NEPA-WHAT IT DID

- Declared National Environmental Policy
- Established a basis for the EIS- procedural law
- Created the Council on Environmental Quality (CEQ)
- CEQ developed regulations- general procedures 40 CFR 1500-1508
- Agencies required to develop regs.
FHWA NEPA Implementation Regulations

“Environmental Impact and Related Procedures”
23 CFR Section 771
FHWA Regs.- Policy

• “To the fullest extent... all environmental ...as a single process (THE UMBRELLA), and compliance with all applicable env. requirements (and) reflected in the environmental document....”

23 CFR 771.105
Environmental Laws & EO’s Affecting Transportation
• Alternative action(s) evaluated
• Best overall public interest decisions
• Balance safe-efficient transportation w/ SEE impacts & national/State/local environmental goals
• Public Involvement (early & continuous)
• Systematic interdisciplinary approach
• Mitigate adverse impacts

23 CFR 771.105
Federal Lands Guidance

- Joint NPS/FLH Memo (8/05)
  - Timing of NEPA decisions
- General FLH NEPA Guidance (3/07-Draft)
  - Apply SAFETEA-LU to FLH Programs
  - R&R of FLH and program partners
- Chapter 3 PDDM- Environmental Stewardship (2/08)
PDDM- Chapter 3
Environmental Stewardship

- Purpose (3.1)
- Responsibilities by Program (3.2)
- Laws, Regs., Policy, Guidance, Permits (3.3)
- Environmental Process (3.4)
- NEPA Documentation (3.5)
- Tracking and Reporting (3.6)
- Division Supplements

http://www.wfl.fhwa.dot.gov/design/manual/
Planning and Programming Phase

- Conduct Planning Activities
- Prepare Project Planning Report
- Conduct Program Meeting
- Public Involvement (by others)
Conduct Planning Activities

- Continuously assess transportation conditions, problems, needs, and issues
- Consult with other transportation planning agencies (Federal/State/Local)
- SAFETEA-LU – Consult with resource and regulatory agencies
- Identify and prioritize solutions/projects
## Planning Environment Linkage (PEL)

<table>
<thead>
<tr>
<th>PLANNING PHASE</th>
<th>NEPA PHASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Purpose &amp; Need (P&amp;N)</td>
<td>Refine P&amp;N; and Finalize/approve</td>
</tr>
<tr>
<td>Range of Alternatives; Justify Screening-Out Alternatives.</td>
<td>Alts. To Fully Evaluate; &amp; Alts. Considered but Eliminated</td>
</tr>
<tr>
<td>Prelim. Type of NEPA document</td>
<td>Confirm NEPA Document Type</td>
</tr>
</tbody>
</table>
Purpose and Need

- The **most important part** of NEPA analysis and an important Planning component:
  - Determines (drives) the range of alternatives considered.
  - Important for other laws’ requirements (e.g., 4f and 404).
  - Provides criteria for selecting an alternative.
  - Provides rationale for incurring environmental impacts.
Purpose and Need

• Brief and succinct.
• Describes consistency w/ transportation plan’s goals and objectives.
• Quantifies the need for the investment.
  – What are the conditions that need to be addressed?
  – What will happen if the conditions aren’t addressed?
• Explains the purpose(s) – what the proposed action should provide.
“A clear statement of the objectives … intended to achieve” and some examples:

- A transportation objective in an applicable plan.
- Support land use, econ. development, or growth in an applicable plan.
- Serve national defense/security/objectives, defined in laws, plans or policies.
- Meeting, to some degree, any of the needs.
Purpose and Need

• Specific enough to develop alternatives that offer real potential for solving the need(s).
• Not so specific as to “reverse engineer” a solution.
• May reflect non-transportation priorities in the area (e.g., wetlands protection, fish passage, water quality, visual quality)
NEPA Classes of Action

- Environmental Impact Statement (EIS)
  - Class I
- Categorical Exclusion (CE)
  - Class II
- Environmental Assessment (EA)
  - Class III

23 CFR 771.115
NEPA Process Options

Early Project Development Activities

- **Significant Impact?**
  - No: Categorical Exclusion
  - Maybe: Environmental Assessment
    - **Significant Impact?**
      - No: FONSI
      - Yes: EIS
        - **Significant Impact?**
          - Yes: ROD
Significance

Context ——— Intensity

Significance
Context

- Significance of impact varies with setting:
  - National, Regional, Statewide, Local
  - Watershed versus stream channel

- Number or type of interests:
  - Large versus small neighborhood
  - Block of businesses
  - Uniqueness of resources
Intensity

- Beneficial and adverse considered
- Affect on public health and safety
- Controversy (environmental, not political)
- Uncertainty or precedent setting
- Cumulative (now and over time)

40 CFR 1508.27
Significance

• Obtain input from agencies and public when determining significance
• Varies from resource to resource & project to project
• Not a prerequisite for mitigation
Preliminary Alternatives in Planning

• **AVOID SEGMENTATION:**

  The Proposed action shall:
  
  – Connect logical termini
  – Have independent utility
  – Not restrict consideration of alternatives for other reasonably foreseeable improvement

Logical Termini Paper (November 1993)
23 CFR 771.111(f)
Alternatives

- FHWA Policy
  - Evaluate Alternative courses of action
  - Decisions made in the best overall public interest
  - Balanced consideration for safe, efficient transportation and social, economic, and environmental impacts

23 CFR 771.105(b)
Alternatives

- **EIS**
  - Rigorously explore and objectively evaluate “all reasonable” alternatives.
  - A “reasonable range” of alternatives can be studied when the number of potentially reasonable alternatives is very large.
Alternatives

- EA
  - Shall include a brief discussion of alternatives.
  - Consideration of a minimum of two detailed-study alternatives – the proposed action and the no-action alternative.
Project Development

- **Conceptual Study Phase**
  - Environmental Scoping
  - Resource Surveys
    - Prepare Environmental Documents
    - Circulate Environmental Documents/Conduct Public Involvement
    - Prepare Final Environmental Document

- **Detailed Design Phase**
  - Mitigation and Permit Coordination
  - Review PS&E

- **Public Involvement**
Environmental Scoping

- Review input from Tribe
- Establish Internal Project Team
- Engage resource and regulatory agencies
- Plan and conduct public involvement
- Refine P&N and Alternatives
- Participate in preliminary engineering review.
Public Involvement

Actively involve the public in a process that is:

- Open
- Cooperative
- Collaborative
- Continuing

Environmental Policy Statement
23 CFR 771
FHWA/FTA Policy and Guidance, December 1994
Public Involvement Tasks

As appropriate for Cat Ex (always for EA/EIS):

- Develop mailing list
- Send project notice to newspaper, public, agencies
- Conduct public scoping meeting
- Publish Notice of Intent in Federal Register (EIS only)
- Refine preliminary purpose & need, alternatives, and issues of concern.
Engage Other Stakeholders

- Interested public and residents
- Federal, State and local government agencies
- Traditionally under-served and under-represented communities
- Tribes
- NGOs
- Historic/recreational organizations, environmental groups
Environmental Scoping Objectives

- Invite participation in NEPA process
- Confirm/refine P&N and range of alternatives
- Identify important issues
- Determine scope of resource field studies & other studies
- Allocate assignments
- Determine activities and their timing
Resource Surveys

- Initiate and complete resource surveys.
  - Background information
  - Presence
  - Potential impacts
  - Mitigation opportunities
- Coordinate survey results with alternative analysis.
- Refine alternatives to avoid/minimize impacts.
Resource Surveys

• Most Common surveys
  – Threatened and endangered species
  – Wetlands
  – Historical and archeological sites

• Other surveys
  – Hazardous materials

• Other studies (land use, recreation, socio-economic, floodplain, visual, noise, etc.)
  (see TA 6640.8A &/or E-Scoping results)
Major Consideration-CE, EA, EIS

- Got Wetlands impacts?
  LEDPA (Least Environmentally Damaging Alternative), 404 permits
- Using Section 4(f)* lands?
  Feasible and Prudent Alternative to that “use,” 4(f) Evaluation

*4(f) lands: a significant publicly owned public park, recreation area, wildlife & waterfowl refuge, or significant historic site
NEPA Documentation

- Complete impact analyses/evaluations
- Analyze/refine alternatives
- Complete consultations (F&WS, SHPO, all others)
- Develop Conceptual Mitigation
- Write Internal Review Draft NEPA Document
- Prepare Draft NEPA Document for signature
- Circulate NEPA Document
- Prepare Final NEPA Document/Decision
Impacts Analysis

• Human Environment
  – Social/economic
  – Cultural Resources

• Natural Environment
  – Wildlife
  – Water Resources
Impacts Analysis

• Direct Effect
  – Caused by action
  – Occur at same time and place

• Indirect Effect (secondary)
  – Caused by action
  – Later in time or farther removed in distance

• Cumulative Effect
  – Incremental impacts (past/present/future) regardless of agency or person undertaking action

CEQ 1508.7 & 8
Direct Impacts

- Within the footprint of the project

- Necessary to Construct the Project
Indirect Impacts

- Caused by action
- Farther removed in time or distance
Cumulative Impacts

- More global
- Incremental over a range of time
- Are not connected to individuals or agencies
- Reasonably foreseeable future
- Information must be readily available
NEPA Document Essentials (CE, EA, or EIS)

- Purpose & Need
- Alternatives
- Impacts
- Mitigation
- Public Involvement & Interagency Coordination
- Documentation
Categorical Exclusion

Early Project Development Activities

- Significant Impact? Yes
  - EIS
- Significant Impact? No
  - FONSI

- Significant Impact? Maybe
  - Environmental Assessment
    - Significant Impact? Yes
      - EIS
    - Significant Impact? No
      - FONSI

- Significant Impact? No
  - Categorical Exclusion

- Significant Impact? Yes
  - ROD
Categorical Exclusion (CE)

- No significant individual or cumulative effect on environmental quality
- No environmentally controversial change to existing environmental conditions
- Similar to actions previously examined and found to meet the above criteria
- Unusual circumstances – 771.117(b)
Categorical Exclusion

- **C List [23 CFR 771.177(c)]**
  - List of actions that meet the criteria for CEs
  - Normally requires no further NEPA approvals

- **D List [23 CFR 771.177(d)]**
  - Additional actions which meet criteria for a CE may be designated as CEs only after FHWA approval
  - Individual project approval required based on submitted documentation
A Reminder for CE’s

A project must be consistent with all applicable environmental laws and regulations.

All issues must be resolved before project is approved as a CE.

- ESA*
- 106*
- 4(f)*
- 404*
- E.O. (wetlands and floodplains)
- CAA
- Etc.

* Requires avoidance alternatives be evaluated
CE Decision Document

- A written 1-5 page document
- No Significant Impact
- Meets CE Criteria in 23CFR 771
- Typically no Public Involvement needed
- May be a memo to file or signed by the EM (undocumented vs. documented)
Environmental Assessment (EA)

Early Project Development Activities

- Significant Impact? No: Categorical Exclusion
- Significant Impact? Maybe: Environmental Assessment
- Significant Impact? Yes: EIS

- EIS: Yes
  - Significant Impact? No: NOI
  - Significant Impact? Yes: FONSI

- EIS: No: ROD
Environmental Assessment

- Concise public document
- Brief description of evidence and analysis
- CEQ suggested page limits (15) but these days 60-100 pages is typical
Environmental Assessment

Suggested EA format:

1. Cover Sheet
2. Purpose and Need
3. Alternatives Considered
4. Impacts
5. Mitigation
6. Comments and Coordination
7. Appendices (If any)
8. Section 4(f) Evaluation (if any)
9. Other Compliance Information

FHWA TA 6640.8A
Prepare & Circulate EA

- Prepare Draft EA
- CFT reviews EA and EA is revised
- SEE Team/external partner reviews
- QA/QC Review by the STES and can include a legal sufficiency review if includes a 4f statement
- Revise the EA and is signed by the Director of Project Delivery
- Distribute the EA to the public and agencies
Public Review EA

- Review and comment period no less than 30 days
- Public Notice of availability in newspapers
- ID locations where the EA may be reviewed (public libraries, FS office)
- Conduct a public meeting
Response to Comments

• Consider and respond to all “substantive” public, local, state, and Federal comments

• Can incorporate responses to comments by addendum to or revision of EA

• Similar comments may be grouped for a common response
EA Outcomes

• Finding of No Significant Impact (FONSI)
• Determine that action is likely to have significant impact >>>>>>PREPARE A NOTICE OF INTENT (NOI) AND PREPARE DRAFT EIS
• Modify or abandon proposed action
  – Notification of abandonment
EA Decision (FONSI)

- A document which briefly presents why an action does not have a significant impact
- It must include and reference the environmental assessment
- Proceed to Detailed (Final) Design, Advertise, Award, Construction

23 CFR 771.119(d)-(h)
Significance Determination

Summary

- A thought process
- Varies project to project, Park to Park, Forest to Forest, etc.
- Based upon Context and Intensity
  Whose Thought process?
  Whose interpretation?
  What Threshold of impact?
Other EIS Requirements

- FR notices of NOI, DEIS, FEIS
- Document & then document some more
- More coord.- Coop’rtg & Participat’g agencies, Public, Media, etc.
- Discuss/respond to Substantive DEIS comments
- Legal Sufficiency Review
- Filing DEIS/FEIS w/ EPA
- EPA ratings on EIS

- Pre Draft, Admin. Draft, Pre Final EIS
- Process, Process, process- Administrative Record
- Internal “Independent” Pre-DEIS Review
- Agency Pre-DEIS Review
- DEIS Rvw by Public & Agencies ≥ 45 days
- Pre-FEIS rvw internal/external
- FEIS Public rvw ≥ 30 days prior to ROD
EIS Process*

*various intermediate steps not shown

1. Environmental Impact Statement
2. Notice of Intent & Scoping Process
3. Draft EIS
4. Public Comment
5. Final EIS
6. Record of Decision (ROD)
7. Agency Action
Legal Sufficiency Review

- Legal requirements have been met
- Defensible
- Properly developed (did we follow the process?)
- Answer questions
- DEIS discussion is adequate
Public Review of DEIS

- Review and comment period no less than 45 days
- DEIS available 15 days prior to Public Meeting (open house)
- DEIS summary may be circulated
- With summaries, list locations where the entire Draft EIS may be reviewed (public libraries)
- Issue news releases, public notices, mailings
Response to Comments

- Public Hearing transcription - review, consider, respond
- Must consider and respond to all “substantive” comments rec’d on DEIS
- Incorporate changes by modifying text and/or a written explanation in FEIS
- Similar comments may be grouped for a common response in FEIS
- Prepare Final EIS
Record of Decision (ROD)

- Brings closure to the EIS process
- Documents the selected alternative
- Explains the basis for the project decision
- Summarizes mitigation measures
- Documents any required 4(f) approval
- 30 days after EPA published FEIS NOA, or
- 90 days after EPA published DEIS NOA, whichever occurs latest

40 CFR 1506.9
23 CFR 771.125(g)
Detailed Design Phase & Environmental Mitigation

- Proceed to Final Design
- Coordinate Mitigation
- Develop Mitigation Plans
- Apply for and get approval of permits:
  - 404, 401, NPDES
  - Erosion and Sediment Control
  - Forest Service Special Use
  - Etc.
Sequence of Mitigation Summary

Avoid

Minimize

Compensate
Federal (CEQ) Mitigation Policy

• Use all practicable means and measures to:
  – Restore and enhance quality of the environment
  – Avoid or minimize adverse effects

• Identify appropriate mitigation measures to improve the project

• Regardless of “significance” of impacts

1500.2(f)/1502.14(f)/1500.16
FHWA Mitigation Policy

• Policy
  – Measures necessary to mitigate adverse impacts be incorporated into the action
  – Implement mitigation measures stated as commitments in environmental documents

• Responsibility
  – Ensure compliance through project management responsibilities

23 CFR 771.105(d)
Mitigation Funding Eligibility

• Impacts actually result from action
• Represent a reasonable public expenditure
  – Consider extent measures would assist in complying with:
    • Federal statute
    • Executive Order
    • Administration regulation or policy

23 CFR 771.105(d) and Preamble to 771
What is Mitigation?

- Avoid Impacts (#1)
- Minimize Impacts (#2)
- Rectify (repair, rehabilitate, restore)
- Reduce or eliminate (preserve)
- Compensate (#3) (replace/substitute)

40 CFR 1508.20
Reveg Mitigation
Construction Traffic Mitigation
Mitigation

- In order for mitigation to receive full consideration, they should be:
  - Practicable
  - Presented in as much detail as possible, and
  - Provided at the earliest possible stage of project planning.
  - May be monitored for success several years after construction
USACE Section 404- Wetlands

No discharge of dredged or fill material may be permitted if:

1) A practicable alternative exists that is less damaging to the aquatic environment, or

2) The nation’s waters would be significantly degraded.
FHWA’s Section 4(f)

FHWA may not approve use of land from a significant publicly owned:

Public park, Recreation area, Wildlife and waterfowl refuge, or significant historic site

**UNLESS**

1) No feasible & prudent alternative

2) Includes all possible planning to minimize harm
Mitigation Coordination and Permits

- Project Design
- Non-Merger Permit Notification
- Develop final mitigation plans/measure
- Coordinate/collaborate with internal/external customers/partners
- Develop/submit/coordinate permit package
Sequence of Mitigation
Summary

Avoid

Minimize

Compensate
Exhibit 3.4A FLU ENVIRONMENTAL PROCESS

PLANNING AND PRELIMINARIES

PROJECT PROPOSAL

PRELIMINARY SITE VISIT

ASSESSMENT AND ANALYSIS

DOCUMENTS AND INFORMATION

ENVIRONMENTAL STUDIES

PROJECT PLANNING AND DESIGN

CONSTRUCTION

EVALUATION

CONSTRUCTION AND MAINTENANCE

PERMIT APPLICATION

ENVIRONMENTAL IMPACT ANALYSIS

PROJECT DOCUMENTATION

ENVIRONMENTAL ASSESSMENT

PROJECT IMPLEMENTATION
Review PS&E

- Review Environment Commitment Summary
  - Any design changes?
  - SCR’s cover commitments?
  - Plans cover commitments?
  - Environ. Commitments Summary Table Checklist
- Permit conditions
- PS&E revised, as appropriate
- Develop any additional final mitigation
Advertise, Award, Construction

- Notice for Public Offers, Bids, Award
- Design-Construction Handoff Meeting
- Pre-Construction Conference
- Public Information Meeting
  - News release
  - Detours
  - Traffic Advisory
- Project Construction
  - Includes environmental mitigation and acceptance
- Environmental Monitoring
  - Document and report if short term
Mitigation Monitoring

• Ensure that…
  – Mitigation is implemented
  – Impacts are no greater than the document allows; and
  – Mitigation measures will work as promised
  – Monitor short &/or long term
  – Document and Report
Evaluation

- Monitor after completion of construction
  - Extended monitoring
- Arrange contract for extended monitoring
- Document and report monitoring to agency
- Evaluation for future projects
- Post construction collaborative review
Projects by Class of Action
(FHWA-wide)

- EIS 7%
- EA 35%
- CE 58%
Average Length of Time to Complete NEPA (FHWA-wide)

- CE: 6 Months
- EA: 16 Months
- EIS: 48 - 72 months
Context Sensitive Solutions (CSS)

- Collaborative and interdisciplinary, starts in Planning
- Involve stakeholders
- Fits physical setting and preserves scenic, aesthetic, historic, and environmental resources
- Maintains safety and mobility
- Should help to streamline processes
QUESTIONS?

THE END