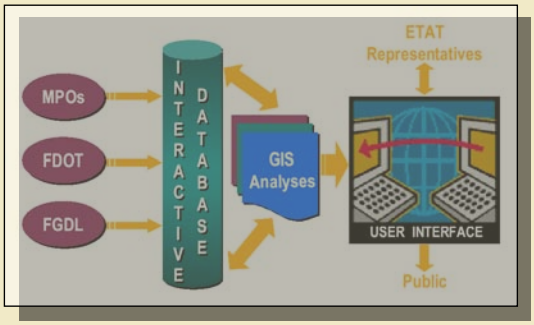
In Florida, a centralized GIS provides an "environmental screening tool" for resource and regulatory agency involvement in the DOT's Efficient Transportation Decision Making (ETDM) process (see Chapter 4 and box).

Why isn't GIS more widely used for data sharing?

In some States and metropolitan areas, GIS is not being widely used. The data may be perceived to be incomplete, unreliable, or hard to find. GIS may be used by project-level NEPA staff, while planners may need training to raise their awareness of available data and tools and how to use them. Many agencies have not had the time or budget to figure out their data and analysis requirements, or to work out the architecture, data maintenance, and other complexities involved in setting up GIS.

FDOT'S ENVIRONMENTAL SCREENING TOOL

Florida's environmental screening tool is an Internet-accessible GIS application that supports the state's Efficient Transportation Decision Making Process (ETDM) process. Project and environmental resource data are input to a database system. Standardized GIS analyses (as prescribed by each resource agency) are automatically performed to identify potential impacts to environmental resources. The results are displayed in the Environmental Technical Advisory Team (ETAT) Review module along with issue-specific maps. Resource agencies need only an Internet connection to view and comment on results. The reports are also available to the public through a read-only web site. The database system houses responses from ETAT members as well as FDOT summaries of public comments.



Issues with GIS were discussed in a number of the FHWA and FTA workshops on Linking Planning and NEPA, and many of the resulting Action Plans included steps to enhance data sharing through GIS. Arizona's Action Plan, for example, noted opportunities for more data sharing, and noted that ADOT could make more people aware of the data it has. Their plan listed more than 10 strategies to enhance their GIS and data sharing. South Carolina's Action Plan noted technological barriers and the need for a data inventory, a data dictionary (to make data more useful), and a database champion to guide development and implementation across agency boundaries.

What role is the Internet playing in information sharing?

The Internet offers an easy way to share information with multiple parties. Most agencies have access to the Internet, and web sites give people, regardless of their physical location, immediate access to information. As in Florida's ETDM process, the Internet may be used to share project and environmental information. Internet web sites can also provide links to agency policies, procedures, analysis tools, forms, and contact lists. Internet "webinars" can be used to conduct virtual meetings on a plan, project, or process.

What kind of information should be available on the Internet for transportation planning?

The Internet offers a simple way to share information – e.g., agency policies and procedures, project descriptions, contact lists – thus improving understanding and facilitating collaboration. If an environmental resource/regulatory agency has access to a State DOT's design standards, for example, it is in a better position to know what measures the DOT is likely to accept for avoiding, minimizing, or mitigating an adverse impact. Databases of information, such as traffic counts or biological resources, are easily shared on the Internet as well.

CALTRANS' USE OF THE INTERNET

The California Department of Transportation, Caltrans, maintains important manuals and publications on the Internet. This extensive list of resources covers everything from construction and engineering services to maintenance and project management. Because this information is readily available, agencies and consultants are able to access this information quickly and easily, potentially speeding up the process of project development.

Caltrans has a Traffic and Vehicle Data Systems Unit available on the Internet. Through this website, traffic counts and other resources are available and widely used by agencies within California for projects. The State maintains data counts on the Internet of at least three years, and they are available by month to show seasonal variations.

FOR MORE INFORMATION:

Caltrans Traffic and Vehicle Data Systems Data
http://www.dot.ca.gov/hq/traffops/saferesr/trafdata/index.htm

8. GETTING STARTED

Each State or metropolitan area that is interested in strengthening the link between planning and NEPA will start from a different place, and will have a different idea of the objectives it wants to achieve. Some have already taken great strides, some want to but are not sure how, and others may be comfortable continuing with past practices that are tried and true. Thus, there is no simple cookbook or list of initial steps.

Yet, based on the 18 Linking Planning and NEPA workshops conducted to date, certain common patterns or early action steps have appeared in many of the Action Plans that participants developed. These may offer ideas for others who wish to go down this path. This chapter addresses the following questions:

What are some of the initial steps that other agencies have taken to start linking planning and NEPA?

As discussed in Chapter 1, the first step may be a self-assessment to evaluate the existing process and how well it is working for all of the participants. This might lead to a set of discussions, among the participating agencies, on potential strategies to address any weaknesses.

The first section of this chapter lists strategies identified most frequently in the Linking Planning and NEPA Action Plans. Once the most promising strategies are identified, necessary funding and other commitments must be secured.

How can I secure each agency's buy-in to these steps?

For each transportation and resource/regulatory agency, the rationale for participating will depend on its own self-interest. Securing buy-in involves asking "What's in it for my agency?" as well as "What's in it for other agencies?"

INITIAL ACTION STEPS

Initial steps vary from state to state and from one metropolitan area to another. Florida and other states at the forefront of linking planning and NEPA started with a "summit meeting" to bring together top executives of the involved agencies and discuss how to work together more effectively. Florida's summit meeting led to a formal agreement (see box on next page) on next steps, including a series of subsequent staff level working group meetings. Similarly, in the Mid-Atlantic States, an Executive Summit of State and Federal executives led to a cooperative agreement directing staff on specific streamlining goals and objectives. To meet these, an interagency Task Force was formed of managers and staff, and the Task Force developed a revised integrated environmental review process.

In North Carolina, the initial action step was an interagency agreement signed by NCDOT, USACE and FHWA integrating Section 404 of the Clean Water Act and NEPA in 1997. The agreement laid out a team approach for all projects needing FHWA action under NEPA and a USACE permit under Section 404. Procedures were established for coordination, consensus and

concurrence points. This agreement was followed, in 2001, by a Memorandum of Understanding among NCDOT, DENR, and USACE to jointly sponsor Permit and Mitigation Process Improvement initiatives, to improve overall workflow effectiveness and efficiency, and to maintain long-term relationships through mutual problem solving. NCDENR, USACE and NCDOT representatives held a one-week facilitated workshop to analyze the current permitting process, identify trouble spots, and redesign the process.

The 18 Linking Planning and NEPA seminars and workshops conducted by FHWA and FTA in 2004 and 2005 sought to replicate some of these same experiences. The initial seminar in each state brought together top executives from transportation and environmental agencies for a discussion of the existing process and how it might be made better. This "summit" provided a "charge" to agency managers, who then used the three-day workshop to develop an Action Plan of next steps.

INITIAL ACTION STEPS IN FLORIDA

In 1999, the State of Florida was selected as a pilot state for developing and implementing a streamlined planning and project development process. This resulted from a "Southern Natural Resource Leaders" group, stimulated by FHWA and EPA.

In February 2000, leaders from 23 federal, state, and local transportation and resource protection agencies participated in a summit meeting on environmental streamlining. The agency leaders committed their support and assigned responsibility to key staff that then worked with FDOT to form a shared vision for Florida's transportation decision-making process.

Following the summit meeting, a working group of over 50 representatives from over 28 agencies worked with FDOT and FHWA in a series of eight multi-agency workshops to examine the current process and develop a more efficient process while protecting Florida's environment. Together, the agencies identified problems with the current processes and desirable characteristics of a streamlined environmental review process. Subsequently the workshop participants developed a conceptual process that they named the ETDM Process. Two focus groups were formed to develop and refine the planning and permitting phase.

The Action plans vary considerably from place to place, depending on the status of prior efforts to link planning and NEPA, the interests of the participating agencies, perceived strengths and weaknesses of the current process, agency cultures, and other factors. Yet, there are some common themes and strategies that are evident in many of these documents (Table 8-1). Short-term strategies that appear in at least half of the Action Plans are:

- Convene follow-up partnering meeting(s) to further refine and build on the Action Plan;
- Create MOUs or other agreements;
- Define or refine the transportation decision-making process;
- Update or develop guidance and manuals to cover purpose and need, the analysis of environmental factors in planning, cumulative effects and other topics;
- Conduct training and cross-training, often using existing courses available from the National Highway Institute and the National Transit Institute;
- Improve the gathering of environmental data, and enhance understanding of data needs and availability; and
- Improve data sharing, often using GIS.

	Convene Partnering Meeting(s)	Form New Committee(s)	Expand Existing Teams	Coordinate with Resource Agencies Before TIP/STIP	Assess Organization Structure	Develop Contact Lists	Improve Understanding of Agency Goals/Processes	Improve Understanding of Agency Info Needs	Create MOUs/Agreements	Consider Funding Resource Agency Positions	Define /Refine Decision-making Process	Update Guidance/Manuals	Develop Check Lists	Conduct Training	Conduct Pilot Projects	Share Good Examples	Improve Data Gathering/Knowledge	Improve Data Sharing (GIS)
AR			■		■						■	■		■				■
AZ			■		■	■	■		■	■	■							■
CA			■	■			■	■	■			■		■		■	■	
CO																		
GA							■							■			■	
ID			■		■				■			■		■	■			■
ME	■									■				■			■	■
MN	■								■		■	■		■	■	■	■	
MO	■	■		■				■				■	■	■				
NJ	■		■						■		■				■		■	■
NM				■		■					■	■		■				■
PA	■		■				■				■	■	■	■	■	■	■	■
SC	■		■	■		■	■		■		■			■			■	■
SD	■		■	■	■			■		■	■	■		■			■	■
TN					■			■			■			■	■			
UT	■	■							■	■	■			■	■		■	■
WA		■		■					■		■	■	■		■			
WI	■	■					■		■		■			■			■	■

Table 8-1 Strategies Included in Linking Planning and NEPA Action Plans

Other initial action steps frequently mentioned in multiple Action Plans include:

- Expand existing planning/project teams to include environmental agencies;
- Take steps to improve each agency's understanding of other agency missions, goals, processes, and information needs;
- Use of pilot projects; and
- Establish procedures for coordinating with environmental agencies before projects are included in transportation improvement programs.

SECURING AND MAINTAINING "BUY-IN"

Having 'buy-in' from top management and involved agencies helps to ensure that everyone involved will work towards an outcome. Within an agency, buy-in would include support from top level executives who deal with staffing and funding, as well as staff who carry out planning and project studies. Buy-in to a collaborative process involves multiple agencies.

Agencies and staff are unlikely to make the considerable effort involved in linking planning and NEPA unless they see practical benefit to themselves. Securing buy-in involves answering two key questions – "What's in it for me (or my agency)?" and "What's in it for them (i.e., other agencies)?" Part of Florida's rationale for creating the ETDM process was budgetary. The DOT was discovering environmental issues late in project development, after considerable resources had been spent to develop a project design, and was facing staffing reductions for budgetary purposes. The Environmental and Transportation Decision Making (ETDM) process was seen as a way to improve efficiency by recognizing problematic projects early and avoiding redesign. In North Carolina, the State DOT's Permit Process Improvement Initiative sought to reduce project delays at permit time. In other States the motivation has come from State legislation, State policy pronouncements by the governor, unsuccessful project proposals, and a desire to get decisions made.

Environmental agencies may be motivated to get involved earlier if they recognize a benefit to the resources they are charged with protecting. Early involvement may offer them opportunities to protect or enhance the environment by influencing transportation and land use policy, shaping the nature and scope of projects, leveraging funds, and creating more effective mitigation programs.

Summit meetings, MOU's and similar techniques can be used to secure and memorialize the buy-in of agency leaders, and to elicit staff support. Continuing involvement by agency leaders, along with necessary funding support, helps demonstrate that the initiative is a management priority.

Maintaining buy-in may benefit from continuous monitoring to see how well goals are being achieved. In North Carolina, for example, the State DOT tracked the success of its permitting initiative in terms of:

- Average cycle time from permit application to formal approval;
- Percent of projects with permits delivered on schedule;
- Timely submission of information by NCDOT;
- Percent of applications placed on hold by permitting agencies; and
- Average time that permits are received prior to the project letting.

Monitoring also offers opportunities to create and celebrate initial successes and identify areas for continuous improvement.

Appendix A

Section 6001 and 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

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TITLE VI--TRANSPORTATION PLANNING AND PROJECT DELIVERY

SEC. 6001. TRANSPORTATION PLANNING.

(a) In General.--Sections 134 and 135 of title 23, United States Code, are amended to read as follows:

``Sec. 134. Metropolitan transportation planning

``(a) Policy.--It is in the national interest to--

``(1) encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

``(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

``(b) Definitions.--In this section and section 135, the following definitions apply:

``(1) Metropolitan planning area.--The term `metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

[[Page 119 STAT. 1840]]

``(2) Metropolitan planning organization.--The term `metropolitan planning organization' means the policy board of an organization created as a result of the designation process in subsection (d).

``(3) Nonmetropolitan area.--The term `nonmetropolitan area' means a geographic area outside designated metropolitan planning areas.

``(4) Nonmetropolitan local official.--The term `nonmetropolitan local official' means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

``(5) TIP.--The term `TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

``(6) Urbanized area.--The term `urbanized area' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

``(c) General Requirements.--

``(1) Development of long-range plans and tips.--To

accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

``(2) Contents.--The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

``(3) Process of development.--The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

``(d) Designation of Metropolitan Planning Organizations.--

``(1) In general.--To <<NOTE: Urban and rural areas.>> carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals--

``(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

``(B) in accordance with procedures established by applicable State or local law.

``(2) Structure.--Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of--

``(A) local elected officials;

[[Page 119 STAT. 1841]]

``(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

``(C) appropriate State officials.

``(3) Limitation on statutory construction.--Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to--

``(A) develop the plans and TIPs for adoption by a metropolitan planning organization; and

``(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

``(4) Continuing designation.--A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

``(5) Redesignation procedures.--A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section.

``(6) Designation of more than 1 metropolitan planning organization.--More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

``(e) Metropolitan Planning Area Boundaries.--

``(1) In general.--For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

``(2) Included area.--Each metropolitan planning area--

``(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

``(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

``(3) Identification of new urbanized areas within existing planning area boundaries.--The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

``(4) Existing metropolitan planning areas in nonattainment.--Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-

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LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

``(5) New metropolitan planning areas in nonattainment.--In

the case of an urbanized area designated after the date of enactment of the SAFETEA-LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area--

``(A) shall be established in the manner described in subsection (d)(1);

``(B) shall encompass the areas described in paragraph (2)(A);

``(C) may encompass the areas described in paragraph (2)(B); and

``(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

``(f) Coordination in Multistate Areas.--

``(1) In general.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

``(2) Interstate compacts.--The consent of Congress is granted to any two or more States--

``(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

``(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

``(3) Lake tahoe region.--

``(A) Definition.--In this paragraph, the term `Lake Tahoe region' has the meaning given the term `region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96-551 (94 Stat. 3234).

``(B) Transportation planning process.--The Secretary shall--

``(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

``(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 135.

``(C) Interstate <<NOTE: California. Nevada.>> compact.--

``(i) In general.--Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake

Tahoe region, by agreement between the Governors of the States of California

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and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

``(ii) Involvement of federal land management agencies.--

``(I) Representation.--The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

``(II) Funding.--In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under other provisions of this title and under chapter 53 of title 49, 1 percent of the funds allocated under section 202 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

``(D) Activities.--Highway projects included in transportation plans developed under this paragraph--

``(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

``(ii) may, in accordance with chapter 2, be funded using funds allocated under section 202.

``(4) Reservation of rights.--The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

``(g) MPO Consultation in Plan and TIP Coordination.--

``(1) Nonattainment areas.--If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

``(2) Transportation improvements located in multiple mpos.--If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is

located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

``(3) Relationship with other planning officials.--The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans

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and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by--

``(A) recipients of assistance under chapter 53 of title 49;

``(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

``(C) recipients of assistance under section 204.

``(h) Scope of Planning Process.--

``(1) In general.--The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will--

``(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

``(B) increase the safety of the transportation system for motorized and nonmotorized users;

``(C) increase the security of the transportation system for motorized and nonmotorized users;

``(D) increase the accessibility and mobility of people and for freight;

``(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

``(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

``(G) promote efficient system management and operation; and

``(H) emphasize the preservation of the existing

transportation system.

``(2) Failure to consider factors.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

``(i) Development of Transportation Plan.--

``(1) In general.--Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

``(A) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

``(B) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that

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is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

``(2) Transportation plan.--A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

``(A) Identification of transportation facilities.--An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

``(B) Mitigation activities.--

``(i) In general.--A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest

potential to restore and maintain the environmental functions affected by the plan.

``(ii) Consultation.--The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

``(C) Financial plan.--A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

``(D) Operational and management strategies.--Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

``(E) Capital investment and other strategies.--Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

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``(F) Transportation and transit enhancement activities.--Proposed transportation and transit enhancement activities.

``(3) Coordination with clean air act agencies.--In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

``(4) Consultation.--

``(A) In general.--In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

``(B) Issues.--The consultation shall involve, as

appro- priate--

``(i) comparison of transportation plans with State conservation plans or maps, if available; or

``(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

``(5) Participation by interested parties.--

``(A) In general.--Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

``(B) Contents of participation plan.--A participation plan--

``(i) shall be developed in consultation with all interested parties; and

``(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

``(C) Methods.--In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable--

``(i) hold any public meetings at convenient and accessible locations and times;

``(ii) employ visualization techniques to describe plans; and

``(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

``(6) Publication.--A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public

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review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

``(7) Selection of projects from illustrative list.--Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

``(j) Metropolitan TIP.--

``(1) Development.--

``(A) In general.--In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

``(B) Opportunity for comment.--In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

``(C) Funding estimates.--For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

``(D) Updating and approval.--The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

``(2) Contents.--

``(A) Priority list.--The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

``(B) Financial plan.--The TIP shall include a financial plan that--

``(i) demonstrates how the TIP can be implemented;

``(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

``(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

``(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

``(C) Descriptions.--Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

``(3) Included projects.--

``(A) Projects under this title and chapter 53 of title 49.--A TIP developed under this subsection for a metropolitan area shall include the projects within the

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area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

``(B) Projects under chapter 2.--

``(i) Regionally significant projects.--Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

``(ii) Other projects.--Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.

``(C) Consistency with long-range transportation plan.--Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

``(D) Requirement of anticipated full funding.--The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

``(4) Notice and comment.--Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

``(5) Selection of projects.--

``(A) In general.--Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved TIP--

``(i) by--

``(I) in the case of projects under this title, the State; and

``(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and

``(ii) in cooperation with the metropolitan planning organization.

``(B) Modifications to project priority.--Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

``(6) Selection of projects from illustrative list.--

``(A) No required selection.--Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects

included in the financial plan under paragraph (2)(B)(iv).

``(B) Required action by the secretary.--Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

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``(7) Publication.--

``(A) Publication of tips.--A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

``(B) Publication of annual listings of projects.--An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

``(k) Transportation Management Areas.--

``(1) Identification and designation.--

``(A) Required identification.--The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

``(B) Designations on request.--The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

``(2) Transportation plans.--In a metropolitan planning area serving a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

``(3) Congestion management process.--Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner

than 1 year after the identification of a transportation management area.

``(4) Selection of projects.--

``(A) In general.--All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

``(B) National highway system projects.--Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on

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the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

``(5) Certification.--

``(A) In general.--The Secretary shall--

``(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

``(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

``(B) Requirements for certification.--The Secretary may make the certification under subparagraph (A) if--

``(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

``(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

``(C) Effect of failure to certify.--

``(i) Withholding of project funds.--If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of

the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

``(ii) Restoration of withheld funds.--The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

``(D) Review of certification.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

``(l) Abbreviated Plans for Certain Areas.--

``(1) In general.--Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

``(2) Nonattainment areas.--The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

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``(m) Additional Requirements for Certain Nonattainment Areas.--

``(1) In general.--Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

``(2) Applicability.--This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

``(n) Limitation on Statutory Construction.--Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

``(o) Funding.--Funds set aside under section 104(f) of this title or section 5305(g) of title 49 shall be available to carry out this section.

``(p) Continuation of Current Review Practice.--Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969

(42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act.

``Sec. 135. Statewide transportation planning

``(a) General Requirements.--

``(1) Development of plans and programs.--To accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State, subject to section 134.

``(2) Contents.--The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

``(3) Process of development.--The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

``(b) Coordination With Metropolitan Planning; State Implementation Plan.--A State shall--

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``(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

``(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

``(c) Interstate Agreements.--

``(1) In general.--The consent of Congress is granted to two or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

``(2) Reservation of rights.--The right to alter, amend, or

repeal interstate compacts entered into under this subsection is expressly reserved.

``(d) Scope of Planning Process.--

``(1) In general.--Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will--

``(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

``(B) increase the safety of the transportation system for motorized and nonmotorized users;

``(C) increase the security of the transportation system for motorized and nonmotorized users;

``(D) increase the accessibility and mobility of people and freight;

``(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

``(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

``(G) promote efficient system management and operation; and

``(H) emphasize the preservation of the existing transportation system.

``(2) Failure to consider factors.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

``(e) Additional Requirements.--In carrying out planning under this section, each State shall consider, at a minimum--

``(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

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``(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

``(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

``(f) Long-Range Statewide Transportation Plan.--

``(1) Development.--Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

``(2) Consultation with governments.--

``(A) Metropolitan areas.--The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

``(B) Nonmetropolitan areas.--With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The Secretary shall not review or approve the consultation process in each State.

``(C) Indian tribal areas.--With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

``(D) Consultation, comparison, and consideration.--

``(i) In general.--The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

``(ii) Comparison and consideration.--Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

``(3) Participation by interested parties.--

``(A) In general.--In developing the statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan.

``(B) Methods.--In carrying out subparagraph (A), the State shall, to the maximum extent practicable--

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``(i) hold any public meetings at convenient and accessible locations and times;

``(ii) employ visualization techniques to describe plans; and

``(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

``(4) Mitigation activities.--

``(A) In general.--A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

``(B) Consultation.--The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

``(5) Financial plan.--The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

``(6) Selection of projects from illustrative list.--A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

``(7) Existing system.--The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

``(8) Publication of long-range transportation plans.--Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

``(g) Statewide Transportation Improvement Program.--

``(1) Development.--Each State shall develop a statewide transportation improvement program for all areas of the State. Such program shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently.

``(2) Consultation with governments.--

``(A) Metropolitan areas.--With respect to each

metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

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``(B) Nonmetropolitan areas.--With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The Secretary shall not review or approve the specific consultation process in the State.

``(C) Indian tribal areas.--With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

``(3) Participation by interested parties.--In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

``(4) Included projects.--

``(A) In general.--A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

``(B) Listing of projects.--An annual listing of projects for which funds have been obligated in the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

``(C) Projects under chapter 2.--

``(i) Regionally significant projects.--Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

``(ii) Other projects.--Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.

``(D) Consistency with statewide transportation plan.--Each project shall be--

``(i) consistent with the statewide transportation plan developed under this section for the State;

``(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

``(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as nonattainment for ozone, particulate matter, or carbon monoxide under such Act.

``(E) Requirement of anticipated full funding.--The transportation improvement program shall include a

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project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

``(F) Financial plan.--The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

``(G) Selection of projects from illustrative list.--

``(i) No required selection.--Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

``(ii) Required action by the secretary.--Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

``(H) Priorities.--The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title and chapter 53 of title 49.

``(5) Project selection for areas of less than 50,000

population.--Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

``(6) Transportation improvement program approval.--Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

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``(7) Planning finding.--A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

``(8) Modifications to project priority.--Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

``(h) Funding.--Funds set aside pursuant to section 104(f) of this title and section 5305(g) of title 49, shall be available to carry out this section.

``(i) Treatment of Certain State Laws as Congestion Management Processes.--For purposes of this section and section 134, and sections 5303 and 5304 of title 49, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 134, and sections 5303 and 5304 of title 49, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 134 and sections 5303 and 5304 of title 49, as appropriate.

``(j) Continuation of Current Review Practice.--Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation

improvement program described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under such Act.".

(b) <<NOTE: Guidelines. 23 USC 134 note.>> Schedule for Implementation.--The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States and metropolitan planning organizations. The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. <<NOTE: Effective date.>> Beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.

(c) Conforming Amendment.--The analysis for chapter 1 of such title is amended by striking the items relating to sections 134 and 135 and inserting the following:

``134. Metropolitan transportation planning.
``135. Statewide transportation planning.".

SEC. 6002. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING.

(a) In General.--Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 138 the following:

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``Sec. 139. Efficient environmental reviews for project decisionmaking

``(a) Definitions.--In this section, the following definitions apply:

``(1) Agency.--The term `agency' means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

``(2) Environmental impact statement.--The term `environmental impact statement' means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

``(3) Environmental review process.--

``(A) In general.--The term `environmental review process' means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

``(B) Inclusions.--The term `environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C.

4321 et seq.).

``(4) Lead agency.--The term `lead agency' means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

``(5) Multimodal project.--The term `multimodal project' means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.

``(6) Project.--The term `project' means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.

``(7) Project sponsor.--The term `project sponsor' means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

``(8) State transportation department.--The term `State transportation department' means any statewide agency of a State with responsibility for one or more modes of transportation.

``(b) Applicability.--

``(1) In general.--The project development procedures in this section are applicable to all projects for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 and may be applied, to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared pursuant to such Act.

``(2) Flexibility.--Any authorities granted in this section may be exercised for a project, class of projects, or program of projects.

``(c) Lead Agencies.--

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``(1) Federal lead agency.--The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.

``(2) Joint lead agencies.--Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969.

``(3) Project sponsor as joint lead agency.--Any project sponsor that is a State or local governmental entity receiving funds under this title or chapter 53 of title 49 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the

Secretary's action or approval results in Federal funding.

``(4) Ensuring compliance.--The Secretary shall ensure that the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection and that such document is appropriately supplemented if project changes become necessary.

``(5) Adoption and use of documents.--Any environmental document prepared in accordance with this subsection may be adopted or used by any Federal agency making any approval to the same extent that such Federal agency could adopt or use a document prepared by another Federal agency.

``(6) Roles and responsibility of lead agency.--With respect to the environmental review process for any project, the lead agency shall have authority and responsibility--

``(A) to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; and

``(B) to prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 is completed in accordance with this section and applicable Federal law.

``(d) Participating Agencies.--

``(1) In general.--The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection.

``(2) Invitation.--The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

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``(3) Federal participating agencies.--Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency--

``(A) has no jurisdiction or authority with respect to the project;

``(B) has no expertise or information relevant to the project; and

``(C) does not intend to submit comments on the project.

``(4) Effect of designation.--Designation as a participating

agency under this subsection shall not imply that the participating agency--

``(A) supports a proposed project; or

``(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

``(5) Cooperating agency.--A participating agency may also be designated by a lead agency as a `cooperating agency' under the regulations contained in part 1500 of title 40, Code of Federal Regulations.

``(6) Designations for categories of projects.--The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

``(7) Concurrent reviews.--Each Federal agency shall, to the maximum extent practicable--

``(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to carry out those obligations; and

``(B) <<NOTE: Procedures.>> formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

``(e) <<NOTE: Notification.>> Project Initiation.--The project sponsor shall notify the Secretary 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, for the purpose of informing the Secretary that the environmental review process should be initiated.

``(f) Purpose and Need.--

``(1) Participation.--As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

``(2) Definition.--Following participation under paragraph (1), the lead agency shall define the project's purpose and need for purposes of any document which the lead agency is responsible for preparing for the project.

``(3) Objectives.--The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include--

``(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;

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``(B) supporting land use, economic development, or growth objectives established in applicable Federal,

State, local, or tribal plans; and

``(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

``(4) Alternatives analysis.--

``(A) Participation.--As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.

``(B) Range of alternatives.--Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

``(C) Methodologies.--The lead agency also shall determine, in collaboration with participating agencies at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project.

``(D) Preferred alternative.--At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process.

``(g) Coordination and Scheduling.--

``(1) Coordination plan.--

``(A) In general.--The lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

``(B) Schedule.--

``(i) In general.--The lead agency may establish as part of the coordination plan, after consultation with each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

``(ii) Factors for consideration.--In establishing the schedule, the lead agency shall consider factors such as--

``(I) the responsibilities of participating agencies under applicable

laws;

``(II) resources available to the cooperating agencies;

``(III) overall size and complexity of the project;

``(IV) the overall schedule for and cost of the project; and

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``(V) the sensitivity of the natural and historic resources that could be affected by the project.

``(C) Consistency with other time periods.--A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

``(D) Modification.--The lead agency may--

``(i) lengthen a schedule established under subparagraph (B) for good cause; and

``(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

``(E) Dissemination.--A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be--

``(i) provided to all participating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

``(ii) made available to the public.

``(2) Comment deadlines.--The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

``(A) <<NOTE: Federal Register, publication.>> For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless--

``(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

``(ii) the deadline is extended by the lead agency for good cause.

``(B) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless--

``(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

``(ii) the deadline is extended by the lead

agency for good cause.

``(3) Deadlines for decisions under other laws.--In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives--

``(A) <<NOTE: Notice.>> as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

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``(B) <<NOTE: Notice.>> every 60 days thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

``(4) Involvement of the public.--Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law, including a regulation.

``(h) Issue Identification and Resolution.--

``(1) Cooperation.--The lead agency and the participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

``(2) Lead agency responsibilities.--The lead agency shall make information available to the participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration. Such information may be based on existing data sources, including geographic information systems mapping.

``(3) Participating agency responsibilities.--Based on information received from the lead agency, participating agencies shall identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts. In this paragraph, issues of concern include any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.

``(4) Issue resolution.--

``(A) Meeting of participating agencies.--At any

time upon request of a project sponsor or the Governor of a State in which the project is located, the lead agency shall promptly convene a meeting with the relevant participating agencies, the project sponsor, and the Governor (if the meeting was requested by the Governor) to resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

``(B) <<NOTE: Deadline. Federal Register, publication.>> Notice that resolution cannot be achieved.--If a resolution cannot be achieved within 30 days following such a meeting and a determination by the lead agency that all information necessary to resolve the issue has been obtained, the lead agency shall notify the heads of all participating agencies, the project sponsor, the Governor, the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Council on Environmental Quality, and shall publish such notification in the Federal Register.

``(i) Performance Measurement.--The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

``(j) Assistance to Affected State and Federal Agencies.--

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``(1) In general.--For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary may approve a request by the State to provide funds so made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.

``(2) Activities eligible for funding.--Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

``(3) Use of federal lands highway funds.--The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

``(4) Amounts.--Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

``(5) Condition.--A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

``(k) Judicial Review and Savings Clause.--

``(1) Judicial review.--Except as set forth under subsection (l), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States or in the court of any State.

``(2) Savings clause.--Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

``(3) Limitations.--Nothing in this section shall preempt or interfere with--

``(A) any practice of seeking, considering, or responding to public comment; or

``(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs.

``(l) <<NOTE: Deadlines. Notices. Federal Register, publication.>> Limitations on Claims.--

``(1) In general.--Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency

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for a highway or public transportation capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

``(2) New information.--The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall

be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 180 days after the date of publication of a notice in the Federal Register announcing such action.".

(b) <<NOTE: 23 USC 139 note.>> Existing Environmental Review Process.--Nothing in this section affects any existing State environmental review process, program, agreement, or funding arrangement approved by the Secretary under section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232; 23 U.S.C. 109 note) as such section was in effect on the day preceding the date of enactment of the SAFETEA-LU.

(c) Conforming Amendment.--The analysis for such subchapter is amended by inserting after the item relating to section 138 the following:

``139. Efficient environmental reviews for project decisionmaking.".

(d) Repeal.--Section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232) <<NOTE: 23 USC 109 note.>> is repealed.

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Appendix B

FHWA/FTA Program Guidance on Linking the Transportation Planning and NEPA Processes
February, 2005

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From: Cindy Burbank
February 23, 2005

Subject: FHWA-FTA Program Guidance on Linking the Transportation Planning and NEPA Processes

As you know, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have spent the past several months developing legal guidance and program guidance on how information, analysis, and products from metropolitan and statewide transportation planning processes can be incorporated into and relied upon in the National Environmental Policy Act (NEPA) process under existing Federal statutes and regulations.

Yesterday we issued this new guidance. Attached for your information and reference are (a) the legal guidance outlining our authority under current law; and (b) the completed program guidance entitled "Linking the Transportation Planning and NEPA Processes." Utilizing a question and answer format, the program guidance is organized into three primary categories: (1) Procedural Guidance; (2) Substantive Guidance; and (3) Administrative Issues.
This guidance is intended for use by State Departments of Transportation, metropolitan planning organizations, and transit agencies, and supersedes the FHWA's August 23, 1999 memorandum to Division Administrators and Federal Lands Highway Division Engineers entitled "INFORMATION: Results of Environmental Briefing at the Department of Justice."

While this guidance is voluntary to State Departments of Transportation, metropolitan planning organizations, and transit agencies, its implementation will positively affect efforts to link the transportation planning and NEPA decision-making processes. Of equal importance, this guidance does not extend NEPA requirements to transportation plans and programs.

On October 22, 2004, the American Association of State Highway and Transportation Officials convened a session in Washington, DC at which each of you provided valuable insight, input, and feedback to us on the focus, content, and structure of this guidance. This guidance represents a significant milestone, and we greatly appreciate your insights and input. However, we recognize that much work and several challenges remain. We look forward to working with each of you over the coming months and years in implementing this guidance.

If you have any questions on this guidance, please contact: Gloria Shepherd, Director of FHWA's Office of Planning at (202) 366-0106; Fred Skaer, Director of FHWA's Office of Project Development and Environmental Review, at (202) 366-2058; Charlie Goodman, Director of FTA's Office of Systems Planning, at (202) 366-1944; or Joe Ossi, Acting Director of FTA's Office of Human and Natural Environment, at (202) 366-1613.

LINKING THE TRANSPORTATION PLANNING AND NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESSES

For 40 years, Congress has directed that Federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306). Over the years, Congress has refined and strengthened the planning process as the foundation for project decisions, emphasizing public involvement, consideration of environment and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo*, disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), planning-level corridor/subarea/feasibility studies, or FTA's planning Alternatives Analyses. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information during NEPA that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this guidance is to change this culture, by supporting Congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. **This guidance was crafted to recognize that transportation planning processes vary across the country. This document provides guidance and information (both conceptually and through some illustrative "current practice" examples) on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws.**

The guidance below is intended for use by State Departments of Transportation (State DOTs), metropolitan planning organizations (MPOs), and transit agencies to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. **Additionally, FHWA and FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this guidance in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.**

This guidance **does not** extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA-21) specifically exempted transportation plans and programs from NEPA review, as reflected under 23 U.S.C. 134(o), 23 U.S.C. 135 (i), and 49 U.S.C. 5305(h). Therefore, initiating the NEPA process as part of, or concurrently with, a transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this guidance by States, MPOs, and transit agencies is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they

meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this guidance document utilizes a "Question and Answer" format, organized into three primary categories ("Procedural Guidance," "Substantive Guidance," and "Administrative Issues").

I. PROCEDURAL GUIDANCE

1. ***How can the products from the transportation planning process be better incorporated into the project development/NEPA process?***

The transportation planning process and the environmental analysis required during project development by NEPA should work in tandem, with the results of the transportation planning process informing the NEPA process.

Under the FHWA/FTA transportation planning regulations (23 CFR 450.322(b) (6)), metropolitan long-range transportation plans must:

"include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in [air quality] nonattainment and maintenance areas to permit conformity determinations under the U. S. Environmental Protection Agency's (EPA's) transportation conformity regulations (40 CFR Part 51). In all [metropolitan] areas, all proposed improvements shall be described in sufficient detail to develop cost estimates."

Similarly for STIPs/TIPs, 23 CFR 450.216(a) (8) and 23 CFR 450.324(g) (1), respectively, require that the STIP/TIP contain *"sufficient descriptive material (i.e., type of work, termini, and length) to identify the project or phase." In addition, 23 CFR 450.324(h) requires that "In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with EPA's transportation conformity regulations (40 CFR Part 51)."*

In each case, project "design concept and scope" includes:

- mode (e.g., unrestricted highway, high occupancy vehicle facilities, light rail, commuter rail, busway, and combinations of modes);
- termini, approximate length, and general alignment;
- number of lanes or tracks; and
- degree of grade separation and access control.

This planning-level information, and the accompanying analysis and public involvement, establishes the foundation for subsequent analysis and decision-making during project development.

2. ***In what format should the planning information be included?***

To be included in the NEPA process, work from the planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be "reasonably available for inspection by potentially interested persons within the time allowed for comment." Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information.

3. ***What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?***

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support the outcome of the long-range transportation plan, in accordance with FHWA/FTA statutory and regulatory requirements on the content and products of statewide and metropolitan transportation planning processes.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. **The intent is not to require NEPA studies in the transportation planning process.** As an option, NEPA analyses prepared for project development can be integrated with transportation planning studies *(see the response to Question 10 for additional information).*

4. ***Should Federal, Tribal, State, and local environmental, regulatory, and resource agencies be involved in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process? If so, what type and extent of involvement is needed?***

Yes, FHWA and FTA highly recommend involving Federal environmental, regulatory, and resource agencies in statewide and metropolitan transportation planning. Additionally, current FHWA/FTA requirements ensure that State DOTs and MPOs coordinate with Tribal governments and State and local air quality agencies (in EPA-designated nonattainment and maintenance areas) in the development of transportation plans and programs. Further participation by Federal, Tribal, State and local environmental, regulatory, and resource agencies during the transportation planning process would be consistent with the cooperative relationship

envisioned by statute and reinforced by the courts. However, ultimately the responsibility for local and State transportation planning decisions lie with the State DOTs, MPOs, and transit agencies.

Successful examples of using planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Additionally, encouraging participation early in transportation planning is advisable, since it would give environmental, regulatory, and resource agencies a better insight into the needs and objectives of the locality and also would provide an important opportunity for agency concerns to be identified and addressed early in the process. These concerns could include issues that might be raised by Federal environmental, regulatory, and resource agencies in considering permit applications for projects designed to implement the transportation plan. Additionally, Federal, Tribal, and State and local environmental, regulatory, and resource agencies are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

Whether or not Federal, Tribal, or State and local environmental, regulatory, and resource agencies participated in the transportation planning process, it is incumbent on Federal lead agencies to identify as early as practicable in the NEPA process those Federal, State, Tribal, and local government agencies that have jurisdiction by law or special expertise with respect to all reasonable alternatives or significant social, environmental, or economic impacts associated with a proposed action that requires NEPA analysis and documentation. The lead Federal agency must invite Federal agencies with jurisdiction by law and should invite the other agencies and governments (as listed above) to be cooperating agencies in the development of the EIS. The lead Federal agency also may request an agency to be a cooperating agency for an EA. As cooperating agencies, these other governmental agencies are afforded an opportunity to participate in the development of the NEPA analysis and documentation (including the review of any incorporated transportation planning products) in addition to their role as members of the public in commenting on the NEPA analysis and documentation. In summary, full engagement of environmental, regulatory, and resource agencies in relevant planning studies is desirable; however, if these agencies choose not to participate or participate only sporadically, the planning products can still be used in the EA or EIS by incorporating them by reference. *See response to Question 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation.*

5. ***What is the procedure for using decisions or analyses from the transportation planning process?***

FHWA and FTA, as the lead Federal agencies, will have the final say on what processes and consultation techniques are used to determine the transportation planning products that will be

incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed FHWA/FTA decisions on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, FHWA and FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

6. ***To what extent can FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will pay off, allowing planning-level decisions and analyses be used in the NEPA process?***

There are no guarantees. However, the potential pay-off is greatly improved for transportation planning processes that address the "3-C" planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects; involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

7. ***What considerations will FHWA/FTA take into account in their review of planning products for acceptance in project development/NEPA?***

FHWA/FTA will give deference to decisions resulting from the transportation planning process if FHWA/FTA determine that the planning process is consistent with the "3-C" planning principles **and** when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (e.g., the Congestion Mitigation and Air Quality Improvement Program or the FTA New Starts Program) also must be met.

Because of our obligations under NEPA, FHWA/FTA must be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, FHWA and FTA should not revisit whether these are the best objectives or choices among other options. Rather, FHWA and FTA review would include making sure that objectives or choices derived from the transportation plan were: based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable and scientifically acceptable. This review would include determining whether: (a) assumptions have a rational basis and are up-to-date and (b) data, analytical

methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

II. SUBSTANTIVE GUIDANCE

General Issues to be Considered:

8. ***What should be considered in order to rely upon transportation planning studies in NEPA?***

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a "checklist," these questions are intended to guide the practitioner's analysis of the planning products:

- ❑ How much time has passed since the planning studies and corresponding decisions were made?
- ❑ Is the information still relevant/valid?
- ❑ What changes have occurred in the area since the study was completed?
- ❑ Is the information in a format that can be appended to an environmental document or reformatted to do so?
- ❑ Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable and defensible?
- ❑ Were FHWA/FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?
- ❑ Were the planning products available to other agencies at NEPA scoping?
- ❑ At NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?
- ❑ Are natural resource and land use plans being informed by transportation planning products, and vice versa?

Purpose and Need:

9. ***How can transportation planning be used to shape a project's purpose and need in the NEPA process?***

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region's future transportation system, define

transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project's purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) a general travel corridor or general mode or modes (i.e., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) if the financial plan for an MPO's long-range transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) the results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

The Maine Department of Transportation's Integrated Transportation Decision-Making Process consists of 10 steps (planning through project implementation). The first step, the Transportation Planning Process, is intended to enhance transportation planning through better communication and coordination among Federal, State and local planning, environmental, regulatory, and resource, and transportation agencies (including MPOs), and the public. Early coordination and information sharing between the agencies provide opportunities to develop better projects, while addressing environmental and community concerns, and reducing project delays. This step also provides the opportunity to balance the purpose and need for transportation improvements with the potential impacts to the community and the environment early in the decision-making process, and allows for consistency between transportation and land use policies. This process step is expected to reduce delays by allowing agencies the ability to make informed decisions

earlier in the project development process. Additional information on this example may be obtained at: http://environment.fhwa.dot.gov/strmlng/itdstat.htm.

Short of a fully integrated transportation decision-making process similar to that described above, many State DOTs develop information for their purpose and need statements when implementing interagency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

10. *Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?*

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the "tiered EIS," in which general travel corridors, modes, and/or packages of projects are evaluated at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a subsequent project or series of projects. The tiered EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in these decisions, as well as to ensure the appropriate consideration of environmental factors in these planning-level decisions. Some recent examples of the tiered EIS approach include I-70 in Missouri (see http://www.improvei70.org/) and I-405 in Washington State (see http://www.wsdot.wa.gov/projects/I-405/resource/i405_0104_ProgRept_rev.pdf).

Another method of initiating NEPA in conjunction with transportation planning studies is the use of the EA/Corridor Study concept, as utilized, for example, by the Indiana Department of Transportation (INDOT). This approach is less formal than the tiered EIS, and often can be accomplished in considerably less time and at less expense. Additional information on this example may be obtained at: http://www.fhwa.dot.gov/indiv/procedur.htm.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the NEPA process could be initiated in conjunction with a corridor or subarea study. Similarly, some transit agencies developing New Starts projects perform the planning-level Alternatives Analysis required for FTA New Starts within the NEPA process and combine the Alternatives Analysis and the draft NEPA document.

Alternatives:

11. *In the context of this guidance, what is the meaning of the term "alternatives?"*

This guidance utilizes the term "alternatives" as specified in NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This guidance does not use the term as it is used in many other contexts (e.g., "prudent and feasible alternatives" under Section 4(f) of the Department of Transportation Act, the "Least

Environmentally Damaging Practicable Alternative" under the Clean Water Act, or the "Alternatives Analysis" in FTA's New Starts statute).

However, as early as possible in the transportation planning stage of any project, a determination should be made as to whether the alternatives to be considered will need to be used to satisfy multiple statutory and regulatory requirements that will be addressed during the subsequent project development process as an integral part of the NEPA process. If so, during transportation planning, the alternatives chosen for consideration and the analysis of those alternatives should reflect the multiple objectives that must be addressed. For example, if a potential project would require a Section 404 permit, ideally there would be coordination with the U. S. Army Corps of Engineers and some level of agreement from them that the alternatives considered are broad enough to allow for the ultimate development of a Least Environmentally Damaging Practicable Alternative. In this case, screening of alternatives for the presence of important wetlands based on geographic information systems (GIS) or other planning-level data sources would be appropriate to support this early determination.

12. ***Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?***

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) shaping the purpose and need for the project or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to the start of the project-level NEPA process. Each approach requires careful attention, and is summarized below.

Shaping the Purpose and Need for the Project: The transportation planning process should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. See the response to Question 9 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

1. the transportation planning process has selected a general travel corridor as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

2. the transportation planning process has selected a general mode (i.e., highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

3. the transportation planning process determines that the project needs to be funded by tolls or other non-traditional funding sources in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

Evaluating and Eliminating Alternatives During the Transportation Planning Process: The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the alternatives analysis to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 5, 6, 7, and 8 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 13 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alternative(s) from detailed consideration in the NEPA process.

For instance, under FTA's New Starts Program, the alternatives considered in the NEPA process may be narrowed in those instances that the Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review. In fact, FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the "Locally Preferred Alternative." Alternatives must meet the following criteria if they are deemed sufficiently considered by an FTA New Starts Alternatives Analysis conducted prior to NEPA without a programmatic NEPA analysis and documentation:

- ❑ During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts; capital and operating costs; social, economic, and environmental impacts; and technical considerations;

- ❑ There must be appropriate public involvement in the planning Alternatives Analysis;

- ❑ The appropriate Federal, State, and local environmental, regulatory, and resource agencies must be engaged in the planning Alternatives Analysis;

- ❑ The results of the planning Alternatives Analysis must be documented;

- ❑ The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and

- ❑ The subsequent NEPA document must include the evaluation of alternatives from the planning Alternatives Analysis.

The above criteria apply specifically to FTA's New Starts process. However, for other transportation projects, if the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

For example, Indiana's Streamlined EIS Procedures established the "one decision-making process" to eliminate the duplication of activities between planning studies and the subsequent environmental analysis carried out under NEPA. This process calls for early and ongoing participation by environmental, regulatory, and resource agencies to help ensure that basic issues regarding purpose and need and alternatives are addressed prior to the preparation of the DEIS. This allows the DEIS process to focus on remaining concerns such as avoidance, minimization, and other forms of mitigation. The procedures also allow the NEPA documents to satisfy permitting requirements including Section 404 and State Construction-in-Floodway permits. For many projects, INDOT and the MPO(s), through the transportation planning process, reach consensus on the need for an improvement, or project, and also agree on the proposed design concept and scope. These are cases in which there is a high level of clarity between INDOT and the MPO(s) about the transportation issue and need, along with a consensus on a limited set of reasonable alternatives. In these cases, the identified design concept and scope is made part of the MPO's long-range transportation plan and INDOT's statewide transportation plan. For other proposed projects in which the need and the design concept and scope are less clear and well-defined, a corridor-level planning study initiated as an EA is conducted. Additional information on this example may be obtained at: *http://www.fhwa.dot.gov/indiv/procedur.htm*.

13. ***What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?***

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based on a corridor study, thereby eliminating all alternatives along other alignments);

(b) briefly summarize the reasons for eliminating the alternative; and

(c) include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and affected agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA "purpose and need" can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. **Alternatives that remain "reasonable" after the planning-level analysis must be addressed in the EIS, even when they clearly are not the preferred alternative.** When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

Affected Environment and Environmental Consequences:

14. ***What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?***

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

- regional development and growth analyses;
- local land use, growth management, or development plans; and
- population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

(a) GIS overlays showing the past, current, or predicted future conditions of the natural and built environments;

(b) environmental scans that identify environmental resources and environmentally sensitive areas;

(c) descriptions of airsheds and watersheds;

(d) demographic trends and forecasts;

(e) projections of future land use, natural resource conservation areas, and development; and

(f) the outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, and multiple species habitat conservation plans.

For example, Florida's Efficient Transportation Decision-Making (ETDM) Process established Environmental Technical Advisory Teams (ETATs) in each of the Florida Department of

Transportation's (FDOT's) seven districts to provide for early interagency coordination during planning. Each ETAT is comprised of 12-20 members that represent Federal, State, and local transportation and environmental, regulatory, and resource agencies. ETAT representatives then provide agency responses to the respective transportation planning entity (FDOT and/or the affected MPO(s)). During the early phases of transportation planning, ETAT members serve largely in an advisory role. The NEPA process begins at the Programming Screen with the development of the Advance Notification package by FDOT. ETAT input provides "agency scoping" to help satisfy the requirements of NEPA and other pertinent laws that are addressed during the NEPA process. At the Programming Screen stage, ETAT members are offered the opportunity to accept or comment on the purpose and need statement, update the environmental reviews conducted at the Planning Screen, identify required technical studies, and opt out of further involvement. A key tool is the Environmental Screening Tool, which is an Internet-accessible GIS application that creates linkages between ETAT members and the Florida Geographic Data Library at the University of Florida. Project and environmental resource data are input to a database system. Standardized GIS analyses (as prescribed by each environmental, regulatory, or resource agency) are automatically performed to identify potential impacts to environmental resources. ETAT members need only an Internet connection to view and comment on results. These reports also are available to the public through a read-only website. The database system houses responses from ETAT members as well as FDOT summaries of public comments. Additional information on this example may be obtained at: *http://www.dot.state.fl.us/emo/*.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed enough to meet NEPA standards and, thus, the inventory and evaluation of affected resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

15. *What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?*

Because the nature of the transportation planning process is to look broadly at future land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

(a) be sufficiently detailed that differences in consequences of alternatives can be readily identified;

(b) be based on current data (e.g., data from the most recent Census) or be updated by additional information;

(c) be based on reasonable assumptions that are clearly stated; and/or

(d) rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

For example, the North Front Range (Greeley, Colorado) MPO currently is conducting a pilot project to link the transportation planning and NEPA processes. In addition to development of purpose and need statements for a set of regionally significant projects identified in the MPO's Year 2030 Regional Transportation Plan, this inter-disciplinary group of planners, citizens, and environmental, regulatory, and resource agency representatives will complete a cumulative impacts analysis for the entire region. This analysis is intended to be relied upon for future transportation project NEPA documents.

Environmental Mitigation:

16. ***How can planning-level efforts best support advanced mitigation, banking, and priorities for environmental mitigation investments?***

A lesson learned from efforts to establish mitigation banks and advance mitigation agreements and alternative mitigation options is the importance of beginning interagency discussions during the transportation planning process. Development pressures, habitat alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for "like" value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

III. ADMINISTRATIVE ISSUES

17. ***Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?***

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

- FHWA planning and research funds, as defined under 23 CFR Part 420 (e.g., Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP), and Minimum Guarantee) and

- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (e.g., wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (e.g., NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

FHWA and FTA encourage State DOTs, MPOs, and transit agencies to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

18. ***What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?***

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by

augmenting their capabilities through greater use of GIS and remote sensing technologies (see http://www.gis.fhwa.dot.gov/ for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

19. ***How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?***

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of TEA-21 speaks specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: *http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm*.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

Lessons learned from stewardship and streamlining initiatives indicate a need for greater involvement in the transportation planning process by environmental staffs. For example, in Florida, agreements are utilized for agency liaison participation in the planning-level environmental screening process within Florida's ETDM Process (see *http://fdotenvironmentalstreamlining.urs-tally.com/Library/default.htm*). The Oregon Department of Transportation seeks environmental, regulatory, and resource agency input through promotion of environmental stewardship, agency collaboration, and project scoping associated with Oregon's Collaborative Environmental and Transportation Agreement on Streamlining process (see *http://environment.fhwa.dot.gov/strmlng/newsletters/oct01nl.htm*). The North Carolina Department of Transportation has blended the transportation project

development process with the watershed planning process (see *http://www.ncdot.org/secretary/envsteward/performance/integration/*). Additionally, the Texas Department of Transportation has focused liaison efforts on major corridor planning efforts. In each of these cases, the State DOT has taken this step only after concluding that the additional investment in up-front planning and coordination will improve the quality, timeliness, and cost effectiveness of a group of projects.

20. ***What training opportunities are available to MPOs, State DOTs, and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?***

Both FHWA and FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the *Linking Planning and NEPA Workshop*, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U. S. Fish and Wildlife Service offers *Green Infrastructure Workshops* which are focused on integrating planning for natural resources ("green infrastructure") with the development, economic, and other infrastructure needs of society ("gray infrastructure").

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (e.g., noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

Transportation planning and NEPA courses offered by various agencies and private sources have been compiled as part of the Executive Order 13274 (Environmental Stewardship and Transportation Infrastructure Project Reviews) workgroup efforts. This list will be posted at http://www.fhwa.dot.gov/stewardshipeo/index.htm.

IV. ADDITIONAL INFORMATION ON THIS TOPIC

Valuable sources of information are FHWA's environmental streamlining website (http://environment.fhwa.dot.gov/strmlng/index.htm) and FTA's environmental streamlining website (http://www.environment.fta.dot.gov). Another source of information and case studies is NCHRP Report 8-38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8-38. In addition, AASHTO's Center for Environmental Excellence website is continuously updated with

news and links to information of interest to transportation and environmental professionals (www.transportation.environment.org).

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Appendix C

FHWA/FTA Legal Guidance
February, 2005

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U.S. Department of Transportation
Federal Highway Administration

Memorandum

Federal Highway Administration and Federal Transit Administration

Subject: Integration of Planning and NEPA Processes

Date: February 22, 2005

From: D.J. Gribbin /s/
Chief Counsel, Federal Highway Administration

In Reply Refer To:
HCC-30

Judith S. Kaleta /s/
Acting Chief Counsel, Federal Transit Administration

To: Cindy Burbank, Associate Administrator
Office of Planning, Environment and Realty, FHWA

David A. Vozzolo, Deputy Associate Administrator
Office of Planning and Environment, FTA

I. ISSUE

You have asked for guidance regarding the extent to which the results of the transportation planning process can be used in and relied upon in the NEPA process.
In response to your request, this memorandum outlines the current law; describes the transportation planning products that can be used in the NEPA process and under what conditions; and explains the roles of Federal agencies and the public in reviewing transportation planning products used in NEPA analyses and documents.

II. BACKGROUND

The transportation planning process required by 23 U.S.C. 134 and 135 and 49 U.S.C. 5303-5306 sets the stage for future development of transportation projects. As part of the transportation planning process, States and local metropolitan planning organizations (MPOs) must develop long-range transportation plans to address projected transportation needs. In addition, they must create transportation improvement programs (TIPs or STIPs), which identify a list of priority projects to be carried out in the next three years to implement the plan. To receive Federal funding, transportation projects must come from a TIP or STIP. As a result, much of the data and decisionmaking undertaken by state and local officials during the planning process carry forward into the project development activities that follow the TIP or STIP. This means that the planning process and the environmental assessment required during project development by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4231 *et seq.*) should work in tandem, with the results of the transportation planning process feeding into the NEPA process. Congress has put great emphasis on the transportation planning process for

shaping transportation decisions, and has retained and refined that emphasis in surface transportation law over decades.

In practice, though, the environmental analyses produced during the NEPA process are sometimes disconnected from the analyses used to prepare transportation plans, transportation improvement programs, and supporting corridor or subarea studies. Analyses and decisions occurring during transportation planning can be ignored or redone in the NEPA process, resulting in a duplication of work and delays in implementation of transportation projects. The sharp separation between the work done during the transportation planning process and the NEPA analysis and documentation process is not necessary. In fact, current law provides authority for and even encourages the integration of the information and products developed in highway and transit planning process into the NEPA process. This memorandum provides guidance on how this information and these products can be incorporated into and relied upon in NEPA analyses and documents under existing laws.

III. LEGAL ANALYSIS OF CURRENT LAW ON INTEGRATING PLANNING AND NEPA

The transportation planning process is a detailed, Congressionally mandated procedure for developing long-range transportation plans and shorter-range transportation improvement programs. These procedures were initially enacted in the 1960s and were codified in Title 23 and Title 49 of the U.S. Code. See 23 U.S.C. 134 and 135 and 49 U.S.C. 5303-5306. In 1991, the planning provisions were substantially expanded by the Intermodal Surface Transportation Efficiency Act of 1991. They have been subsequently revisited and refined by Congress in various transportation bills, but the basic framework has remained intact. The procedures identify the State and local agencies with primary responsibility for transportation planning. They also identify agencies and other interested parties who should be given an opportunity to participate in the transportation planning process and describe their appropriate level of involvement. The statute spells out the planning factors that must be considered, including, among other factors, the protection and enhancement of the environment. 23 U.S.C. 134(f) and 135(c).[1] The transportation planning process undertaken by States and MPOs is periodically reviewed and, if found to be adequate, certified by FHWA and FTA. The Federal government does not approve the transportation plans developed by State or local officials, and although FTA and FHWA jointly approve the Statewide TIP such an approval does not constitute a Federal action subject to review under NEPA.[2] This is the process that Congress constructed to shape transportation decisions for Federally-funded projects.

[1] Protection of the environment is reinforced in the FHWA and FTA regulations clarifying the factors to be considered in the transportation planning process (e.g., States and MPOs must analyze the "overall social, economic, energy and environmental effects of transportation decisions…." 23 CFR 450.208 and 450.316.

[2] As stated in the planning provisions of Title 23, "[a]ny decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review" under NEPA. 23 U.S.C. 134(o); see also 23 U.S.C. 135(i). These provisions are discussed more fully in Section V of this memorandum.

In order to be eligible for Federal funding, projects must come from a plan created by this process. Federal action subject to NEPA is needed to approve these Federal aid projects. Because of the continuity between the planning and project development processes, the NEPA analysis for a transportation project needs to be reviewed in the context of this transportation planning process.

NEPA and the government-wide regulations that carry out NEPA (40 C.F.R. Parts 1500 *et seq.*) clearly contemplate the integration of the NEPA process with planning processes. Specifically, Section 102(2)(A) of NEPA direct all Federal agencies to "utilize a systemic, interdisciplinary approach which will insure the integrated use of natural and social sciences and the environmental design arts in *planning* and decisionmaking." [Emphasis added] The regulations issued by the President's Council on Environmental Quality (CEQ) amplify the statutory directive:

- 40 C.F.R. 1501.1(a) requires decisionmakers to "integrate[e] the NEPA process *into early planning* to ensure appropriate consideration of NEPA's policies and to eliminate delay";
- 40 C.F.R. 1501.1(b) emphasizes the need for "cooperative consultation among agencies *before the environmental impact statement is prepared"*, rather than "submission of adversary comments on a completed document";
- 40 C.F.R. 1501.1(d) emphasizes the importance of "[I]dentifying at an early stage the significant environmental issues deserving of study," by deemphasizing "insignificant issues" and "narrowing the scope of the environmental impact statement accordingly";
- 40 C.F.R. 1501.2 requires that Federal agencies "integrate the NEPA process with *other planning at the earliest possible time* to ensure that planning and [agency] decisions reflect environmental values…."

Likewise, the NEPA regulations adopted by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) emphasize the tie between NEPA and transportation planning:

- 23 C.F.R. 771.105(a) provides that "To the fullest extent possible, all environmental investigations, reviews and consultations be coordinated as a single process.…"; and
- 23 C.F.R. 771.105(b) directs that "Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic and environmental impacts of the proposed transportation improvement; and of national, State and local environmental protection goals."

Thus, the organic statute, the government-wide NEPA regulations, and the specific FHWA and FTA regulations all strongly support the integration of the NEPA process with the transportation planning process.

Case law on the issue of the use of transportation planning studies and decisions in the NEPA process is not extensive. However, to the extent they exist, court decisions have consistently supported the reliance in the NEPA process on work done in the planning process. For example, in *North Buckhead Civic Association v. Skinner*, 903 F. 2d 1533 (11th Cir. 1990), the Plaintiffs

challenged the purpose and need articulated in the EIS for a multi-lane limited access highway connecting two existing highways. The purpose and need was derived from a series of planning studies conducted by the Atlanta Regional Commission. Plaintiffs argued that the purpose and need was crafted in a way that the proposed highway was "conclusively presumed to be required" and a rail alternative perfunctorily dismissed for its failure to fully satisfy the objectives of the project. The Court of Appeals disagreed with the Plaintiffs, stating that their objections reflected "a fundamental misapprehension of the role of federal and state agencies in the community planning process established by the Federal-Aid Highway Act." The Court went on to explain that the Federal-Aid Highway Act contemplated "a relationship of cooperation between federal and local authorities; each governmental entity plays a specific role in the development and execution of a local transportation project." The Court emphasized that federal agencies did not have responsibility for long range local planning, and found that the "federal, state and local officials complied with federally mandated regional planning procedures in developing the need and purpose section of the EIS." 903 F.3d at 1541-42. Although the Court in *Buckhead* acknowledged the validity of a purpose and need based on the results of the planning study, it did not in any way scale back the holdings of other cases relating to purpose and need which caution agencies not to write purpose and need statements so narrowly as to "define competing 'reasonable alternatives' out of consideration (and even out of existence)." *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997). (In this case, the Army Corps of Engineers failed to question city's insistence on one approach for supplying water and gave no independent thought to the feasibility of alternatives, both single source and separate source supply options. On this basis, the EIS was found to be inadequate.)

In *Carmel-by-the-Sea v. U.S. DOT*, 123 F.3d 1142 (9th Cir. 1997), the Plaintiffs challenged the sufficiency of an EIS for failing to adequately consider the proposed project's growth-inducing effects. The Ninth Circuit disagreed, finding that the EIS satisfied this requirement by referencing several local planning documents that specifically included construction of the highway in their growth plans and which discussed overall growth targets and limits. In addition, the Court found that achieving "Level of Service C," an objective derived from the local congestion management plan, was an appropriate part of the purpose and need statement (although ultimately the EIS was found inadequate on cumulative impact grounds). Similarly, in *Laguna Greenbelt, Inc. v. U.S. DOT*, 42 F.3d 517 (9th Cir. 1994), the court held that the absence of a more thorough discussion in an EIS of induced growth, an issue that was sufficiently analyzed in referenced state materials, does not violate NEPA. However, regardless of the source, the analysis of induced growth must be in sufficient detail and must provide an analytical basis for its assumptions in order to be adequate under NEPA. See *Senville v. Peters*, 327 F.Supp.2d 335, 349 (Vt. 2004) (In this case, the District Court found an FEIS, before it was supplemented by FHWA, to be inadequate because it contained only a "sketchy" discussion of induced growth and failed to support its assumptions with any analysis.)

In *Utahns for Better Transportation v. U.S. DOT*, 305 F.3d 1152 (10th Cir. 2002), *as modified on rehearing*, 319 F.3rd 1207 (10th Cir. 2003), Plaintiffs contended that the FEIS was inadequate because it failed to consider reducing travel demand through alternative land use scenarios in combination with mass transit. Noting that "reasonable alternatives" must be non-speculative, the Tenth Circuit found that Plaintiffs had not demonstrated a deficiency in the FEIS on this basis (although it was ultimately found inadequate on other grounds). The Court stated that "Land use is a local and regional matter," and that, in this case, the corridor at issue would

involve the jurisdiction of several local and regional governmental entities whose cooperation would be necessary to make an alternative land use scenario a reality. The fact that these entities had clearly declined to alter their land use plans in such a way was justification for not considering this alternative. 305 F.3d at 1172. [3]

In *Sierra Club v. U.S. Department of Transportation*, 310 F.Supp.2d 1168 (D. Nevada 2004), Plaintiffs made several challenges to the EIS for a proposed highway project.
One of these challenges alleged that FHWA relied on understated population and traffic forecasts. However, the Nevada District Court found that FHWA's reliance on the forecasts and modeling efforts of the designated metropolitan planning organization responsible for developing transportation plans and programs for the area was reasonable. In addition, Plaintiffs argued that the EIS had improperly rejected a fixed guideway as a reasonable alternative under NEPA. The Court disagreed, finding that FHWA reasonably relied on a "major investment study"[4] conducted as part of its planning process to establish that such an alternative (1) would not meet the project's purpose and need, even when considered as part of a transportation strategy, (2) was too costly and (3) depended on connections to other portions of such a system for which construction was uncertain.[5]

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[3] Note, however, an alternative is not "speculative" or "unreasonable" merely because it is outside the jurisdiction of the proposing agency. 40 C.F.R. 1402.14 (c). In some cases, an agency might be required to consider an alternative outside its jurisdiction. For example, in *Muckleshoot Indian Tribe v. United States Forest Service*, 177 F.3d 800 (9th Cir. 1999), the Ninth Circuit Court of Appeals found that the lack of funds for an alternative was not sufficient to render it "speculative" when the Forest Service could have at least made a request for additional funding. The facts in the *Muckleshoot* case are different than the *Utahns* case, where the local agencies had clearly declined to exercise the alternative.

[4] Corridor-level "Major Investment Studies" were for a time required under FTA and FHWA's planning regulations where a need for a major metropolitan transportation investment was identified and Federal funds were potentially involved. Major investment studies were intended to refine the system-wide transportation plan and lead to decisions on the design concept and scope of the project, in consultation with other interested agencies. In addition, they were intended to be used as input to EISs and EAs. 23 C.F.R. 450.318. In Section 1308 of the Transportation Equity Act for the 21st Century, the Secretary was directed to eliminate the separate requirement for major investment studies and instead to integrate it with the planning analyses required under the FTA and FHWA planning statutes "as part of the analyses required to be undertaken pursuant to the planning provisions of Title 23, United States Code and Chapter 53 of Title 49, United States Code, and the National Environmental Policy Act of 1959 (42 U.S.C. 4321 et seq.) for Federal-aid highway and transit projects.". Pub.. 105-178 (June 9, 1998). Although no longer required, "major investment studies" continue to be allowed at the discretion of the State or local agency.

It is telling, however, that a good many State and local agencies continue to prepare "major investment studies" (and similar corridor and sub-area analyses) on their own volition, because they have found it very valuable to vet the merits and weaknesses of various alternatives—both modal and alignment--before they even initiate the NEPA analyses and documentation. Moreover, FTA requires Metropolitan Planning Organizations and/or transit agencies contemplating major capital investment ("new starts") projects to prepare a planning-level corridor study, know as an "Alternatives Analysis," either before or during a Draft Environmental Impact Statement for the purpose of narrowing the range of alternatives for study in a subsequent NEPA analysis and document(s) by eliminating some alternatives from further detailed study. See also footnote 10.

[5] Plaintiffs have appealed this decision, and the Ninth Circuit has stayed further construction on the project pending the outcome of the appeal. *Order Granting Stay*, Ninth Circuit Court of Appeals, No. CV-02-00578-PMP (July 27, 2004).

As demonstrated by these cases, Courts have sanctioned the use of information from the planning process in a NEPA analysis and document. This is consistent with the opening language in NEPA advocating the integration of environmental considerations in both planning and decision-making. Consequently, products from the transportation planning process can be used in the NEPA analysis and documentation prepared for a transportation project.

IV. LEGAL GUIDANCE ON HOW PRODUCTS FROM THE PLANNING PROCESS CAN BE USED IN THE NEPA PROCESS

For studies, analyses or conclusions from the transportation planning process to be used in the NEPA process, they must meet certain standards established by NEPA. This is because the information and products coming from the planning process must be sufficiently comprehensive that the Federal government may reasonably rely upon them in its NEPA analysis and documentation. Transportation planning processes vary greatly from locality to locality. Some transportation planning processes will already meet these standards, while others might need some modification to do so. Below is a discussion of where products from the transportation planning process might be incorporated into a NEPA analysis and documentation (purpose and need, alternatives, affected environment, and, to a more limited extent, environmental consequences in terms of land use, indirect and cumulative impacts, etc.), along with the NEPA standards they must first meet.

In addition to what is discussed below, these planning products must come from a transportation planning process that complied with current transportation planning requirements (e.g., provided an opportunity for public involvement and considered relevant planning factors). Interested State, local, tribal and Federal agencies should be included in the transportation planning processes, and must be given a reasonable opportunity to comment upon the long range transportation plan and transportation improvement program. Finally, any work from the planning process must have been documented and available for public review during the planning process. Such documentation should be in a form that can easily be appended to the NEPA document or incorporated by reference.[6]

Purpose and Need

The "purpose and need statement" in a NEPA document is where the planning process and the NEPA process most clearly intersect. A sound planning process is a primary source of the project purpose and need. It is through the planning process that state and local governments determine what the transportation needs of an area are, which of transportation needs they wish to address, and in what time frame they wish to address them. Indeed, that is what the law requires from the planning process and actually prevents projects that do not come from the planning process from going forward.

The purpose and need statement, at a minimum, is a statement of the transportation problem to be solved by the proposed project. It is often presented in two parts: broad goals and objectives,

[6] Documents may be incorporated by reference if they do not impede agency or public review of the action. Any document incorporated by reference must be "reasonably available for inspection by potentially interested persons within the time allowed for comment." Incorporated materials must be cited in the NEPA document and their contents briefly described. 40 C.F.R. 1502.21.

and a description of the transportation conditions (congestion, safety, etc.) underlying the problem. The long-range transportation plan also includes goals and objectives similar to "purpose and need" but on a broader scale, since it typically covers a wider area and spans at least twenty years. These goals and objectives are often identified through extensive public outreach, sometimes called "visioning" or "alternative futures" exercises. The purpose and need statement for a transportation project should be consistent with and based on the goals and objectives developed during the planning process.

Getting input from Federal agencies as transportation goals and objectives are developed during the planning process is advisable and would be consistent with the cooperative relationship envisioned by statute and reinforced by courts. Such participation would give Federal agencies a better insight into the needs and objectives of the locality and would also provide an important opportunity for Federal concerns to be identified and addressed early in the process. These concerns could include issues that might be raised by Federal agencies in considering permit applications for projects designed to implement the transportation plan. However, the responsibility for local planning lies with the metropolitan planning organization or the State, not the Federal government.

In many cases, the goals and objectives in the transportation plan are supported by a needs assessment and problem statement describing current transportation problems to be addressed. Although the goals and objectives in the long-range transportation plan will be broader than what is appropriate for a specific project, they can be the foundation for the purpose and need to be used in a NEPA document. For example, they can be used to generate corridor-level purpose and need statements, during planning, for use in NEPA documents**.** The challenge is to ensure what comes from the long-range transportation plan is not so general as to generate a range of alternatives that are not responsive to the problem to be solved.

NEPA calls for a purpose and need statement to briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. A purpose and need statement can be derived from the transportation planning process. The purpose and need statement:

- Should be a statement of the transportation problem (not a statement of a solution);
- Should be based on articulated planning factors and developed through a certified planning process;
- Should be specific enough so that the range of alternatives developed will offer real potential for solutions to the transportation problem;
- Must not be so specific as to "reverse engineer" a solution; and
- May reflect other priorities and limitations in the area, such as environmental resources, growth management, land use planning, and economic development.

Alternatives

Under NEPA, an EIS must rigorously explore and objectively evaluate all reasonable alternatives, and briefly explain the rationale for eliminating any alternatives from detailed

study.[7] "Reasonable alternatives" are described in Council on Environmental Quality (CEQ) guidance as including "those that are practical or feasible from the technical and economic standpoint and using common sense." *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, Question #2a (March 23, 1981). An alternative is not "reasonable" if it does not satisfy the purpose and need,[8] but it may be reasonable even if it is outside the jurisdiction of the proposing agency to implement.

The transportation planning process frequently takes steps to refine the purpose and need statement that results in narrowing or screening the range of alternatives. Regional planning considerations may be the basis for refining the purpose and need statement, which might then have the effect of eliminating some alternatives from detailed consideration. For example, network connectivity across a geographic barrier such as a river may dictate a particular transportation mode or a general alignment. The plan may also identify where a locality wants housing, commercial development, agriculture, etc.—all of which might drive the need for transportation improvements in particular corridors.

When a long- range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives, a subarea or corridor study could be conducted to "zoom in" on a particular area. This study would evaluate alternative investment strategies, engineering constraints, fiscal constraints, and environmental considerations in this area, and could narrow the range of possible alternatives to those that will meet the goals and objectives of the broader long-range transportation plan in that particular subarea or corridor. At the conclusion of such a study, the remaining alternatives might simply consist of a single corridor or mode choice with location and design options.

On a broad scale, a decision about whether projects located in particular subareas or corridors would satisfy the transportation goals and objectives of a locality can be made in these subarea or corridor studies. These studies can therefore be used in and relied on in an EIS to refine the purpose and need statement, thereby narrowing the range of alternatives to be considered by eliminating some alternatives from further detailed study. When conducting subarea or corridor screening studies during the planning process, State and local agencies should keep in mind the principles of NEPA and should be sure to document their procedures and rationales. To be incorporated into an EIS, the analysis of alternatives conducted in the subarea or corridor study should be consistent with the standard of NEPA requiring consideration of reasonable alternatives. Alternatives that remain "reasonable" after the planning level analysis must be addressed in the NEPA process, even when they are clearly not the preferred alternative.[9]

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[7] 40 C.F.R. 1502.14 The term "alternatives" is also used in many other contexts (for example, "prudent and feasible alternatives" under Section 4(f) of the Department of Transportation Act, the "Least Environmentally Damaging Practicable Alternative" under the Clean Water Act, or the "Alternatives Analysis" under FTA's New Starts program). This memorandum only uses the term as defined under NEPA. At the planning stage of any project, however, a determination should be made as to whether the alternatives to be considered will need to be used to satisfy multiple requirements at the planning and NEPA review stages. If so, during planning the alternatives chosen for consideration and the analysis of those alternatives should reflect the multiple statutory objectives that must be addressed.

[8] In some cases, an alternative may be reasonable even if it just partially satisfies the purpose and need. See *NRDC v. Morton*, 458 F.2d 827, 836 (C.A.D.C. 1972).

[9] Under the requirements for FTA's New Starts Program, however, under the appropriate circumstances, reasonable alternatives may be eliminated from detailed study during a rigorous planning-level Alternatives Analysis (including an evaluation of environmental consequences) conducted before the

Alternatives passed over during the transportation planning process because they are infeasible or because they do not meet the NEPA "purpose and need" can be omitted from the detailed analysis of alternatives in the NEPA analyses and documentation, so long as the rationale for omitting them is documented in the NEPA document. That documentation can either be appended to the EIS or the specific transportation planning documents can be summarized in the EIS and incorporated by reference. The NEPA review would then have to consider the alternatives that survive the planning study, plus any additional reasonable alternatives identified during NEPA scoping that may not have been considered during the planning process. All reasonable alternatives considered in the draft and final EIS should be presented in a "comparative form" that sharply defines the issues and provides a clear basis for a choice by the decisionmaker and the public. 40 C.F.R. 1502.14.

Finally, any planning study being relied upon as a basis for eliminating alternatives from detailed study should be identified during the NEPA scoping process and available for public review. Since a major purpose of the scoping process is to identify alternatives to be evaluated, the public should be given the opportunity to comment on determinations made in the planning process to eliminate alternatives.

Therefore, if the planning process is used to screen or narrow the range of alternatives, by excluding certain alternatives from detailed study or by prescribing modes or corridors for transportation development which results in eliminating alternative modes or corridors from detailed study, then the planning-based analysis of alternatives:

- Should describe the rationale for determining the reasonableness of the alternative or alternatives;
- Should include an explanation of why an eliminated alternative would not meet the purpose and need or was otherwise unreasonable; and
- Should be made available for public review during the NEPA scoping process and comment period.

Under FTA's New Starts program, the alternatives considered during the NEPA process may be narrowed even further by eliminating alternatives from detailed study in those instances when the Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review.[10] In fact, FTA may narrow the alternatives considered in detail in the NEPA analysis and documentation to the No-Build (No-Action) alternative and the "Locally Preferred Alternative". The following criteria must be met if alternatives are eliminated from detailed study by a planning Alternatives Analysis conducted prior to the NEPA review:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts, capital and operating costs, social, economic, and environmental impacts, and technical considerations;

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issuance of a NEPA Notice of Intent to prepare an Environmental Impact Statement. This is discussed later in this section.

[10] FTA offers applicant sponsors the opportunity to conduct the Alternatives Analysis before NEPA begins or alternatively, to conduct the Alternatives Analysis concurrently with the NEPA DEIS.

- There must be appropriate public involvement in the planning Alternatives Analysis;
- The appropriate Federal, State, and local resource agencies must be engaged in the planning Alternatives Analysis;
- The results of the planning Alternatives Analysis must be documented;
- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and
- The NEPA document must incorporate by reference the evaluation of alternatives from the planning Alternatives Analysis.

If, during the NEPA process, new reasonable alternatives not considered during the planning Alternatives Analysis are identified or new information about eliminated alternatives comes to light, those alternatives must be evaluated during the NEPA process.

Affected Environment and Environmental Consequences

The EIS must present a description of the environment in the area that would be affected by the proposed action and alternatives and their environmental consequences. 40 C.F.R. 1502.15 and 1502.16. In the development of the long-range transportation plan and a corridor or subarea studies, a similar assessment of the environment in the area and environmental consequences should typically have been conducted. Such planning-level assessments might include developing and utilizing geographic information system overlays of the area; providing information on air- and water-sheds; identifying the location of environmental resources with respect to the proposed project and alternatives; conducting environmental "scans" of the area of impact; and utilizing demographic trends and forecasts developed for the area. The discussion in the planning process of development growth, and consistency with local land use, growth management or development plans, as well as population and employment projections, would be particularly valuable for use in determining the affected environment and the scope of cumulative impacts assessment and possible indirect impacts of the proposed transportation improvement. Any relevant parts of such transportation planning process analyses, conducted in the planning process or by other sources and used in plan development, can be incorporated by reference and relied upon in the NEPA analysis and documentation.

The CEQ regulations require the action agency preparing an EIS to assess the environmental consequences of the proposed action and any reasonable alternatives. The CEQ regulation contains a detailed list of all of the types of environmental consequences that must be discussed, including direct, indirect and cumulative impacts and their significance, as well as means to mitigate adverse environmental impacts. These consequences must be discussed for each alternative and should be presented in a comparative form. 40 C.F.R. 1502.16. In transportation planning, the development of transportation plans and programs is guided by seven planning factors (23 U.S.C. 134(f) (1) and 23 U.S.C. 135(c) (1)), one of which is to "protect and enhance the environment, promote energy conservation, and improve the quality of life." As such, there generally is a broad consideration of the environmental effects of transportation decisions for a region.[11] To the extent relevant, this analysis can be incorporated into the "environmental

[11] Specifically, the FHWA/FTA transportation planning regulations (23 C.F.R. Part 450 and 49 C.F.R. Part 613) require inclusion of the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on human, natural and man-made environment such as housing, employment and community development, consultation with

consequences" section of an environmental assessment or impact statement performed under NEPA. However, in most cases the assessment of environmental consequences conducted during the planning process will not be detailed enough to meet NEPA standards and thus will need to be supplemented.

Nonetheless, the planning process often can be a source of information for the evaluation of cumulative and indirect impacts required under NEPA. 40 C.F.R. 1502.16, 1508.7 and 1508.8. The nature of the planning process is to look broadly at future land use, development, population increases, and other growth factors. This analysis could provide the basis for the assessment of cumulative and indirect impacts required under NEPA. Investigating these impacts at the planning level can also provide insight into landscape, watershed or regional mitigation opportunities that will provide mitigation for multiple projects.

An EIS may incorporate information regarding future land use, development, demographic changes, etc. from the transportation planning process to form a common basis for comparing the direct, indirect and cumulative impacts of all alternatives. When an analysis of the environmental consequences from the transportation planning process is incorporated into an EIS it:

- Should be presented in a way that differentiates among the consequences of the proposed action and other reasonable alternatives;
- Should be in sufficient detail to allow the decisionmaker and the public to ascertain the comparative merits and demerits of the alternatives; and
- Must be supplemented to the extent it does not adequately address all of the elements required by the CEQ and FHWA/FTA NEPA regulations.

V. LEGAL GUIDANCE ON WEIGHT TO BE GIVEN TO PLANNING PRODUCTS INCORPORATED INTO NEPA ANALYSES AND DOCUMENTS

Responsibility for NEPA analyses and documents on Federally-funded or approved highway and transit projects ultimately rests with FHWA and FTA, since they are taking the federal action subject to NEPA. FHWA and FTA have an obligation to independently evaluate and review a NEPA analysis and document, even when some of the information contained in it has been prepared by the State or other local agency. 42 U.S.C. 4332(2)(D); 40 C.F.R. 1506.5 Under NEPA and other relevant environmental laws such as the Endangered Species Act, the Clean Water Act, or the Clean Air Act, other agencies also must be given an opportunity to review and comment on NEPA documents and analysis. Federal agencies that have jurisdiction by law have an independent responsibility under NEPA and, upon the request of the lead agency, shall be "cooperating agencies."[12] Tribes and state and local agencies with jurisdiction by law and all agencies with special expertise may, upon the request of the lead agency, be "cooperating agencies" in the NEPA process. 40 C.F.R. 1501.6 and 1508.5.

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appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems). 23 C.F.R. 450.316(a)(13).

[12] Nonetheless, a cooperating agency may, in response to a lead agency's request for assistance in preparing an EIS, reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is subject to the EIS. 40 C.F.R. 1501.6(c).

However, while imposing on Federal agencies the obligation to independently evaluate information in NEPA analyses and documents, Congress also affirmed that NEPA does not apply to the transportation planning process because it is not a Federal action:

> "Since plans and programs described in this [transportation planning] section are subject to a reasonable opportunity for public comment, since individual projects included in the plans and programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and programs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)."

23 U.S.C 134(o) and 135(i). The transportation planning process is a local function, which, by statute, is undertaken by State and local governments. The Department of Transportation has an oversight role, but it does not conduct the process and, therefore, there is no Federal action to trigger the application of NEPA. This is different than the "big picture" planning processes undertaken by other Federal agencies with respect to lands that they manage, where action by the Federal agency is involved and NEPA applies.[13]

The affirmation in Sections 134(o) and 135(i) that the decisions made by State and local governments during the transportation planning process are exempt from NEPA is based on a Fifth Circuit decision, *Atlanta Coalition on the Transportation Crisis, Inc. v. Atlanta Regional Commission*, 599 F.2d 1333 (5th Cir. 1979). In this case, plaintiffs sought declaratory judgment that an EIS was required for a regional transportation plan developed by the Atlanta Regional Commission in compliance with the FHWA and FTA planning regulations. The plan proposed a comprehensive transportation system for the Atlanta area. It included an analysis of projected regional transportation needs through the year 2000 and identified the general location and the mode (i.e. highway or transit) for recommended transportation corridors to meet those needs. The Fifth Circuit denied plaintiff's request for an EIS, finding that "Congress did not intend NEPA to apply to state, local or private actions; hence, the statute speaks only to 'federal agencies' and requires impact statements only as to 'major federal actions.'" 559 F.2d at 1344. Specifically, the Court stated:

> "The fact is that the [regional plan] was developed by ARC in conjunction with state and local authorities, and no federal agency had any significant hand in determining, or made any decision concerning, its substantive aspects. Under the statutes, those decisions are entrusted to the state and local agencies, not FHWA or [FTA]. Moreover, the plan, as a plan will never be submitted to a federal agency for review or approval. And while the planning process was so structured so as to preserve the eligibility for federal funding of projects included within the resulting plan, it has been consistently held that the

[13] For example, NEPA applies to the general management plans prepared and approved by the National Park Service for each unit of the National Park System (Chapter 2, "Management Policies," at www.nps.gov/policy/mp/chapter2.htm), and applies to resource management plans prepared and approved by the Bureau of Land Management to maximize resource values of federal lands and resources (43 C.F.R. 1601.0-6).

possibility of federal funding in the future does not make the project or projects 'major federal action' during the planning stage."

[Cites omitted] 599 F.2d at 1346. The Court further found that certification or funding of the planning process by FHWA and FTA did not amount to a "major federal action" as defined in the NEPA regulations. 559 F.3d at 1344; 40 C.F.R. 1508.18. The Court concluded by again emphasizing: "We have no doubt but that the [regional plan] embodies important decisions concerning the future growth of the Atlanta area that will have a continuing and significant effect on the human environment. But at the risk of belaboring the point, we reemphasize that those decisions have been made by state and local authorities, will not be reviewed by any federal agency, and obligate no federal funds. The defendants therefore need not prepare an impact statement on the [regional plan]." 559 F.3d at 1349.

This theme is echoed in other court decisions involving local planning processes. Early in the development of NEPA law, Courts recognized that deference to local planning was appropriate in the NEPA process. In *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service*, 487 F.2d 1029 (U.S. App. D.C. 1973), the Postal Service determined that the construction of a bulk mail facility would have no significant impact since, under the locality's zoning laws, the postal facility was a "permitted use" at the location proposed by the Postal Service. In analyzing this issue, the Court noted: "The question of significance takes on a distinctive case in the context of land use planning." The Court went on to state: "When local zoning regulations and procedures are followed in site location decisions by the Federal Government, there is an assurance that such 'environmental' effects as flow from the special uses of land—the safety of the structures, cohesiveness of neighborhoods, population density, crime control, and esthetics—will be no greater than demanded by the residents acting through their elected representatives. " 487 F.2d at 165-66. The Court acknowledged, however, that local planning was not sufficient to effectuate NEPA, and that actions of the Federal government might have implications beyond those evaluated in the planning process: "For example, whereas the Federal Government might legitimately defer to New York City zoning in matters of, say, population density, a different issue would be posed by the location within the city of an atomic reactor. Its peculiar hazards would not be limited to the citizens of New York, nor could they be controlled by them." 487 F.2d at 166. *See also Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851 (C.A. Idaho 1982) (citing *Maryland-National Capital Park* and upholding a finding of no significant impact when a Federal project conformed to existing land use patterns, zoning and local plans).

The Fifth Circuit followed a similar line of reasoning in *Isle of Hope Historical Association v. U.S. Army Corps of Engineers*, 646 F. 2d 215 (5th Cir. 1981). In this case, the Court held that, in preparing an EIS, the Corps of Engineers properly relied on information and answers from the local government regarding planning and zoning issues. The Corps had consulted with county officials to determine whether planning documents had been adopted and whether there was any inconsistency between the proposed project and the local zoning regulations. Plaintiffs challenged this part of the EIS, alleging that it had not adequately discussed the planning documents at issue nor disclosed inconsistencies between the zoning regulations and the proposed project. The Court upheld the Corps' reliance on the county officials' responses, stating that "For the Corps in this case to follow planning documents which the county had not adopted or to engage independent analysis of inconsistencies which those specifically charged

with zoning enforcement did not find would make the Corps in effect a planning and zoning review board….The proper function of the Corps was to assess the environmental impact of the [proposed project], not to act as a zoning interpretation or appeal board." 646 F.2d at 221.[14]

This respect for local sovereignty in making planning decisions has been reinforced more recently in the context of transportation planning. In *North Buckhead Civic Association v. Skinner* (discussed previously in Section III of this Memorandum), the 11th Circuit emphasized that "NEPA does not confer the power or responsibility for long range local planning on Federal or state agencies." 903 F. 3d at 1541-42. See also *Sierra Club v. U.S. Department of Transportation*, 350 F.Supp.2d 1168, 1193 (D. Nevada 2004), where the Court said: "[A] federal agency does not violate NEPA by relying on prior studies and analyses performed by local and state agencies." This approach is also consistent with the statutory provision describing the Federal-State relationship for the Federal-aid highway program: "The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed." 23 U.S.C. 145(a). In conducting its NEPA analysis, FHWA and FTA must take into account Congressional direction regarding its statutory authority to act. See *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (C.A.D.C. 1991).[15]

When it enacts a provision of law, Congress is presumed to have in mind previous laws relating to the same subject matter. To the greatest extent possible, new statutes should be read in accord with prior statutes, and should be construed together in harmony. N. Singer, *Statutes and Statutory Construction*, 6th Ed., Vol. 2B, Sec. 51.02. A Federal agency's independent obligation to evaluate planning products incorporated into the NEPA process must be performed in a way that is consistent with the Congressional direction that NEPA does not apply to local transportation planning and consistent with court decisions recognizing the sovereignty of local governments in making local transportation planning decisions. Federal agencies should ensure transportation planning decisions have a rational basis and are based on accurate data, but should not use the NEPA process as a venue for substituting federal judgment for local judgment by requiring reconsideration of systems-level objectives or choices that are properly made during the local transportation planning process.[16]

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[14] Of course, the reliance on the underlying local plan does not excuse the analysis of the impacts of the project within the context of that plan. Cf*. Sierra Club Illinois Chapter v. U.S. Department of Transportation*, 962 F. 2d 1037, 1042 (N.D. Ill. 1997).

[15] In this case, plaintiffs challenged the Federal Aviation Administration's EIS on an application by the Toledo Port Authority for a cargo hub in Toledo. Plaintiffs alleged that the FAA should have considered alternatives outside of Toledo. The Court disagreed, finding that Congress had made clear that the location of cargo hubs was to be made by local authorities and not by the Federal government, stating: "Where the Federal government acts, not as a proprietor, but to approve and support a project being sponsored by a local government or private applicant, the Federal agency is necessarily more limited. In the latter instance, the Federal government's consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor in the sitting and design of the project." 938 F.2d at 197.

[16] This would not constrain the Environmental Protection Agency's authority under Section 309 of the Clean Air Act to refer concerns to the President's Council on Environmental Quality regarding impacts on public health or welfare or environmental quality. 42 U.S.C. 7609.

The transportation planning process and the NEPA process work in harmony when the planning process provides the basis or foundation for the purpose and need statement in a NEPA document. To the extent regional or systems-level analyses and choices in the transportation planning process help to form the purpose and need statement for a NEPA document, such planning products should be given great weight by FHWA and FTA, consistent with Congressional and Court direction to respect local sovereignty in planning. This approach is also consistent with a letter to Secretary Mineta dated May 12, 2003, from James Connaughton, Chairman of CEQ, on purpose and need statements in NEPA documents:

> "Federal courts generally have been deferential in their review of a lead agency's 'purpose and need' statements, absent a finding that an agency acted in an arbitrary or capricious manner. They have recognized that federal agencies should respect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the federal agency's NEPA analysis of purpose and need [citing to *North Buckhead*]."

Further, in his letter, the Chairman states that, even though other Federal agencies must be provided an opportunity to comment, they "should afford substantial deference to the transportation agency's articulation of purpose and need" when the proposal is a transportation project.[17]

Therefore, if transportation planning studies and conclusions have properly followed the transportation planning process, then they can be incorporated into the purpose and need statement and, further, can be used to help draw bounds around alternatives that need to be considered in detail. For example, if systems-level or other broad objectives or choices[18] from the transportation plan are incorporated into the purpose and need statement used in a NEPA document, FHWA and FTA should not revisit whether these are the best objectives or choices among other options. Rather, their review would include making sure that objectives or choices derived from the transportation plan were based on transportation planning factors established by federal law; reflect a credible and articulated planning rationale; are founded on reliable data; and were developed through a transportation planning process meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the objectives and choices must

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[17] See, also, *Citizens Against Burlington, Inc. v. Busey*, *id*., At 938 F.2d 190, 195-96 (C.A.D.C. 1991), stating "When an agency is asked to sanction a specific plan, see 40 C.F.R. § 1508.18(b)(4), the agency should take into account the needs and goals of the parties involved in the application. [Citations omitted];" *Louisiana Wildlife Federation, Inc. v. York*, 761 F.2d 1044 (5th Cir. 1985), stating "Under [the Corps'] Guidelines, therefore, not only is it permissible for the Corps to consider the applicant's objective; the Corps has a duty to take into account the objectives of the applicant's project. Indeed, it would be bizarre if the Corps were to ignore the purpose for which the applicant seeks a permit and to substitute a purpose it deems more suitable."

[18] Examples of such planning objectives or choices that courts have accepted for use in the purpose and need statement for a NEPA document are (1) the need for a multi-lane highway connecting two other highways (*North Buckhead Civic Association v. Skinner*, 903 F.2d at 1537) and (2) the need for a particular level of service (*Carmel-by-the-Sea v. U.S. DOT,* 123 F.3d at 1156). In *Atlanta Coalition on the Transportation Crisis v. Atlanta Regional Commission*, the court discusses the distinction between "systems" planning and "project" planning, and describes the Atlanta "systems" plan as "an analysis of projected regional transportation needs through the year 2000 [identifying] the general location and the mode (i.e., highway or mass transit) of recommended transportation corridors to meet those needs." 599 F.2d at fn.2 and at 1341.

be documented and included in the NEPA document. In such cases, alternatives falling outside a purpose and need statement derived from objectives or choices identified in the planning process do not need to be considered in detail.

FHWA and FTA should independently review regional analyses or studies of transportation needs conducted during the transportation planning process at a similar level. FHWA and FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable and scientifically acceptable. This review would include determining whether assumptions have a rational basis and are up-to-date and data, analytical methods, and modeling techniques are reliable, defensible, and reasonably current. This approach preserves the sovereignty of state and local governments in making local planning decisions but in a way that is consistent with the principles and procedures of NEPA.

Nonetheless, additional scrutiny may be required if the results of the planning process are more specific than needed for regional or systems-level planning. Such results might actually be part of project development, which is outside of the planning jurisdiction of local agencies. Project development often involves a Federal action and therefore would be subject to NEPA. See 23 U.S.C. 134(o) and 135(i). In addition, the information the Federal agencies rely upon in the NEPA process based on underlying transportation planning work cannot be inaccurate, false or misleading. See *Sierra Club v. U.S. Army Corps of Engineers,* 701 F. 2d 1011, 1035 (where the court required a supplementation or re-evaluation of the NEPA analyses and documentation where the Corps unquestioningly relied on inaccurate information and did not investigate, on its own, the accuracy of the fisheries data submitted to it to support a permit for a landfill in the Hudson river to accommodate the Westway highway project.)

In conducting reviews under NEPA, Federal agencies should defer to planning products incorporated into the NEPA process to the extent that they involve decisions or analysis within the jurisdiction of the local planning agency. The focus of the Federal agency's review should be whether the planning information is adequate to meet the standards of NEPA, not whether the decisions made by the planning authority are correct. This would be consistent with the specific roles assigned by Congress to local and Federal authorities and consistent with court decisions admonishing Federal agencies to respect the sovereignty of local authorities in developing local plans.

VI. CONCLUSION

This memorandum provides guidance on how transportation planning level information and products may be used to focus the documentation prepared to comply with NEPA when Federal approvals are needed to build a transportation project. Federal law and regulations and best practices ensure that much information that is relevant to the NEPA process is in fact developed during the planning process. Both Federal transportation law and NEPA law strongly suggest that to the extent practicable, the NEPA process should use and build on the decision made and information developed during the planning process. Of course, where the transportation planning process fails to address or document issues, the NEPA analyses and documentation may have to supplement the information developed during the planning process.

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Appendix D

FHWA/FTA Guidance on Myths and Misperceptions
October, 2003

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FEDERAL LAWS AND REGULATIONS:
"EXPLODING THE MISPERCEPTIONS"[1]

Misperception 1. Transportation plans can be written in very general terms (e.g., a "policy plan"), leaving decisions on the nature of a transportation project to be made during project development and NEPA.

Statewide plans can be written in general terms, but more specificity is required in metropolitan areas. To comply with EPA's transportation conformity regulations, transportation plans in non-attainment and maintenance areas must identify the "design concept and scope" of planned transportation facilities. Design concept and scope includes:

- Mode – highway, transit – and termini
- Number of lanes or tracks
- Degree of grade separation and access control

In all metropolitan areas, including those that are in attainment of air quality standards, transportation plans must be financially constrained. Thus, they must provide sufficient detail to support the development of capital and operating cost estimates.

Misperception 2. In metropolitan areas, a project must appear in the MPO's plan and TIP before the NEPA process can be initiated.

The NEPA process can be initiated before a project appears in the MPO's plan and TIP. In such cases, the start of the NEPA process is treated administratively as a planning study. FHWA/FTA planning and/or capital funds may be used to pay for the initial NEPA activities (e.g. feasibility or corridor needs studies). Although FTA planning funds may be used for preparing environmental documents, FHWA planning funds cannot be used for this purpose since this is considered to be Preliminary Engineering by FHWA. When used for planning activities, highway capital funds must appear in the TIP unless the State and MPO agree to exclude them from inclusion in the TIP. Transit capital funds must appear in the TIP as well as the MPO's Unified Planning Work Program (UPWP).

The NEPA process can be initiated before a project appears in the MPO's adopted plan and TIP, <u>BUT</u> cannot be completed (with a FEIS, FONSI, or CE) until the plan and TIP specifically include the project, with the exception of projects that are grouped in accordance with 23 CFR 450.324(i). In non-attainment and maintenance areas, projects, which are approved by FHWA/FTA, must be included in a currently conforming plan and TIP before the completion of NEPA.

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[1] This paper was developed by FHWA and FTA for their Linking Planning and NEPA seminars and workshops, and was used to "debunk" common misperceptions about the relationship between planning and NEPA.

Misperception 3. An analysis of alternatives that is done as part of the planning process, as well as any resulting project decisions, must be redone under NEPA.

The planning and NEPA project development process should be considered a continuum and as such will involve a "winnowing down" of alternatives to achieve the reasonable range of alternatives required in the NEPA process for an EIS. A series of screening steps is a typical and rational way to approach complex decision-making. This winnowing down may occur:

- During planning before the formal initiation of NEPA;
- During planning after the formal initiation of NEPA (e.g., NEPA scoping or early coordination activities as part of planning);
- After the project appears in the plan and TIP but before the formal initiation of NEPA; and/or
- After the project appears in the plan and TIP and after the formal initiation of NEPA.

Where screening decisions occur prior to NEPA scoping (or early coordination), FHWA and FTA advise state and local agencies to adhere to the principles of NEPA including

- Consideration of environmental impacts at an appropriate level of detail for the decision at hand;
- Coordination with environmental resource agencies;
- Public involvement; and
- Document the process and rationale.

State and local agencies that screen out alternatives prior to NEPA assume some risk of opposition, challenge by project opponents, or be questioned by resource agencies in later stages of NEPA development. Nevertheless, if NEPA principles are adhered to, the screening decisions have a sound basis in analysis, and the analysis and coordination/involvement process is well documented, FHWA and FTA will not normally require that these decisions be reconsidered under NEPA. It is appropriate to take advantage of the studies, public involvement and interagency coordination related to transportation planning during the NEPA project development process. Studies produced during the planning process that support the selection of alternatives can be appended to the NEPA document and relied upon in the NEPA process so long as the information is not outdated.

Misperception 4. The NEPA document must present all reasonable alternatives at the same level of detail.

Under Federal regulations, the NEPA process must consider a reasonable range of alternatives. This does not preclude the participating agencies from screening out some alternatives prior to release of the NEPA document. This might occur, for example, where an alternative is clearly inferior in terms of its transportation performance, cost effectiveness, the extent of environmental impacts, financial feasibility, or other factors. The NEPA document would address these decisions when describing the alternatives considered but eliminated from consideration.

All alternatives that are presented for consideration in the draft and final EIS must be in "comparable level of detail" under Federal regulations. This does not mean that the level of detail must be the same for each alternative. Sufficient information should be provided to enable the reader to understand the consequences of each alternative and make reasonable comparisons. Given the specifics of locations related to resources, it may be necessary to vary the level of detail from alternative to alternative to develop an adequate understanding of the environmental impacts and the alternatives ability to satisfy the purpose and need.

Misperception 5. If an agency starts the NEPA process during planning, there is a risk that its plans and programs would be subject to NEPA.

Metropolitan and statewide transportation plans, as well as the metropolitan and statewide transportation improvement programs, do not entail a major federal action, and are thus not subject to the requirements of NEPA. TEA-21 specifically exempted transportation plans and improvement programs from NEPA review. Initiating the NEPA process as part of or concurrently with a planning study does not mean that the plans and TIP/STIPs are subject to NEPA.

Misperception 6. A good way to get resource agencies involved early is to publish a Notice of Intent in the Federal Register to begin the official NEPA scoping process.

Resource agencies are often designated to be "cooperating agencies" in the NEPA process. A cooperating agency is an agency that has jurisdiction by law or special expertise.

Under Council on Environmental Quality regulations (40 CFR 1501.6), the lead Federal agency is expected to request the participation of each cooperating agency in the NEPA process at the earliest possible time. Cooperating agencies are then expected to participate in the NEPA process and in scoping (although they may indicate that other program commitments preclude or limit their involvement). The Notice of Intent and the initiation of scoping do not trigger the requirement for resource agency participation. One way to involve a resource agency early – potentially in advance of scoping – is for the lead agency to formally request that agency's participation as a cooperating agency.

Misperception 7. The NEPA process begins with the Notice of Intent (NOI).

The NOI is an important step in the overall NEPA process but is only one of several milestones along the way to an agency's final NEPA decision. The NOI signifies the point in the project development process in which the Federal agency has reached a conclusion about the appropriate NEPA class of action and has determined that an environmental impact statement (EIS) will be prepared. The NOI announces the agency's intention to prepare an EIS and begins that process (40 CFR 1508.22).

In order for an agency to come to the decision that an EIS must be prepared for a specific project or action, some amount of planning and environmental analysis is inherently necessary. While the degree of analysis and investigation will vary depending on the agency action, project, location, and environmental resources involved, the work necessary to reach this decision could be considerable. In some cases, a formal environmental assessment (EA) may be prepared to precipitate the decision to prepare an EIS; in other cases, this decision is supported by planning-level analyses. In both cases, an adequate level of technical work is necessary to support the class of action

decision. Consequently, NEPA can be considered to begin as soon as such work is initiated, even if it is undertaken in advance of formal environmental review and documentation.