

MEMORANDUM

TO: Interested Parties
FROM: ODOT & FHWA Quality Initiative Team
SUBJECT: NEPA Document Dos and Don'ts, 2nd Edition
DATE: 8/25/11

The purpose of this memo is to share general NEPA documentation advice as well as frequently made comments during Oregon Department of Transportation (ODOT), Oregon Department of Justice (DOJ), and Federal Highway Administration (FHWA) review of Environmental Assessment (EA) and Environmental Impact Statement (EIS) documents. Your feedback is very much appreciated. This memo will be updated periodically, as appropriate. We encourage you to check ODOT's environmental website for the latest version of this memo - this is the second iteration.

Please call your ODOT NEPA Program contact, other Environmental Project Managers (EPMs), and/or your FHWA Oregon Division environmental contacts if you have any questions during development of your NEPA document. We are here to support and assist you and make your jobs easier.

Before a Draft Document is Assembled

- As technical reports are being completed, be sure you understand the relevant findings of each report, especially how different alternatives would have different impacts to each resource. If something does not make sense, continue to ask questions until you understand. There may be a gap in the information that has been provided to you to date. Now is the best time to fill gaps.

Administrative

- In conjunction with review of the preliminary draft NEPA document, consider using a postcard process to determine the document format(s) desired by interested parties. Feedback from the postcard process helps to determine how many copies of different document formats are needed. The postcard process does not typically include jurisdictional agencies that will receive one or more copies of the NEPA document per standard distribution, but *may* include elected officials, media, special interest groups, etc. In summary, the postcard process consists of the following steps, which may be modified as appropriate:
 - If the interested parties list consists of 50 or less contacts, it may not be worthwhile to run a postcard process.
 - Prepare a form letter which explains that a NEPA document will soon be released and identifies document format options available to interested parties. Such options could include, but are not limited to: (1) no document desired because the interested party will review the document at a location where the document is being made publicly

available or on the project website, (2) request the Executive Summary only (if available – EAs do not typically include this), (3) request a free CD version of the document, or (4) request the complete hard-copy NEPA document (which may involve a fee to recover the costs of printing – if so, indicate the cost and ask that a check be sent to the ODOT return address).

- Prepare postage-paid (by ODOT) postcards which, on the back side, include the above choices with a checkbox by each choice and instruction to check only one box. In order to correlate returned postcards with the sender, the back of the postcard should also include a mailing label for each recipient. The front of the postcard should be addressed to the ODOT contact with responsibility for tabulating interested parties' document preferences (typically this is the EPM).
- Prepare mailing labels for the proposed project's interested parties list and affix them to postage-paid envelopes and the backs of postcards. Within each envelope, insert the form letter and postcard. Seal the envelopes and mail them.
- When applicable, set up a fee collection system for interested parties requesting the full hard-copy NEPA document.
- As postcard replies are received, keep track of the desired document format in the project's interested parties spreadsheet. When applicable, also keep track of fees received for interested parties requesting the full hard-copy NEPA document.
- If postcards are sent in from contacts not already on the interested parties list, add these individuals to the spreadsheet. If envelopes are returned undelivered, attempt to determine if there is another address to use. If not, indicate in the interested parties spreadsheet that address is invalid.
- Tabulate the requested document format types to help determine how many copies of each format type will need to be prepared. Prepare and distribute documents.
- Consider using a sticker on the cover of the document for the comment due date and public hearing information rather than inserting these dates directly into the document, as the dates can be difficult to predict given the logistics of printing and occasionally the dates need to be revised.
- Specify how alternative formats, such as Braille or alternative language documents, can be accessed (i.e., list an ODOT person to contact); also, state where the original document will be available.
- Provide the estimated cost for a paper copy if charges will apply for printed copies.
- A comment form should be used to better track and respond to NEPA Document Quality Control Review comments made on preliminary draft NEPA documents.
- Print line numbers on draft documents for easier comment reference and response.
- The camera ready version is the only version that should not include line numbers.

Readability

- Draft the document in a manner that ensures that someone unfamiliar with the project will understand the choices that are available and the impacts associated with each choice. Be succinct while providing enough information for someone who has no previous knowledge of the project, the need, project history, etc. The document needs to be written in a way that

- provides that information and paints the picture or tells the story.
- To the degree possible, use “plain language,” limit the use of acronyms, and write the document to an eighth grade reading level (which is the average reading level of the general public).
 - The Executive Summary, as applicable, should tell the story of the project.
 - Ensure that complete sentences are written. Ensure that paragraphs contain related subject matter and are broken appropriately.
 - Be specific when describing the transportation needs. When there are long delays between draft and final documents the data used to illustrate the needs may require updating.
 - Replace “it” with the word to which “it” is referring, as often as practicable.

Formatting

- Readability can be improved through use of formatting, such as:
 - increase the use of white space
 - consider one $\frac{3}{4}$ sized column instead of two for reading on web page
 - proper use of headings and subheadings, including limiting the hierarchy of headings to four at the most (e.g., Section 3.5.2.1 would equate to Chapter 3, Section 5, Subsection 2, Sub-subsection 1)
- Define acronyms the first time they are used.
- Organize content within each chapter so that it flows logically.
- Review the FHWA Technical Advisory (TA) T6640.8A to ensure that the draft document includes all required discussions and items outlined.
- “Reader-friendly” formats are supported and encouraged. You do not need to explicitly follow the format outlined in the FHWA Technical Advisory, as FHWA has found that “reader-friendly” documents are consistent with the Technical Advisory.
- For the Final EIS (FEIS), do not use condensed or abbreviated formats as described in T6640.8A - use the “Traditional Approach.”

References

- The public documents relied upon need to be cited, as appropriate, and referenced in the Reference section.

Interested Parties Letter

- Sample language:

“Thank you for your interest in the proposed **[insert name]** project.

The Federal Highway Administration and Oregon Department of Transportation have completed the **[Draft / Final] Environmental Impact Statement (EIS) / Environmental Assessment (EA)** for the proposed project, which is attached for your review and comment.

In accordance with **[23 CFR 771.123(i)]** (for EISs) / **[23 CFR 771.119(e)]** (for EAs), comments

shall be submitted in writing to the applicant or the Administration within **[45 days (for EISs) / 30 days (for EAs)]** of the availability of the DEIS unless the Administration determines, for good cause, that a different period is warranted. Thus we request your reply within **[45 days / 30 days]** of the date at the top of this letter. If no comments are received, it will be assumed that you do not wish to comment on this **[EIS / EA]."**

Figures and Tables

- Ensure that figures are easily read and laid out so that comparisons can be easily made between alternatives, design options and the text that references them.
- Clearly identify the location of alternatives considered but dismissed. The mapping within the document should be sufficient to be able to locate any alternative considered.
- If geographical references, such as project landmarks or street names, are provided in the text of the document, they should also be clearly labeled on associated maps or figures.
- Locating figures and tables closely to applicable text is preferable. If all figures and tables are provided at the end of a chapter or in some other format that is inconsistent with reader expectation, let the reader know the document is organized this way.
- Ensure that the project area is clearly defined on a figure. If different study area boundaries are used for different resources, provide those maps.
- Provide data only at the level of reasonable accuracy for that computation. Provide wetland estimate impacts to the nearest tenth of an acre. Be careful not to present data in an overly precise manner. Energy is often a good example where calculations may easily be made to several thousandths of a whole number; however, it is highly unlikely we have the confidence in the calculation to that degree.
- Ensure that north arrows are provided.
- Ensure that accurate legends are provided.

Table of Contents

- Add white space to increase readability.
- See the [EIS annotated template](#) for an example of how the Table of Contents should look for an EIS. This format can be modified for EA documents.

General

- Use the same project title throughout the NEPA documentation.
- Use the same names for alternatives throughout the NEPA documentation.
- Use consistent terms and references throughout the entire NEPA document.
- Temporal terms need to be defined clearly (e.g., duration, short term, seasonal, horizon year).
- Short-term construction impacts need to be clearly distinguished from long-term project impacts. The estimated construction duration should be provided.
- If design exceptions have been assumed, state what they are and the degree of coordination that has occurred with the party that would grant such exception (either ODOT or FHWA).
- Specify the permits, approvals, and/or licenses that are anticipated to be required.
- Provide a list of technical reports used to inform the NEPA document and provide

information as to where they can be obtained.

- Do not use consultant names in the NEPA document except for the list of preparers. Do not use consultant logos in the NEPA document.

Terminology

- Future conditional tense verbs such as “would” and “could” are often more appropriate to describe the proposed action in the draft NEPA document (EA, DEIS) than future tense verbs such as “will.” After a Preferred Alternative has been identified, “will” and other future tense verbs may be warranted.
- The term “proposed action” is often more appropriate than “project” until a Preferred Alternative has been identified.
- The term “forecast” is often more appropriate than “expected.”
- The term “is estimated” is often more appropriate than “would.”
- The term “resource” is often more appropriate than “discipline.”
- The use of the term “significant” in an EA can be a red flag since an EA is prepared to determine if a proposal has any significant impacts. Projects with significant impacts require an EIS. In concluding a discussion of resource impacts, “significant” may be appropriate in an EA (but not elsewhere).
- “Selection” of the Preferred Alternative occurs in the REA/FONSI for EAs and in the ROD for EISs. However, the Preferred Alternative can be “identified” in the EA or DEIS (it must be identified in the FEIS). Use the terms “identify” or “identification of” when calling out the Preferred Alternative prior to issuance of the REA/FONSI or the ROD.

Purpose and Need

- Ensure that the Purpose and Need addresses the transportation problem. Present traffic volumes and congestion data or other appropriate data to help define and/or illustrate the problem. Quantify how traffic will get worse or better in the design horizon (i.e., 20 years after date of opening).
- If/when Goals and Objectives are used in project development, the content of the Goals and Objectives section needs to be clearly distinguished, separate from, and not repeat elements from the Purpose and Need statement.
- When discussing the transportation problem to be solved, include deficiencies that exist with the current design. Be specific and discuss those problems in a manner that the general public will understand (i.e., shoulders are not wide enough—tell the audience why narrow shoulders are non-optimal). Include metrics, where appropriate.
- After the Purpose and Need statement has been initially drafted early in project development, it is highly recommended that the EPM forward it to FHWA, DOJ, and ODOT NEPA Program staff for review. Doing so will ensure that the Purpose and Need statement is on solid footing before proceeding beyond the scoping process.
- The Purpose and Need statement should reflect the most accurate information known about the deficiencies of the transportation system. Accordingly, the Purpose and Need statement should be considered a “living document” up until the publication of the draft document and should be updated when new and relevant information becomes known.

- For projects that fall within SAFETEA-LU 6002 coordination requirements, the draft Purpose and Need statement must be shared with the public and participating agencies during NEPA scoping activities. The opportunity for involvement must be publicized and may occur in the form of public workshops or meetings, solicitations of verbal or written input, conference calls, postings on web sites, distribution of printed materials, or any other involvement techniques or mediums.
- While project development team and citizen advisory committee comments may be sought on content of the draft Purpose and Need statement, FHWA is responsible for the Purpose and Need. Development of the Purpose and Need statement is a collaborative effort, but under no circumstances should there be a “voting” process involving the project development team or any stakeholder group (e.g., citizen advisory committee).
- Refer to the 1990 FHWA guidance “[The Importance of Purpose and Need in Environmental Documents](#)” and [AASHTO Practitioner’s Handbook 07 “Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects”](#) for further guidance on development of the Purpose and Need statement.

Alternatives

- Goals and Objectives cannot be used to screen/eliminate alternatives from further consideration, but can be used to help justify identification of the Preferred Alternative.
- A primary purpose of Goals and Objectives is their relation to Evaluation Criteria. Objectives that can be measured or quantified can be used as Evaluation Criteria (along with Evaluation Criteria derived from the Purpose and Need). These Evaluation Criteria can then be used to make comparisons between viable alternatives. However, while Evaluation Criteria serve as helpful tool, they should not be the sole means used to identify the Preferred Alternative.
- Eliminating alternatives from further consideration should be based primarily upon the alternatives’ ability to meet the Purpose and Need. Under the proper circumstances, it may also be possible to eliminate alternatives based upon technical, economic, or environmental infeasibility. For further information, see [AASHTO Practitioner Handbook 07](#) and [FHWA’s Alternatives Analyses White Paper](#).
- For an EIS, a “reasonable range of alternatives” includes those that meet the Purpose and Need and are technically, economically, and environmentally feasible. If the number of reasonable alternatives is “very large,” it is permissible to further reduce this range while ensuring that the remaining range of alternatives is representative of the “full spectrum” of reasonable alternatives. For further information, see Question #1 of the CEQ’s “[Forty Most Asked Questions Concerning CEQ’s NEPA Regulations](#).”
- The CEQ requirement to consider “all reasonable alternatives” (40 CFR 1502.14) does not apply to EAs. While it is common for EAs to consider alternatives for a number of reasons (e.g., public controversy, avoidance/minimization of impacts to sensitive resources), the requirement for EAs is less stringent than the requirement for an EIS.
- Make sure the names of the various alternatives are distinct and are not easily confused with each other. Think about this early in the process so that the alternative naming terminology is consistent and trackable. This is especially important if there are a wide

variety of alternatives.

- Clearly describe each alternative including what elements are included, specifying termini.
- Be very careful in the use of alternatives vs. “design options” and any other terms someone may independently coin. Use “alternatives” as much as possible. If other terms are used, they must be explained to the reader - especially how they relate to, or are different from, an alternative.
- The alternatives need to be depicted clearly on a map(s), ensuring that any geographical references in the text (streets, neighborhoods, businesses, etc.) are reflected on the map(s).
- Explain why the alternatives are located where they are, as appropriate.
- Clearly describe proposed mitigation (in the draft NEPA document) or committed mitigation (in the final NEPA document) for each alternative.
- Provide clear and logical reasoning for dismissal of each alternative considered but rejected. A map of alternatives considered but not included should be provided. Provide as many metrics as possible. Most alternatives considered but rejected should have multiple documented reasons for their rejection.
- Carefully review the alternatives considered, but dismissed section for consistent internal logic, especially with respect to design exceptions. If an alternative has been dismissed because it requires a design exception, the remaining alternatives would be expected not to require design exceptions.
- When a range of alternatives to be considered has been established, production of an alternatives technical report is beneficial. The alternatives technical report can be reviewed by ODOT, ODOJ and FHWA in advance of receipt of a draft document. Following this protocol reduces the likelihood of finding substantive alternatives issues when the draft NEPA document is submitted.
- It is wise to be aware of environmental show-stoppers, such as Section 4(f) impacts, a Goal Exception, Individual 404 permit, etc. It is possible to use this rationale to eliminate alternatives from further consideration and in retention of alternatives that avoid these types of resource impacts.
- Be sure to clearly articulate what transportation improvements are assumed in the No-Build Alternative. Built, on-the-ground, projects are not included in the No-Build Alternative. Transportation projects that are within a financially constrained plan or program (e.g., Metropolitan Planning Organization plans, Transportation Improvement Plans, ODOT Statewide Transportation Improvement Program, Local Capital Improvement Programs) should all be included in the No-Build Alternative. For the cumulative impacts analysis, reasonably foreseeable non-transportation projects need to be included.
- SAFE-TEA LU Section 6002 allows the Preferred Alternative to be developed to a higher level of design for the following reasons: (1) to facilitate the development of mitigation measures, or (2) to facilitate concurrent compliance with other applicable environmental laws. Except in the context of a Preferred Alternative as provided for in SAFETEA-LU 6002, it is not appropriate to bring one or more alternatives to a higher level of design or analysis while not providing equal treatment to other viable alternatives that have not yet been eliminated from consideration.

Bike and Pedestrian

- Provide a complete list of improvements that would be included with the proposed project.
- Provide a map of existing facilities and facilities assumed in the No Build Alternative.

Affected Environment

- Clearly state conditions that do not meet existing standards. Provide the metrics for the standard and existing conditions.
- Use actual traffic data to describe existing conditions.
- Ensure adequate data are provided prior to making conclusions.
- Provide citations for data as close to the original source of data as possible. For example, if a safety statistic is provided at an Oregon Transportation Commission (OTC) briefing, but was derived from an annual safety report, the safety report should be cited.

Socioeconomics/Environmental Justice (EJ)

- Ensure the appropriate amount of specificity is provided. For example, specify how much farther residents would have to drive or walk if there were to be a change in access.
- Use local data and resources in addition to U. S. Census data.
- Be clear regarding the race and ethnic percentages in the study area.
- Be clear whether or not the project will impact disadvantaged groups. If available, include the data to show an accurate account of potential impacts to the populations in the study area.
- Make sure the discussion addresses disproportionately high and adverse impacts to EJ populations and identify possible mitigation measures.
- Include information about the availability of replacement housing for those requiring relocation.
- A clear distinction between Environmental Justice and the Uniform Act should be made as they have two separate responsibilities. Environmental Justice addresses the impact on the minority and low income population of the project area.
- Do not only focus on displacements in the EJ analysis. Incorporate the relevant access, air quality, noise, community cohesion, or other impacts into the Environmental Justice section.
- The Uniform Act should primarily be addressed under the Relocation Section rather than the Environmental Justice section. The Uniform Act addresses the individual, families, businesses, etc. that are being relocated/impacted as result of the project.

Land Use

- Discuss the consistency of the project with applicable local and regional land use plans.
 - Under the State Agency Coordination Rule (see [OAR 731-015-0075](#)), ODOT must “rely on affected cities and counties to make all plan amendments and zone changes necessary to achieve compliance with the statewide planning goals and compatibility with local comprehensive plans after completion of the Draft Environmental Impact Statement or Environmental Assessment and before completion of the Final

Environmental Impact Statement or Revised Environmental Assessment. These shall include the adoption of general and specific plan provisions necessary to address applicable statewide planning goals.”

- Document the amount of land that will be affected. How many acres of land zoned as (x, y, z) will be converted to transportation use? Describe the effect (socio-economic) of removing this land from these uses.
- Document the reason(s) for conclusions made that land use will be unaffected.

Cultural Resources

- Do *not* rely upon the Reconnaissance Level Survey/Intensive Level Survey process for NHPA Section 106 documentation. Determinations of Eligibility and Findings of Effect are needed to define the boundaries of historic properties, so that Section 4(f) can appropriately be considered.
- Review draft Determinations of Eligibility. Be sure that a historic property boundary is identified. Review that boundary for logic. The tax lot is not always appropriate as the historic boundary. Casual Section 106 documentation can lead to unnecessary Section 4(f) issues.
- Clearly state where the project is in the Section 106 process, regarding Determinations of Eligibility, Findings of Effect, and the necessity of developing a Memorandum of Agreement (MOA).
- If the State Historic Preservation Office (SHPO) has concurred in the recommended eligibility, then do not use “considered eligible” or “potentially eligible” when discussing historic properties. Once SHPO concurrence has been received, historic properties are either eligible or not eligible for the National Register of Historic Places.
- Use proper Section 106 language when referencing Findings of Effect: No Historic Properties Affected, No Historic Properties Adversely Affected, or Historic Properties Adversely Affected.
- An MOA is usually only needed if the Section 106 finding is Historic Properties Adversely Affected.
- The draft NEPA document may be able to provide an expected Section 106 finding. The final document will include the Section 106 finding. The Section 106 finding is made for the entire project, not particular properties or disciplines.
- Determinations of Eligibility should be completed prior to the release of the draft document.
- If land will be required from a historic property, you must also evaluate this in terms of Section 4(f) use.
- The Section 106 process must be complete prior to the final environmental document being approved by FHWA.

Water Quality/Quantity

- Describe in terms of “increase new,” “lower new,” “least runoff,” “most runoff” the amount of impervious surface in the alternatives. The description can provide gross estimates, but the information provided needs to give a sense of the scale of the differences

between the alternatives.

- Follow ODOT Geo-Environmental Section Bulletin "[Stormwater Management Program](#)" [GE09-02(B)], which provides stormwater, water quality, and flow control guidance for ODOT projects.

Wetlands

- Ensure that the total project cost estimate includes proposed wetland mitigation.
- Be sure to include the wetland "only practicable alternative" finding in the final document, where required.
- The Preferred Alternative must be the Least Environmentally Damaging Practicable Alternative (LEDPA) in order for the Corps to be able to permit the project.

Biology

- Clearly state which threatened or endangered (T&E) species and/or their designated critical habitat are present and if consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS) is required. Provide a reference to the date and source of T&E species information provided.
- If T&E species are present that would not be affected by the proposed action, state how compliance with the Endangered Species Act (ESA) is documented (e.g., a No Effect Memorandum).
- State whether informal or formal consultation is expected with each Service and for which species.
- When a Biological Opinion (BO or BiOp) is required, the final NEPA document should include a summary of terms, conditions and conservation measures from the BO.

Air Quality

- Reference the date that the regional conformity determination requirement was made by the U.S. Department of Transportation - not the U.S. Environmental Protection Agency (EPA).
- EPA (in conjunction with each state) only designates areas that do not meet the National Ambient Air Quality Standards (NAAQS). These areas are designated as non-attainment. When those areas have met the NAAQS, their status can be changed to maintenance. Areas are not designated as "attainment areas." NAAQS are established for criteria pollutants. Be sure the air quality section uses correct terminology.
- Ensure that this section includes an appropriate Mobile Source Air Toxics (MSAT) analysis, with reference to FHWA guidance: [Memorandum on Interim Guidance on Air Toxic Analysis in NEPA](#).

Noise

- "Abatement" is the term used in FHWA's noise regulation and is generally preferable to mitigation, but almost always requires a definition for the general public.
- At the draft NEPA document stage, any adjacent property owner should be able to read the document and understand: (a) what noise levels are expected to be near their property if

the project is not built; (b) what noise levels are expected to be near their property if the project is built (without abatement); (c) if the noise levels meet ODOT's noise impact criteria (explain what those are); (d) if noise abatement would meet ODOT's reasonable and feasible criteria (explain what those are); (e) where noise walls, or other abatement measures, are recommended (because providing them meets the reasonable and feasible criteria); (f) where noise walls are not proposed because (although there is a noise impact) abatement does not meet the reasonable and feasible criteria.

- Discuss the consequences if property owners determine to not have noise abatement implemented. Specifically mention the ability for federal funds to participate in future abatement at that location.
- When noise abatement consideration is proposed in the final NEPA document, include mitigation language similar to this: "Based on the studies completed to date, ODOT intends to incorporate noise abatement in the form of (a) barrier(s) [or berm(s)] at: [_____], with respective lengths and average heights of [_____]. Calculations based on preliminary design data indicate that the barrier(s) or berm(s) will reduce noise levels by 5 to [__] dBA for [___] residences at a cost of [_____]. If during final design conditions have substantially changed, noise abatement may not be necessary. The final decision regarding noise abatement will be made upon: (1) completion of the project design, which occurs following the [ROD or FONSI] and (2) the completion of the public involvement processes as outlined in [ODOT's Noise Manual](#)."

Traffic Analysis and Modeling

- Begin the traffic analysis as soon as possible. Other related analyses, such as Noise, Air Quality, and Energy are highly dependent on traffic model outputs.
- When the NEPA document is accompanied by preparation of an Interchange Area Management Plan (IAMP), the associated traffic analyses should use the same assumptions and data to ensure a high level of consistency between the two documents.
- The traffic analysis and modeling effort needs to be based upon the 20-year horizon year from date of facility opening. The date of facility opening should be estimated conservatively, as a lengthy NEPA process could push the opening date and thus create a need for the traffic analysis to be updated.
- Explain the approach to traffic modeling. The EIS/EA should be written so that a lay person can understand the general approach and general methodology.
- Clearly identify and document key assumptions.
- Ensure that key assumptions are not altered or retranslated using different terminology and data as the traffic modeling information is passed to different consultants. Use consistent language.
- Ensure that an explanation is provided of a large standard deviation in model runs.

Greenhouse Gases (GHGs) and Climate Change

- In general, ODOT and FHWA do not quantitatively address greenhouse gas (GHG) emissions related to climate change in an EIS. Our EIS strategy involves referencing ODOT Sustainability Program policies for long-term reductions in GHG from our operations and

maintenance practices. Include ODOT's briefing papers on GHGs/climate change as an appendix to the environmental document – see:

- <http://www.oregon.gov/ODOT/SUS/docs/ClimateChange.pdf> (5 pages), and
 - <http://www.oregon.gov/ODOT/SUS/docs/ClimateChangeInternal.pdf> (4 pages)
- If one of the key issues identified during NEPA scoping is GHGs/climate change, ODOT will coordinate early with FHWA regarding the level of analysis needed in the EIS/EA.
 - The EIS template discusses GHGs/climate change under Cumulative Impacts (Chapter 4). However, GHGs/climate change could also be addressed in the later sections of Chapter 3.
 - Adaptation considers potential future effects to transportation facilities brought on by climate change (e.g., ocean rise, frequency and intensity of scour events).

Section 4(f)

- Use and reference [23 CFR 774](#), “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)).”
- Carefully review the status of all properties that are listed or eligible to be listed on the National Register of Historic Places (NRHP). If the proposed project would require land from any property that is listed or is eligible to be listed on the NRHP, Section 4(f) must be considered and appropriately documented.
- Check with your FHWA Oregon Division contact and GES NEPA Program contact as soon as possible if you believe that your project may be causing a constructive use under Section 4(f). Constructive use is extremely rare and requires coordination with FHWA Headquarters. NEPA documents ***do not*** make determinations that there is “no constructive use”.
- An adverse effect under Section 106 does not necessarily equate to a Section 4(f) use – determine if any land will be used (acquired), or if the qualities, attributes or features of the Section 4(f) property will be adversely impacted.
- Clearly map the boundaries of each Section 4(f) resource including its features and attributes with the project footprint overlaid, to clearly show what portion of the Section 4(f) resource the project would use. For historic properties, the Section 106 Determination of Eligibility should provide a clear historic property boundary.
- *De minimis* impact – Use the regulatory language to the maximum extent practicable. In the draft NEPA document, communicate that it is FHWA's proposed intent to make a *de minimis* finding, the coordination that has been completed, the coordination that remains, and how the public will be notified and can comment on the proposed finding. Be clear that FHWA makes this finding. Section 4(f) *de minimis* findings for historic resources can be made following SHPO concurrence; however, Section 4(f) *de minimis* findings for parks, recreation areas, and wildlife and waterfowl refuges require public involvement prior to FHWA making the Section 4(f) *de minimis* finding.
- For parks, recreation areas, and waterfowl and wildlife refuges, do not seek concurrence in proposed Section 4(f) *de minimis* determinations from officials with jurisdiction until ***after*** the NEPA document comment period has closed, and those officials can consider the comments received on the proposed Section 4(f) *de minimis* finding. FHWA does not make

a Section 4(f) *de minimis* determination for parks, recreation areas, and wildlife or waterfowl refuges until after the public hearing and/or comment period.

- If an individual Section 4(f) evaluation is required, you must establish that there is no feasible and prudent avoidance alternative using the measures outlined in 23 CFR 774.
- If all alternatives being considered have more than a Section 4(f) *de minimis* use, then you must go through the least harm analysis using measures outlined in 23 CFR Part 774.
- When a project team believes that an alternative should be eliminated because of potential Section 4(f) impacts, there should be a memorandum that documents these reasons. The documentation should identify the proposed impacts to the Section 4(f) resource, show a graphic representation of the impacts (in relation to the rest of the Section 4(f) resource), demonstrate that the Section 4(f) impacts associated with the remaining alternatives are significantly less, identify the legal thresholds for Section 4(f), show coordination with the official with jurisdiction over the resource (as needed), and if possible, include a letter from the jurisdiction that describes why such impacts are not acceptable.
- Before proceeding with the preparation of a Nationwide Section 4(f) Programmatic Evaluation, make sure that you have evaluated whether the “use” of the Section 4(f) resource can be determined to meet Section 4(f) *de minimis* standards. It is almost always more streamlined and more efficient to use a Section 4(f) *de minimis* determination to comply with Section 4(f) rather than a Nationwide Section 4(f) Programmatic Evaluation.
- There are currently five Nationwide Section 4(f) Programmatic Approvals:
 - *Independent Bikeway or Walkway Projects* – cannot be applied to projects with unusual circumstances (i.e., major impacts, adverse effects, or controversy), therefore cannot be used for an EIS but could potentially be used for an EA. Does not require analysis of avoidance alternatives, but must meet the specific conditions of the programmatic approval (5/23/77 Federal Register).
 - *Use of Historic Bridges* – can be applied to any NEPA class of action. Requires limited analysis of avoidance alternatives as prescribed in the Federal Register Notice (7/5/83). Cannot be used if a reasonable alternative has been identified that is not discussed in the programmatic evaluation.
 - *Minor Involvement with Historic Sites* – cannot be applied to an EIS. Requires limited analysis of avoidance alternatives as prescribed in the Federal Register Notice (12/23/86). Cannot be used if a feasible and prudent alternative has been identified that is not discussed in the programmatic evaluation.
 - *Minor Involvement with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges* – cannot be applied to an EIS. Requires limited analysis of avoidance alternatives, as prescribed in the Federal Register Notice (12/23/86). Cannot be used if a feasible and prudent alternative has been identified that is not discussed in the programmatic evaluation.
 - *Net Benefit* – can be applied to any NEPA class of action. Requires limited analysis of avoidance alternatives as prescribed in the Federal Register Notice (4/20/05). Cannot be used if a feasible and prudent alternative has been identified that is not discussed in the programmatic evaluation.

Section 6(f)(3) of the Land and Water Conservation Fund (LWCF) Act

- Acquisition of property from a park or recreational area can potentially constitute a Section 6(f)(3) “conversion” or “small conversion” that requires replacement property and formal National Park Service (NPS) approval. In addition, use or occupation of a Section 6(f)(3)-protected property for less than a 6-month duration can constitute a “non-conforming use” requiring NPS approval. Use or occupation of a Section 6(f)(3)-protected property for 6 months or longer is typically considered to be a conversion or small conversion.
- **Early** in project development, check with the OPRD LWCF grants coordinator to identify whether parks and/or recreational areas in the project vicinity have Section 6(f)(3) protection.
- Coordinate with Right-of-Way staff early in the conversion/replacement process.
- Follow the ODOT guidance for Section 6(f)(3) conversion and replacement.
- Consider project scheduling if you have a Section 6(f) conversion, as the conversion process can be time consuming and potentially costly.
- The local park (not ODOT) is actually the jurisdictional authority that drives the Section 6(f)(3) conversion process, thus their early cooperation is essential. Because ODOT is causing the conversion, ODOT normally takes the lead in terms of funding and documenting the 6(f)(3) conversion and replacement process.

Mitigation

- At the draft NEPA document stage, all mitigation should be referenced in the text as proposed or potential mitigation since a commitment has not yet been made.
- Clearly articulate the project impact and link that impact to the mitigation measure(s) proposed.
- The mitigation section should not include ODOT standard specifications.
- The mitigation section should not include pasted versions of ODOT guidance.
- Efforts beyond regulatory mitigation are considered to be “enhancements” and should be identified separately. Enhancement (i.e., beyond mitigation) should only be included in documents following close coordination with FHWA.

Cumulative Impacts

- The guidance for preparation of cumulative impacts assessments is contained in the [EIS annotated template](#). Until such time that an EA annotated template is prepared, please also use the same guidance for EA cumulative impacts assessments.

Coordination/Public Involvement

- For EISs, guidance for what is contained in Chapter 7 (Comments and Coordination) is found in the [EIS annotated template](#).
- Include a section that describes the different advisory groups involved in the project, such as the Project Management Team (PMT), Citizen Advisory Committee (CAC), Technical Advisory Committee (TAC), Policy Review Committee (PRC), etc. Include an appendix that lists the members (and their representation) for each group.
- Be sure that all project documentation appropriately references the NEPA decision-maker

(usually FHWA). PRCs, CACs, TACs, and PMTs can only make recommendations.

- Summarize Tribal coordination, issues raised, and the plan for incorporation of those considerations. Include all of the precise information that the ODOT Archaeological Staff provides (e.g., dates of meetings, persons with whom communication occurred).
- Provide specifics for all coordination, such as date, times, location, number of attendees, number of comments received, etc.
- Provide a summary of all public involvement that has occurred.
- For draft NEPA documents, include a paragraph that outlines how comments submitted will be handled. Advise the reader that it is unlikely he/she will receive an individual, separate response to the comment, due to the volume of comments. Advise the reader that comments submitted may be grouped into similar comments and addressed in the final NEPA document.
- Keep accurate records of each party that has received the EA, REA, FONSI, DEIS, FEIS, and/or ROD. Keep accurate records of public outreach and notice methods (e.g., website, press release, post cards).

Other Project Management Hints

- Early in project kick off, organize the project filing system.
- Involve legal counsel as soon as there are indications of potential litigation. Common warning signs may include: correspondence from attorneys representing clients, Freedom of Information Act (FOIA) requests, long-detailed letters, persistent correspondence with specific individuals, etc. Share all such correspondence from attorneys with FHWA Oregon Division upon receipt.
- Be sure that FHWA understands the major and controversial issues of a project. If there are certain areas in which the public has expressed interest, share that information.
- If you receive a FOIA request, be sure to closely coordinate with FHWA. Be sure you keep details of the information provided in a FOIA request. Individuals may submit duplicate FOIA requests to different agencies. It is very important that involved agencies closely coordinate and are able to track their FOIA responses.
- Only FHWA can extend a comment period. If ODOT receives a request for comment extension, coordinate with FHWA Oregon Division, prior to granting such a request.
- SAFETEA-LU provides for an 180-day statute of limitations (SoL) on federal actions associated with transportations projects. However, this 180-day SoL can only be invoked once a notice is published in the Federal Register by FHWA. Simply mentioning something about the 180-day statute of limitations in a cover letter or elsewhere in the document does not invoke the SoL. Please coordinate early with FHWA in order to publish the SoL notice for your EA or EIS, so that FHWA can publish it quickly after the NEPA decision. The SoL notice will require that FHWA carefully examine which laws, regulations and executive orders upon which final decisions were made.
- As part of the consultant's contract, have a provision that the consultant shall retain all materials through the duration of the statute of limitations. The statute of limitations for challenges to NEPA decisions is 6 years, unless a 6-month notice is published in the Federal Register.

List of Permits, Approvals, and Actions Required for the Project

- This list should only include specific permits and approvals that are required for the project. This list should not be vague discussion of coordination with different entities.
- Section 4(f) should be listed as a separate FHWA approval, as applicable.
- If any permits or approvals are mentioned in the text of the document, they should be reflected in this list.