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 to the completion of the NEPA process?

- Executive Order 6640.1A
- 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

### U.S. Department of Transportation
Federal Highway Administration
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.)
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)
  - 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
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**

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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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