

Applying NEPA to Transportation Projects

ASCE Presentation
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Questions and Answers The National Environmental Policy Act of 1969 (NEPA)

Frequently asked questions of applying the NEPA decision-making process to transportation project development within the State of Alabama.

Topics of Discussion

- Brief History of NEPA
 - Triggers of NEPA
 - Final design activities and NEPA process
 - Common type of NEPA document in Alabama
 - Document approval - Delays
 - Bike/Ped Facilities
- NEPA Tips

BRIEF HISTORY:

National Environmental Policy Act

- Law that established the Environmental Policy of the United States
- Signed into law on January 1, 1970 by President Nixon
- Established the decision-making framework called the **NEPA process**
- Court decisions from lawsuits have defined requirements
- Applies only to Federal activities

NEPA does not apply to decisions made by:

- The President
- Congress - NEPA is required for legislation if it was developed with the significant cooperation of a federal agency
- Federal courts

Question 1: Triggers of NEPA

What triggers NEPA?

Proposing any Federal action triggers NEPA.

• Action (40 CFR § 1508.18) is defined as **approving, undertaking, or funding** in whole or in part:

- New and continues activities
- Project funded or conducted by federal agency
- New or revised rules, regulations, etc.
- Legislative proposals

True or False

NEPA applies to:

- A bypass funded with Federal-aid funds
- A new Interstate interchange funded with state funds
- A locally sponsored project funded with bonds
- A state funded project requiring a federal permit

Question 2: Project Design and the NEPA Process

How much project design is acceptable, prior the completion of the NEPA process?

- Executive Order 6640.1A
 - <http://www.fhwa.dot.gov/legsregs/directives/orders>
- Preliminary Design
- Final Design

Question 3: Type of NEPA Documentation

What NEPA class of action documents the majority ALDOT projects?

- Categorical Exclusions (CE)
- Programmatic Categorical Exclusion (PCE)

Categorical Exclusions (CE)

Actions that do not cause significant impacts to....

- Planned growth or land use
- Cultural, historical, or recreational resources
- Air, noise, or water quality
- Travel patterns
- Relocate significant numbers or people
- Individually or cumulatively environmental impacts

Unusual Circumstances

- Significant environment impacts
- Substantial controversy on environmental grounds
- Significant impacts on properties protected by Section 4(f) or Section 106
- Inconsistencies with Federal, State, or local law, requirement, or administrative determination relating to environmental aspects of the action

The NEPA Umbrella

- Title VI of Civil Rights Act of 1964
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12898 (Environmental Justice)
- Section 4(f) of USDOT Act (49 USC 303)
- Clean Air Act
- Clean Water Act
- Executive Order 11988 (Floodplain Management)
- Executive Order 11990 (Protection of Wetlands)
- Endangered Species Act
- Farmland Protection Policy Act
- Solid Waste Disposal Act
- Resource Conservation and Recovery Act of 1976



- Noise 23 CFR 772
- Wetlands 23 CFR 777
- National Historic Preservation Act
- Economic, Social and Environmental Effects
- Highway Noise Standards
- Public Hearing Requirements 23 USC 128
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- AND much much MORE...

Question 4: Delay of NEPA Document Approval

What are some reasons that may delay a timely approval of your NEPA document?

- Resource issues
- NEPA Processing Elements

Why delays in Approval of Document?

Resource Issues

- Section 106
- Section 6(f)
- Section 4(f)
- Endangered species
- Bike/Ped Facilities

NEPA Process Elements

- **Purpose and Need**
- Alternatives
- Impacts
- Interagency coordination
- Public Involvement
- Mitigation

Section 106 – 36 CFR 800

National Historic Preservation Act (passed 1966)

- Applies to Federally assisted “undertakings”
- Agencies must take into account effects of undertakings on historic properties
- Grounded in consultation among stakeholders to resolve conflicts



Section 4(f)

49 USC 303 (passed 1966)

- Provides protection for parks, recreation areas, refuges and historic sites
- Applies **ONLY** to the actions of DOT agencies (FHWA, FTA, FRA, etc.)



Pedestrian/Bicycle Trail in a Park



Water-fowl Refuge

Section 6(f) of Land and Water Conservation Fund Act (LWCFA)

- Section 6(f) of the Land and Water Conservation Fund Act of 1965, as amended (LWCFA)
 - U.S. Code: 16 U.S.C. Sections 4601-4 et seq.
 - Regulations: 36 CFR 59.1
- Department of the Interior, National Park Service and local agencies
- Consult with LWCFA liaison (ADECA)

Mitigation/Environmental Commitments

Not implementing environmental commitments during construction

- US Fish and Wildlife
- Sensitive Resource Areas

USFWS Requirement – No Equipment in the stream...



Again.....USFWS Requirement – No Equipment in the stream



NEPA Process Elements

- **Purpose and Need (P&N)**
 - **Purpose:** explains the problem the project is intended to address
 - **Need:** includes the data substantiating that the problem currently exists or is likely to occur.

Purpose and Need Statement

- **Problem statement**

- Describe the transportation problem
- Using plain language
- **Don't** include the proposed solution or alternatives
- Using only one to two sentences

Examples of Purpose and Need

- System linkage
- **Capacity/Congestion**
- Economic development
- **Roadway deficiencies**
- Legislation/Congressional Intent
(i.e. earmark) - Can't be the only basis
for Purpose and Need

➤ **NOTE:** Safety is better used as a benefit
to solving Need.

Delays in Document Approval

Other....

- Public Involvement – Controversy?
 - Special-interest groups
- Response to comments
 - We read them all
 - Substantive – we expect them to be addressed
 - “Later” is not acceptable
- Outdated resource clearances
 - USFWS – endangered species
 - SHPO - cultural resources

Question 5: Bike/Ped Facilities

- What are the requirements to install and/or repair bicycle and pedestrian facilities on a proposed project?
- What about American Disability Act (ADA) compliance, i.e., resurfacing projects?

NEPA Tips

- “It Depends”
- The term “significant”
- Regulation language
- Coordination with ALDOT
- Document, Document, Document

NEPA TIP #1

“It Depends.....”

The answer to most all NEPA related questions.

NEPA TIP #2

Don't use the word “significant” in any environmental document, unless you are directly referring to regulatory language

- It is too easy to state or imply something is significant. In which case, you should be preparing an EIS.
- We don't want to set precedent on what exactly “significant” is.

NEPA TIP #3

Using regulatory language - Different resource agencies, different regulatory language. For example:

- CEQ use “**effect**” and “**impact**” interchangeably
- Section 4(f) uses the term “**use**” for an impact
- Section 106 uses the term “**effect**”
- The Endangered Species Act uses the term “**effect**”
- Noise use the term “**impact**”

NEPA TIP #4

Compliance with NEPA **does not substitute** for compliance with other environmental laws – it provides an efficient means for ensuring **TOTAL** compliance.



NEPA TIP #5

Coordination – Who, What

ALDOT

- Level of NEPA document
- Purpose and Need
- Logical Termini
- Alternatives
- Public involvement requirements
- Environmental studies
- Mitigation
- Other expenditure of funds

FHWA

- Tribal Coordination
- Early discovery of Section 4(f) resource
- Environmental Justice
- Indirect and Cumulative Effects
- Final Design activities prior completion of NEPA process
- Bike/Ped issues

NEPA TIP #6

Be sure to document any meetings, coordination, etc. with agencies, the public, or other individuals or groups.

Any Questions?

Thank you for your time and participation.

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