



## **Oversight Procedure 32B – NEPA and Design Document Comparison**

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### **1.0 PURPOSE**

This Oversight Procedure describes the review, analysis, recommended procedures and reporting requirements that the Federal Transit Administration (FTA) expects from the Project Management Oversight Contractors (PMOC) regarding the extent to which the scope and requirements found in the NEPA document have been addressed in project design documents.

### **2.0 BACKGROUND**

#### **2.1 The National Environmental Policy Act**

The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. NEPA's purpose is to foster excellent action; it is to help public officials make decisions that are based on understanding the environmental consequences, and take actions that protect, restore, and enhance the environment. The NEPA statute is found in 42 U.S.C. §§ 4321-4347.

NEPA's policy calls for federal agencies to:

- implement procedures to make the NEPA process useful to decision makers through clear documents that emphasize real environmental impacts and alternatives;
- integrate the requirements of NEPA with other planning and environmental review procedures;
- facilitate public involvement;
- use NEPA to identify alternatives that will avoid or minimize adverse effects upon the quality of the human environment;
- restore and enhance the quality of the human environment and avoid or minimize adverse effects of their actions upon the quality of the human environment.

The general process for complying with NEPA is set forth in the FHWA/FTA regulation, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622 and 23 U.S.C. § 139.

The Project Sponsor's coordination with FTA planning and environmental specialists to develop and carry out the scoping process, outlined in 40 CFR § 1501.7 of the Council on Environmental Quality (CEQ) Regulations, before the NEPA process formally begins, ensures that all necessary environmental issues are addressed early in the planning process. Related to the proposed action, NEPA requires an early and open process to identify the scope of issues to be addressed and develop appropriate mitigation measures.

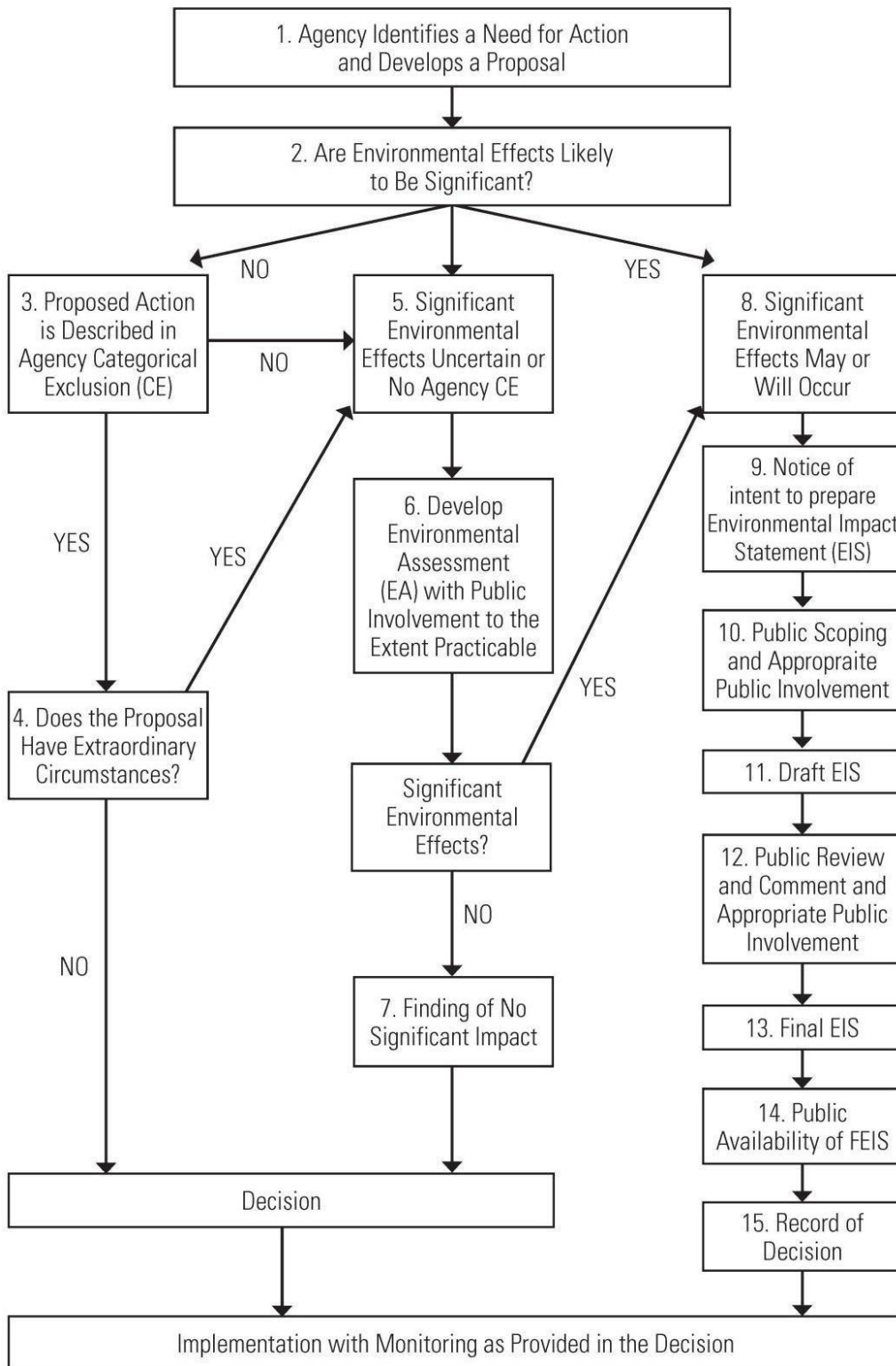
Agencies are encouraged to integrate the NEPA process with other planning requirements (such as those related to historic preservation and protection of public lands) at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. In air quality non-attainment or maintenance areas, transportation plans must contain enough information to allow conformity findings as defined by U.S. Environmental Protection Agency, 40 CFR Part 51.

Within the NEPA document, the agency discusses the factors that are considered in its decision to proceed with the proposed action. If a project is not categorically excluded (CE) under NEPA, the NEPA process is concluded with a Record of Decision (ROD) for an EIS level action; or a Finding of No Significant Impact (FONSI) for an EA level action. Note that an EA could result in preparation of an EIS, in which case the process would be concluded with a ROD.

The ROD or FONSI states what the decision is; identifies the alternatives considered, including the preferred alternative; and discusses mitigation measures. The final environmental determination details all practical means of avoiding or minimizing environmental harm, including enforcement and monitoring commitments, and explains why other means were not adopted.

A project sponsor must initiate the NEPA process before FTA can approve its project for entry into the project development (PD) phase. The NEPA process must be concluded before a project can be approved for entry into the engineering phase. The graphic below is from the Council on Environmental Quality, Executive Office of The President, A Citizen's Guide to The NEPA, Dec. 2007, pg. 8.

# The NEPA Process



*\*Significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final EIS or the Record of Decision (CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c)).*

### **3.0 OBJECTIVE**

The objective of this review is for the PMOC to characterize the level to which the project design documents reflect the NEPA findings and recommendations. The PMOC should compare for consistency, the project design documents, cost estimate and schedule with the impacts and mitigation requirements identified through NEPA and found in the NEPA decision document.

### **4.0 REFERENCES**

The following are the principal, but by no means the only, references to Federal legislation, regulation and guidance, with which the PMOC should develop a solid understanding as related to the Project Sponsor's project work being reviewed under this OP:

#### **4.1 Statutes and Legislation**

- Title 49 United States Code Chapter 53 (49 USC 53) Federal Transit Laws, as amended by Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, effective October 1, 2012
- 49 U.S.C. § 5309, Fixed Guideway Capital Investment Grants;
- 49 U.S.C. § 303, Policy on lands, wildlife and waterfowl refuges, and historic sites
- 42 U.S.C. §§ 4321-4347, National Environmental Policy Act of 1969 (NEPA), as amended
- 23 U.S.C. § 139, Efficient Environmental Reviews for Project Decision making

#### **4.2 Executive Orders**

- Executive Order 11988 - Floodplain Management, , 42 Federal Register 26951, page 117, May 24, 1977; 3 CFR 1977 Compilation, page 117, as amended

#### **4.3 Regulations**

- 49 CFR Part 602, Emergency Relief Program, Interim Final Rule, 78 Federal Register 61, pages 19136 – 19147, March 29, 2013
- 49 CFR Part 611, Major Capital Investment Projects, 78 Federal Register 6, pages 2032-2037, January 9, 2013
- 49 CFR Part 622, Environmental Impact and Related Procedures
- 23 CFR Part 450, Planning Assistance and Standards
- 23 CFR Part 771, Environmental Impact and Related Procedures;
- 23 CFR Part 774, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(F))
- 40 CFR Parts 1500-1508, Council on Environmental Quality

#### **4.4 Agency Guidance**

- FTA Policy and Procedures for FY 2013 Grants, 77 Federal Register 200, Section V(B), pages 63701-63703, October 16, 2012
- New Starts and Small Starts Policy Guidance, 78 Federal Register 157, page 49372, August 14, 2013

## **5.0 PROJECT SPONSOR SUBMITTALS**

The PMOC shall obtain from the project sponsor the most current versions of the following:

- Alternatives Analysis Report (prior to entry to Engineering)
- MPO-adopted LRTP (prior to entry to Engineering)
- NEPA documents (CE, EA, DEIS, FEIS, NEPA Re-evaluations, Supplemental EIS, etc.)
- Applicable Memoranda of Understanding (MOU), Memoranda of Agreement (MOA), Biological Opinions (BO) or other specific documents executed for the proposed action
- Locally Preferred Alternative (LPA) and decision-making documentation (when available)
- Operating cost estimate for project
- Capital cost estimate for project (or as defined in the LPA, if available)
- Project master schedule (inclusive of additional planning, design phases, procurement and construction, through to Revenue Service Date)
- New Starts submittals
- Project drawings, project narratives, design criteria, specifications
- Information on third-party interfaces (including especially freight railroads), description of interface and status of negotiations/agreements
- Project Management Plan and associated sub-plans
- Real Estate Acquisition and Management Plan (RAMP)
- Public Involvement Plan/Agency Coordination Plan
- Permit/Approval Tracking Table (when available)

## **6.0 SCOPE OF WORK**

The PMOC should review for adequacy and timing the Project Sponsor's approach to incorporating the environmental requirements, including restrictions, contained in the project's NEPA documents, into its project design documents and the Project Sponsor's plan to check, review and update the design documents for changes in environmental requirements. Checks may be peer reviews or independent reviews to ensure that the two document sets are consistent and the project scope definition is adequate to avoid or mitigate impacts identified under NEPA.

Verify the preferred alternative's fit with local conditions. See that required cooperating agreements and permits have been identified and impacted stakeholders listed. Assess the level to which environmental impacts and avoidance or mitigation measures are reflected in project design documents. Focus on the constructability, cost and time effects of implementing the mitigation measures.

Coordinate this review with an OP 32A (Project Transit Capacity Review) to ensure the project scope documentation matches the project LPA (or currently identified preferred alternative if the LPA has not yet been decided) analyzed in the environmental documents.

Verify that impacts to third parties, especially to those in the railroad environment (freight carriers, Amtrak, high speed corridors, etc.), are identified in the environmental document. Where there are impacts, verify that impacted third parties at their current addresses have received the environmental

document for review. Confirm that comments, if any, have been received by the Project Sponsor from such third parties. As a possible further step, prior to the Record of Decision, encourage the Project Sponsor to produce a plan or drawing showing impacts and mitigations within the railroad environment, and to obtain sign-off by affected parties on this drawing.

During construction, the PMOC should verify that the contract documents and/or interagency or public-private partnership agreements are being followed – that the project itself and the related mitigation measures are being implemented as called for in the NEPA document and in the Full Funding Grant Agreement (FFGA) or Small Starts Grant Agreement (SSGA).

## **7.0 REPORT, PRESENTATION, RECONCILIATION**

The PMOC shall review and analyze the pertinent information available for completeness, adequacy, consistency, and appropriateness of the level of detail; identify discrepancies; state findings in order of importance (most likely, largest consequences, etc.); provide professional opinions and make recommendations for modifications or additional work by the Project Sponsor along with a time frame for the performance of the work.

The PMOC shall provide FTA with a written report of its findings, analysis, recommendations, professional opinions, and a description of the review activities undertaken. After FTA approval, the PMOC should share the report with the project sponsor. In the event that differences of opinion exist between the PMOC and the project sponsor regarding the PMOC's findings, the FTA may direct the PMOC to reconcile its findings with the project sponsor and provide FTA with a report addendum covering the modifications agreed to by the project sponsor and the PMOC.

The report formatting requirements of OP 01 apply. When necessary, the PMOC shall perform data analysis and develop data models that meet FTA requirements using Microsoft Office products such as Excel and Word and use FTA-templates when provided. The PMOC may use other software as required but documentation and report data shall be made available to FTA.

## APPENDIX A

### Acceptable Quality Level

	DESIRED OUTCOME	PERFORMANCE REQUIREMENT	CHECK LIST	ACCEPTABLE QUALITY LEVEL	PERFORMANCE MEASURE	MONITORING METHOD
1	PMOC shall review and analyze the extent to which the scope in the NEPA document has been addressed in project design documents; including real estate acquisition and relocation plans and contracts, construction contract plans and specifications, and project operating plans.	<b>R1a.</b> The PMOC shall develop and document a process for review and analysis of the extent to which the scope in the NEPA document has been addressed in project design documents.		<b>Q1a.</b> Process exists and has been followed.	<b>M1a.</b> Evidence of a documented process.	<b>MM1a.</b> Periodic review by FTA or its agent.
		<b>R1b.</b> The PMOC shall use its process to validate the extent to which NEPA issues are reflected in design documents, cost estimates and schedules.		<b>Q1b.</b> Review must be made and the PMOC provides internal verification that the process as documented has been followed.	<b>M1b.</b> Documented review and analysis of NEPA and other Project documentation.	<b>MM1b.</b> Periodic review by FTA or its agent.
2	The PMOC shall assess and evaluate the Project Sponsor's environmental and other PE documentation for compliance with NEPA and other environmental laws and regulations	<b>R2a.</b> The PMOC shall assess the level to which impacts and mitigations are reflected in Project design documents, evaluate constructability, cost and time affects of mitigation implementation and confirm that NEPA scope is adequately reflected in Project capital cost estimates and schedule.		<b>Q2a.</b> Professional opinion of mitigation impacts, cost and time effects and reflection of NEPA scope in Project Sponsor's NEPA process.	<b>M2a.</b> Documented evidence of assessment of design documents for mitigation impacts, cost and time affects and reflection of NEPA scope, supported by a professional opinion.	<b>MM2a.</b> Periodic review by FTA or its agent.
		<b>R2b.</b> The PMOC shall, during construction, verify that the Project and related mitigation measures are implemented in accordance with the NEPA document.		<b>Q2b.</b> Professional opinion pertaining to implementation by Project Sponsor of NEPA plan mitigation measures.	<b>M2b.</b> Documented evidence of review and verification of implementation of mitigation according to the NEPA plan, supported by a professional opinion.	<b>MM2b.</b> Periodic review by FTA or its agent.
3	The PMOC shall document its findings, professional opinions, and recommendations in a report to the FTA.	<b>R3.</b> The PMOC shall present its findings, conclusions, and recommendations to FTA and, upon FTA approval, reconcile those recommendations with the Project Sponsor to the extent possible.		<b>Q3.</b> Reports and presentations are professional, clear, concise, and well written. The findings and conclusions have been reconciled with other PMOC reports and have been reconciled with Project Sponsor to the extent possible.	<b>M3.</b> PMOC's findings in descending order of importance, conclusions, recommendations, and presentation.	<b>MM3.</b> Periodic review by FTA or its agent.