

Appendix A: Application of the National Environmental Policy Act (NEPA) on WSDOT projects.

The following summary was prepared by WSDOT for the Joint Legislative Audit and Review Committee (JLARC).

In order to account for the range of project impacts (from minor to significant), NEPA provides for three basic "classes of action" to assess and document environmental impacts:

- An Environmental Impact Statement (EIS) is required for projects that will have a significant effect on the environment.
- An Environmental Assessment (EA) is prepared when the significance of the environmental impact is not clearly established. If the environmental analysis and interagency review find no significant environmental impacts, a finding of no significant impact (FONSI) is issued. If, however, the EA demonstrates that a significant effect on the environment will occur, then an EIS must be prepared.
- A categorical exclusion (CE) is prepared when an action does not individually or cumulatively have a significant effect on the environment. A CE project may have a specific or minor affect that requires documentation of mitigation measures to satisfy NEPA. These projects are referred to as Documented Categorical Exclusions (DCE).

An EIS can be prepared for one project or it can be prepared at a corridor level and encompass multiple projects. "Tiering" refers to the coverage of general topics, such as alignment) in a corridor or program-level EIS under which narrower EISs, EAs, or CEs are subsequently prepared.

NEPA Environmental Impact Statement

The EIS is the most detailed of the NEPA documents and requires full disclosure of the project scoping, consideration of project alternatives (e.g., location of alignment, design of interchange, etc.), assessment of impacts for each alternative, and demonstration of compliance with other environmental laws and executive orders. The EIS process includes the following steps: notice of intent (NOI), draft EIS (DEIS), final EIS (FEIS), and record of decision (ROD).

The lead federal agency, usually the Federal Highway Administration (FHWA), publishes the NOI in the Federal Register, which signals the initiation of the EIS process. Project scoping begins immediately to identify the major issues to be considered by the EIS; it is an open process involving various stakeholders, including the public and other federal, state, tribal and local agencies. Until recently in Washington State, the scoping process for a major transportation project with water impacts may have been addressed through a project-specific Signatory Agency Committee (SAC), which served to merge the considerable environmental assessment requirements under NEPA and CWA Section 404. With the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005, a new forum is being created to

replace the SAC. Stakeholder involvement and interagency coordination continues throughout the entire process.

The DEIS provides a detailed description of the proposal, including the purpose and need for the project, as well as any reasonable alternatives to both the project itself and the proposed design. A number of discipline reports are developed to address the issues associated with the project, which may range from a biological assessment to a cultural resources study and a socioeconomic evaluation to a mitigation plan for environmental impacts. For example, the I-405 Corridor EIS included about 20 discipline reports to support the alternatives analyses.

In addition, the EIS must address Section 4(f) of the Department of Transportation Act of 1966, which requires an impact analysis when a transportation program or project requires the use of publicly owned land, including:

- Public parks,
- Recreation areas,
- Wildlife and waterfowl refuges of national, state, or local significance,
- Lands of an historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge, or site).

This impact analysis is addressed during the EIS process and is generally included as a discipline report to the FEIS. (In 1983, the DOT Act, including Section 4(f), was recodified in the United States Code (U.S.C.). The amendment of Section 4(f) was recodified in 49 U.S.C. Section 303.)

Each project alternative must be assessed for its impacts on the affected environment. After a formal comment period, including receipt of comments from the public and other agencies, the lead agency issues the FEIS, which addresses the comments on the DEIS and provides an analysis to select the "preferred alternative." Between 30 and 90 days after the FEIS issuance, the ROD is prepared and issued. The ROD is the final decision document and usually culminates in selection of the preferred alternative from the FEIS; however, the ROD is an independent process and may select a different alternative than the FEIS preferred alternative if a documented analysis supports that decision.

NEPA Environmental Assessment

An EA is prepared to determine the significance of environmental impacts associated with a transportation project proposal. The EA includes a brief discussion of the need for the proposal, as well as a concise analysis of alternatives, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons that were consulted. As with an EIS, the FHWA is usually the lead federal agency for an EA for a transportation project; however, the U.S. Forest Service was the lead agency for the EA developed for the all-weather surfacing of SR 31 through the Colville National Forest from Metaline Falls to the international border with Canada. The lead agency must approve the EA before its availability is announced through public notices. The EA does not need to be formally circulated for review. Depending on the FHWA-approved state

public involvement procedures, a public hearing may or may not be required. A 30-day review period is required, but may be reduced in rare circumstances.

Following the review period and consideration of public comments, the significance of any environmental impacts is determined. If, during the preparation of an EA, a significant impact is discovered, then the project must prepare an EIS. Upon completion of the EA, if there are no significant impacts associated with the project, the lead agency may issue a finding of no significant impact (FONSI).

NEPA Categorical Exclusion

If a transportation project includes a pre-designated category of actions that do not individually or cumulatively have a significant social, economic, or environmental effect, then the project is excluded from the preparation of an EA or EIS. A list of CEs is presented in 23 CFR 771.117(c). Other projects may also qualify as CEs if they are documented pursuant to the requirements of 23 CFR 771.117(d). However, a normally excluded action may, under extraordinary circumstances, have a significant environmental effect. For example, the presence of an endangered species or an impact on a critical habitat area or historical site may trigger an EIS for a project that would normally be considered a CE.

A Categorical Exclusion may be classified as a Documented Categorical Exclusion (DCE) when the project requires documentation of mitigation measures to satisfy NEPA. The following conditions may require documentation:

- Any Federal Lands are affected or impacted.
- A federal Corps of Engineers Section 10 or Section 404 (Nationwide or Individual) permit is required.
- Substantial or uncertain impact may occur on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act.
- Possible impact on habitat or species protected under the Endangered Species Act (ESA).