

Chapter 3

Project Development and Documentation



Contents

Chapter 3 Project Development and Documentation	3-1
3.1 Project Description	3-1
3.2 Logical Termini and Independent Utility	3-2
3.3 Purpose and Need	3-4
3.3.1 Importance of Purpose and Need	3-4
3.3.2 Elements of a Purpose and Need Statement.....	3-5
3.3.3 Development of Purpose and Need Statements.....	3-6
3.4 Alternatives	3-7
3.4.1 Early Identification of Reasonable Alternatives	3-8
3.4.2 Screening of Alternatives	3-8
3.4.3 Development of Avoidance Alternatives	3-9
3.4.4 Presentation of Alternatives in NEPA Documentation	3-9
3.5 NEPA/404 Merge Process	3-11
3.6 Project Documentation and Administrative Record.....	3-12
3.7 Laws, Regulations, and Guidance	3-13

Chapter 3 Project Development and Documentation

NEPA ASSIGNMENT – CE Assignment vs. Full Assignment

The Nebraska Department of Transportation (NDOT) entered CE Assignment pursuant to [23 USC 326](#) on September 5, 2018. Under CE Assignment, NDOT assumed FHWA responsibilities for determining whether specific projects are categorically excluded from the requirement to prepare an EA or EIS. NDOT, rather than FHWA, now makes CE determinations for most projects (for exceptions, see [Chapter 1, Overview](#), Section 1.5). All EAs and EISs, as well as CE determinations not assignable to NDOT under [23 USC 326](#), continue to be formally approved by FHWA. Once full NEPA Assignment under [23 USC 327](#) is in place, all types of environmental approvals (CE, EA, and EIS, with limited exceptions; see [Chapter 1, Overview](#), Section 1.5) will be made by NDOT.

This chapter describes the development and documentation of key components required for National Environmental Policy Act of 1969 (NEPA) analysis. These key components are the project description, logical termini and independent utility, purpose and need, and alternatives screening and presentation. In addition, this chapter discusses Nebraska Department of Transportation (NDOT) requirements for project documentation and the administrative record.

3.1 Project Description

A complete and accurate project description is necessary to appropriately evaluate and describe the impacts of the project in NEPA documentation. The project description defines the project location and study area, existing facilities, project features, and proposed construction activities. This information is the foundation for environmental analysis, which in turn allows project decision makers, resource agencies, and the public to understand the effects of the project on the human, physical, and natural environment. The project description may be modified as studies are undertaken or when additional or modified needs are identified as project development advances. The Super Team coordinates the evaluation of proposed project description changes to confirm that those changes are appropriate and to evaluate the impact of project description changes on NEPA documentation for the project.

Project descriptions are written so a member of the public who has no prior knowledge of the project can understand what the project entails without the benefit of looking at a plan set. Jargon should be avoided. If use of a technical term is necessary for describing a specific project feature, the term should be defined clearly and concisely when it is first used. If specific locations need to be described, mile markers or cardinal directions from a landmark, intersection, or other geographical feature should be used (for example, “A right-turn lane would be constructed in the southwest corner of the

The project description should avoid detailed information that is not relevant to the environmental impact analysis. Detail unrelated to environmental impacts is not beneficial to the reader; such detail reduces the readability of the NEPA documentation and can hinder reader understanding.

US-75/N-8 intersection to accommodate the eastbound to southbound turn movement”).

Figures are helpful for illustrating the project and its features, and should be included or referred to as appropriate.

The project description includes objective information about the elements of the proposed action. Discussion of potential environmental impacts, such as wetland, noise, or other impacts

or issues, is generally not included; these topics are discussed in other areas of the NEPA documentation. Additionally, the project description should avoid detailed information that is not relevant to the environmental impact analysis. Detail unrelated to environmental impacts is not beneficial to the reader; such detail reduces the readability of the NEPA documentation and can hinder reader understanding. An overly detailed project description also reduces flexibility for minor project changes.

3.2 Logical Termini and Independent Utility

As part of the development of the project study area, the project limits need to be appropriately defined. The project limits are established based on logical termini to frame the project and the evaluation of its potential impacts in the context of the local area community and topography, future travel demand, and other infrastructure improvements in the area. Logical termini, as defined in the Federal Highway Administration's (FHWA's) 1993 paper titled [The Development of Logical Project Termini](#), are "rational end points for a transportation improvement" and "rational end points for a review of the environmental impacts."

FHWA NEPA regulations ([23 Code of Federal Regulations \[CFR\] 771.111\(f\)](#)) require that transportation projects:

- (1) **Connect logical termini and be of sufficient length to address environmental matters on a broad scope;**
- (2) **Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and**
- (3) **Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.**

Logical termini should be considered for all types of NEPA documentation, and the specific determination of logical termini depends on the type of project. The following should be considered when determining the project's logical termini:

- For projects related to the relief of traffic congestion, the most common termini are the beginning and end points of major traffic generation, particularly intersecting highways, because traffic generators usually determine the size and type of facility being proposed. An example would be widening a two-lane roadway between two four-lane sections of highway.
- For projects not primarily related to congestion, the determination of the logical termini would be less based on traffic generators and more likely based on locations of physical roadway conditions, safety concerns, or other issues related to the need of the project.
- Logical termini may not be necessary for site-specific improvements, such as a local intersection improvement or a bridge replacement.
- Geographic boundaries are typically not suitable as logical termini. For example, ending a project at a county line is not logical when the substandard roadway continues beyond the county line to an adjacent town or city.
- The termini selected should encompass an entire project to avoid segmentation. For example, if the project need extends throughout an entire corridor but only a segment of that corridor is proposed for federal funding and the remainder is funded from other sources, the full corridor

must be included in the NEPA review so that the full impacts of the project are addressed. Including a corridor of sufficient length to address all potential impacts does not preclude staged construction. Project implementation may be staged or programmed for shorter sections or discrete construction elements as funding permits.

Project termini are to be established during the earliest phases of the project. Termini may be refined as a result of agency coordination and public involvement. The logical termini are documented in NDOT's Project Programming Documents. Moreover, the logical termini presented in the NEPA documentation should be consistent with the project limits identified in the adopted Regional Transportation Plan of the Metropolitan Planning Organization (MPO) or other planning documents in a non-MPO area.

In considering the termini of a project, the environmental documentation must show that the project has independent utility; that is, it stands on its own and functions independently of any other project. Documentation must also clearly show that the project is usable and is a reasonable expenditure of public funds even if no other transportation improvements are made in the area.

The project termini selected should not restrict consideration of alternatives for other reasonably foreseeable future projects. A transportation project is considered within the context of a foreseeable future condition (frequently a 20-year time horizon) that includes other proposed transportation and development projects. The definition of the transportation project, including its endpoints, must not preclude implementing these other planned projects, nor restrict the ability of the transportation infrastructure to expand or be modified in the future, if necessary. For example, a project that constructs a new overpass across an existing highway should provide sufficient horizontal clearance for a planned future widening of the existing highway.

The concept of independent utility arose from the Council on Environmental Quality (CEQ) requirement to consider connected actions in determining project scope. Connected actions should be discussed in the same environmental document. Actions are defined as connected if they ([40 CFR 1508.25](#)):

- (i) **Automatically trigger other actions which may require environmental impact statements.**
- (ii) **Cannot or will not proceed unless other actions are taken previously or simultaneously.**
- (iii) **Are interdependent parts of a larger action and depend on the larger action for their justification.**

The term "independent utility" was first used by the courts in early NEPA litigation. The NEPA cases concerned project interdependence and whether an EIS was improperly avoided by separately evaluating segments of a larger highway project. This is also referred to as project segmentation. FHWA subsequently adopted terminology into its NEPA regulations to address connected actions through the concept of independent utility. According to FHWA's NEPA regulations, a project has independent utility if it is usable and "a reasonable expenditure even if no additional transportation improvements in the area are made" ([23 CFR 771.111\(f\)\(2\)](#)). If a project is determined to have independent utility, then under CEQ's NEPA regulations, the project is not connected to a larger action; the project is not an element of a "connected action" in CEQ regulatory terminology.

Questions to Consider

- Are the project termini consistent with the project's purpose and need?
- Do the project termini allow for consideration of environmental issues on a broad scope?
- Do the project termini support a project with independent utility?
- Does the defined project restrict future alternatives or require future improvements outside the project termini?

Questions related to identifying logical termini and independent utility should be directed to the Environmental Documents Unit (EDU) Manager or NDOT legal counsel.

3.3 Purpose and Need

A well-defined purpose and need statement establishes the transportation problem (need) and basic goals of the project (purpose).

A transportation project is developed when a transportation problem is identified. The problem forms the foundation of the need for the proposed improvements. The goals of the project are addressed in the project's purpose. Accordingly, a well-defined purpose and need statement establishes the transportation problem (need) and basic goals of the project (purpose).

A project purpose and need statement is required for environmental impact statements (EIS) by CEQ NEPA regulations, which state that a purpose and need statement "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" ([40 CFR 1502.13](#)). To fulfill this requirement for transportation projects, FHWA [Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#), directs state Departments of Transportation to "identify and describe the proposed action and the transportation problem(s) or other needs which it is intended to address" (1987). [Technical Advisory T 6640.8A](#) also states that the EIS purpose and need section should "clearly demonstrate that a 'need' exists and should define the 'need' in terms understandable to the general public" (FHWA 1987).

Although a purpose and need statement is not required for environmental assessments (EA), an EA "should contain a brief discussion of the need for the proposal..." according to CEQ's [Forty Most Asked Questions](#) (1981). In addition, FHWA [Technical Advisory T 6640.8A](#) suggests that the EA "describe the transportation or other needs which the proposed project is intended to satisfy (e.g., provide system continuity, alleviate traffic congestion, and correct safety or roadway deficiencies)" (1987). NDOT includes a purpose and need for all EAs. For projects developed as a categorical exclusion (CE), a purpose and need statement is required only when the project is processed as a CE Level 3 (see [Chapter 4, Categorical Exclusion](#), for information on CE levels), when the project requires a U.S. Army Corps of Engineers (USACE) Nationwide Permit 23 or when a Programmatic Section 4(f) Evaluation is completed.

This section discusses the importance of purpose and need, the elements of a purpose and need statement, and the development of a purpose and need statement.

3.3.1 Importance of Purpose and Need

The project purpose and need statement is used to develop and evaluate alternatives, promotes successful agency coordination, and is key in the analysis required under Section 4(f) of the U.S. Department of Transportation (U.S. DOT) Act and Section 404 of the Clean Water Act.

The purpose and need statement drives the development of a reasonable range of alternatives. It should not be so narrowly defined as to point to only a single solution or alternative, nor so broad that it could encompass virtually any solution. The purpose and need statement is used as a basis to screen out alternatives that are not reasonable and supports the identification of a preferred alternative. Although the purpose and need statement serves as the cornerstone for the alternatives analysis, it should not discuss alternatives. The alternatives analysis is the place in the documentation for explaining how the considered range of alternatives meet the purpose and need.

A well-defined purpose and need statement also is an essential element for successful agency coordination during NEPA and the permitting processes. Without a well-defined, well-established, and

well-justified purpose and need, it would be difficult to determine which alternatives are reasonable, prudent, and practical, and to demonstrate why resources managed by other agencies warrant being impacted.

Furthermore, the purpose and need developed for a transportation project plays a key role in the analysis required under Section 4(f) of the U.S. DOT Act and Section 404 of the Clean Water Act. Under Section 4(f), the U.S. DOT is required to determine whether there is any “prudent and feasible” alternative that avoids the use of publicly owned parks, recreation areas, and wildlife or waterfowl refuges, as well as significant historic sites. Under Section 404 of the Clean Water Act, USACE is required to determine whether there is any practicable alternative that avoids the use of aquatic resources within its jurisdiction. In general, an alternative that does not meet the project purpose and need can be eliminated from consideration under Section 4(f) and Section 404.

3.3.2 Elements of a Purpose and Need Statement

FHWA provides guidance on items to be considered when developing a purpose and need statement in its [Technical Advisory T 6640.8A](#). If applicable, these items may be described in the purpose and need statement for a proposed action. This list is not all-inclusive, and these items are not applicable in every situation; FHWA intends this information only as a guide. The considerations are as follows:

- Project status – Briefly describe the project history, including actions taken to date, other agencies and governmental units involved, action spending, schedules, etc.
- System linkage – Consider if the proposed action is a connecting link, and how it fits into the transportation system.
- Capacity – Consider the capacity of the present facility and its ability to meet present and projected traffic demands. Consider what capacity and levels of service for existing and proposed facilities are needed.
- Transportation demand – Consider the proposed action’s relationship to any statewide plan or adopted urban transportation plan. In addition, consider any related traffic forecasts that are substantially different from those estimates of the [23 United States Code \(USC\) 134](#) planning process.
- Legislation – Consider whether there is a federal, state, or local governmental mandate for the proposed action.
- Social demands or economic development – Consider how the proposed action would foster new employment and benefit schools, land use plans, recreation facilities, etc. In addition, consider projected economic development and land use changes that indicate the need to improve or add capacity to a roadway.
- Modal interrelationships – Consider how the proposed action would interface with and serve to complement airports, rail and port facilities, mass transit services, etc.
- Safety – Consider whether the proposed action is necessary to correct an existing or potential safety hazard. NDOT generally cites a safety purpose only on defined safety projects.
- Roadway deficiencies – Consider if and how the proposed action is necessary to correct existing roadway deficiencies (for example, substandard geometrics, load limits on structures, inadequate cross-section, or high maintenance costs). In addition, consider how the proposed action would correct these deficiencies.

Needs for a project, such as crash history, degraded road conditions, an absence of conditions for economic development, or inadequate capacity, should be considered in the context of the local area social, economic, and topographic conditions; the future travel demand; and other infrastructure

improvements in the area. Without framing a project in this way, proposed improvements may result in only marginally satisfying the need, or they may cause unexpected problems that require additional corrective action. Project needs should be quantified with relevant, accurate, and factual data as necessary to evaluate the impacts of alternatives, to defend the basis for the selection of the preferred alternative, and to justify project expenditures.

Although most transportation projects stem from a transportation-related need, transportation agencies recognize that economic development can be a primary or secondary purpose for some highway projects, particularly in non-urban areas. In these cases, the transportation needs are linked to the underlying need for economic development in economically depressed or underutilized areas.

If economic development is identified as a purpose of, or need for, a project, the project typically provides the infrastructure to support the economic development plan. Projects of this type need to include a thorough indirect effects and cumulative impacts analysis that considers the broader economic development in the NEPA documentation. Information on indirect effects and cumulative impacts is provided in this *Environmental Procedures Manual* (Manual), [Chapter 8, Technical Resource Analysis](#).

An adequate level of detail needs to be included when identifying and describing the transportation problem(s) or other needs that a proposed project is intended to address. The level of detail may vary depending on the type of NEPA documentation or class of action. EAs, EISs, and other environmental analyses, such as Clean Water Act Section 404(b)(1) alternatives analysis and Section 4(f) evaluations, require a greater level of detail than CE documentation.

3.3.3 Development of Purpose and Need Statements

Purpose and need statements are the result of an extensive planning process. To receive federal funding, transportation projects must come from an approved MPO Transportation Improvement Program (TIP) or NDOT's Statewide Transportation Improvement Program (STIP). As a result, much of the data and decision making undertaken by state and local officials during the planning process can be useful for the project development activities that follow the TIP or STIP. The planning process and the NEPA evaluation should work in tandem, with the results of the transportation planning process feeding into the NEPA process, including the data collected to support the purpose and need for the project.

The purpose and need for transportation projects should come out of the long-range transportation planning process during which system-wide needs are analyzed and projects are advanced for programming. According to [23 CFR 450, Appendix A, Linking the Transportation Planning and NEPA Processes](#), the transportation planning process can provide the basis for the purpose and need statement in NEPA documentation as follows:

- Goals and objectives from the transportation planning process may be part of the project's purpose and need statement.
- A general travel corridor or general mode (that is, highway, transit, or a highway and transit combination) resulting from transportation planning analyses may be part of the project's purpose and need statement.
- If the financial plan for an MPO's long-range transportation plan indicates that funding for a specific project will require special funding sources (such as tolls or public-private financing), this information may be included in the purpose and need statement.

To the extent that regional or systems-level analyses and choices in the transportation planning process help to form the purpose and need statement for NEPA documentation, such planning products should be given a great deal of weight, consistent with Congressional and Court direction to

respect local sovereignty in planning. For more information, see NDOT's [Planning and Environmental Linkages Guidance](#).

For EIS projects, [23 USC 139](#) requires that the public and participating agencies are provided the opportunity to be involved in the development of the project purpose and need statement in a timely and meaningful way. This opportunity is typically provided during the EIS scoping process. The opportunity for input must be widely publicized and may occur in the form of public workshops or meetings, solicitations of verbal or written input, postings on the project website, distribution of printed materials, or other involvement techniques. Records of these opportunities and the comments considered need to be included in project documentation.

In preparing the purpose and need documentation, the following guidelines should be followed:

- The purpose should be stated as the desired outcome to address the problem and should avoid stating a solution. For example, a project purpose may be "to increase freeway capacity to accommodate future traffic volumes," not "to widen the freeway from four to six lanes."
- Where appropriate, the purpose should be stated broadly enough so that multiple alternatives and/or multi-modal solutions are not dismissed prematurely.
- The purpose should focus on the transportation system. Other goals and objectives that might be addressed by the project, such as pedestrian-friendly downtown business districts, livability, avoidance and minimization of environmental impacts, and enhancement opportunities, may be appropriate to describe in the chapter, but are not typically part of the core purpose and need statement. Relevant information on factors considered during the metropolitan or statewide planning processes should be presented or incorporated by reference, as appropriate"
- The discussion of the needs should be factual and numerically based, and include exhibits, tables, maps, and other graphics to illustrate or provide support for points that are being made.
- The purpose and need statement should be concise and easily understood by the general public. Typically, the purpose and need statement should be only one or two paragraphs long.

Additional guidance for preparation of purpose and need documentation is available in the [American Association of State Highway and Transportation Officials \(AASHTO\) Practitioner's Handbook 07, Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects](#).

The project purpose and need statement should be revisited as the project progresses through the development process to ensure that it remains valid. It may be expanded as studies are undertaken in the study area, and additional or modified needs may be revealed as project development advances. However, consideration should be given to the fact that modifications may introduce the need to review and evaluate additional alternatives to reflect the revised purpose and need.

Questions related to purpose and need should be directed to the EDU Manager.

3.4 Alternatives

Once the purpose and need for a project has been developed and the study area has been defined, planners and engineers must identify and evaluate alternative ways in which the transportation problem(s) can be solved. Under CEQ regulations ([40 CFR 1500.2\(e\)](#)), federal agencies are directed to "use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment."

3.4.1 Early Identification of Reasonable Alternatives

The identification and consideration of reasonable alternatives is an essential part of the NEPA process and the goal of objective decision making. A reasonable alternative must satisfy the purpose and need of the project. During the early phases of project development, preliminary alternatives are developed or may be confirmed from earlier plans and studies. The number of preliminary alternatives depends on the type of project, the project location, the project's size and complexity, and the resources potentially affected. For example, a bridge replacement or roadway widening is likely to have few alternatives, while a new roadway on new location could have a fairly large number of possible alignments that will ultimately be screened to a reasonable range of alternatives to move forward.

The identification and consideration of reasonable alternatives is an essential part of the NEPA process and the goal of objective decision making.

For complex projects, alternatives are typically screened early in project development to review the range of preliminary alternatives or concepts and to decide which ones to carry forward for detailed study. With this process, unreasonable alternatives (for example, those that do not meet the project's purpose and need, those with extremely high costs, and those with unacceptable environmental impacts) can be eliminated from further consideration. If there are many reasonable alternatives, the screening process can be used to define a reasonable range of alternatives that represents the broader set of reasonable alternatives. It is important to document the reasons why specific alternatives were eliminated from further study.

During the alternatives screening process and throughout the project planning process, some alternatives may be modified, added, or eliminated from further consideration. Early planning efforts, such as initial coordination, scoping, and environmental screening, are likely to identify issues to be factored into the development and refinement of the project alternative(s). The decisions to revise the range of reasonable alternatives are documented as the project advances, noting the reasons, such as an alternative was modified to avoid specific impacts or modified to better meet the project purpose and need. For EIS projects, [23 USC 139](#) requires that affected agencies and the public be given an opportunity to provide input into the development of alternatives. Project records need to document these opportunities, any comments provided, and how agency or public comments were considered.

3.4.2 Screening of Alternatives

3.4.2.1 Screening Criteria

To screen alternatives, it is helpful to have a set of screening criteria against which alternatives can be compared. Criteria could involve specific thresholds such as level of service; whereas other criteria would be more general (for example, reducing congestion in a corridor or increasing access). The screening criteria should be sufficiently comprehensive to include all factors relevant to the purpose and need, reasonableness of alternatives, and specific constraints in the study area. Screening criteria are project specific and developed on a case by case basis depending on the factors relevant to the specific project.

The screening criteria used to evaluate alternatives in an EA or EIS are documented in the discussion of the alternatives analysis process and description of which of the potential alternatives are advancing to more detailed evaluation. The level of detail in documentation depends on the class of action, discussed further in Section 3.4.4.

3.4.2.2 Alternatives Screening Tools

An inventory of the study area using secondary source materials is a valuable tool for developing and screening preliminary alternatives. The inventory can include lists of information on and maps of known socioeconomic factors, land use, environmental issues (for example, ecological, noise, and hazardous materials), cultural (that is, historic and archeological) resources, and other readily available resource information. This information is obtained from existing databases and mapping that are available from departments and agencies such as Nebraska Department of Natural Resources, Nebraska Game and Parks Commission, Nebraska Department of Environmental Quality, National Park Service, U.S. Fish and Wildlife Service, and USACE. A bibliography of sources for the study area inventory should be started at this point to aid in the preparation of the list of references that will eventually be included in the EA or EIS.

Information of value in alternatives development is also available in NDOT's geographic information system (GIS). GIS can be used to develop constraints mapping that identifies the locations of known resources for use early in the design process to avoid resources and aid in the screening of alternatives. The constraints reviewed can include waterways, wetlands, hazardous materials, cultural resources, residential and business areas, recreation areas, floodplains, threatened and endangered species, farmlands, and others as applicable.

The initial constraints mapping exercise is conducted at a high-level to determine which alternatives are considered environmentally feasible (that is, permissible). The constraints mapping can be used to identify resources that must be avoided, such as resources of importance and resources that are difficult to mitigate. As the project advances and more is known about the proposed alternatives and resources present, the constraints mapping and alternatives screening can be repeated to further refine alternatives. This process should be documented and described as one of the first steps of avoidance and minimization (see Section 3.4.3).

3.4.3 Development of Avoidance Alternatives

Beyond the CEQ requirements to evaluate alternatives to avoid or minimize impacts on the environment, other regulations require consideration for avoidance alternatives. Specifically, Section 4(f) of the U.S. DOT Act of 1966; the executive orders on wetlands (Executive Order 11990), floodplains (Executive Order 11988), and environmental justice (Executive Order 12898); and USACE Section 404 (b)(1) guidelines require agencies to develop alternatives that would avoid or minimize impacts. These regulations are discussed in this Manual in the appropriate sections of Chapter 8, Technical Resource Analysis.

Throughout alternatives development, the NDOT Roadway Design Division, NDOT Environmental Section, NDOT Project Studies & Survey Section, NDOT Local Projects Section, and other project sponsors, as appropriate, should coordinate efforts for the following:

- Identifying environmental issues that may affect project alignment, and documenting the avoidance and minimization efforts undertaken to protect sensitive and protected resources
- Determining technical studies that may be required to refine alignments and address environmental issues
- Identifying project schedule requirements and addressing schedule impacts associated with the issues and studies

3.4.4 Presentation of Alternatives in NEPA Documentation

As a project advances to the NEPA phase, only projects requiring an EIS need to include a range of alternatives to be evaluated in NEPA documentation. While it is common and often beneficial for an

EA to evaluate more than one build alternative, projects expected to have no significant impacts and environmentally cleared with an EA only need to consider one build alternative and one no-build alternative. EAs need to include a discussion of other alternatives that had been considered and eliminated. The three classes of action are described more fully in the following sections.

3.4.4.1 Environmental Impact Statements

As stated in [40 CFR 1502.14\(a\)](#), CEQ specifically requires that when an EIS is being prepared, all reasonable alternatives must be explored. CEQ also requires that those alternatives that were initially considered but eliminated from more detailed study be discussed in the EIS along with the reasons for removing these alternatives from further consideration. Typically, the EIS alternatives chapter includes a detailed discussion of all build alternatives evaluated in the document, a no-build alternative, and the alternative development process, which includes other alternatives considered but eliminated from further consideration.

Build Alternatives

Following the screening of alternatives, the reasonable range of alternatives are presented in the EIS as the project's build alternatives. Each build alternative should be developed to a level of detail adequate to conduct a comparative analysis of transportation performance, environmental impacts, and relative costs. Build alternatives should be described in detail, including maps and graphical representation of features of each alternative. This comparative analysis is presented in the Draft EIS. The Draft EIS may also identify the project preferred alternative. If the preferred alternative is not identified in the Draft EIS, it is identified in the Final EIS.

FHWA, in providing guidance for the implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 6002 ([23 USC 139](#)), explains that "the lead agencies must provide opportunities for the involvement of participating agencies and the public" in the development of the range of alternatives "and must consider the input provided by these groups" ([2006](#)). After considering the input, NDOT is responsible for deciding the range of alternatives to be considered in the NEPA documentation. The form and timing of the public and participating agency involvement is flexible, but the opportunity must be provided prior to NDOT's decision that defines the range of alternatives to be considered. Also, "the lead agencies must determine, in collaboration with the participating agencies, the appropriate methodologies to be used and level of detail required in the analysis of alternatives" ([FHWA 2006](#)). [23 USC 139](#) provisions are mandatory for EISs and optional, but rarely followed, for EAs.

No-Build Alternative

In addition to the build alternatives discussed above, a no-build alternative (also known as a no-action alternative) must be included and evaluated (in accordance with [40 CFR Parts 1500–1508](#)). The no-build alternative considers the future scenario that includes all other reasonably foreseeable transportation and land use projects, but not the proposed action. The no-build alternative continues with current conditions and management direction, including ongoing programs, legislation, and regulations, with the addition of other programmed projects that would be completed regardless of the status of the project being studied in the NEPA documentation. As required by NEPA, the no-build alternative is included in the NEPA evaluation, regardless of whether it meets the purpose and need, to serve as a baseline and to allow equal comparison to the build alternative(s) carried forward. The no-build alternative also helps decision makers and the public understand the consequences of taking no action.

Alternatives Development and Alternatives Eliminated from Further Consideration

The EIS alternatives chapter should provide sufficient documentation to justify the decision to carry the build alternatives forward and to eliminate others from further consideration. The alternatives screening process is sometimes documented in a separate report, which can be incorporated into the EIS as an appendix. The documentation for the alternatives screening process should include the following:

- Initial alternatives considered
- Screening criteria and methodology
- Screening results
- Agency and public input into the screening process

The alternatives considered and screened out are identified in this section, and the reasons for their elimination from further detailed study is explained.

3.4.4.2 Environmental Assessments

In EAs, there is frequently one build alternative evaluated against a no-build alternative. In some instances where the project may be complex or controversial, an EA may consider two or more build alternatives. The process through which the build alternative has been identified is documented similarly to the documentation noted above. The EA fully describes the build alternative to a level of detail appropriate for the analysis of transportation performance, environmental impacts, and anticipated cost. The no-build alternative is defined the same way for an EA as for an EIS (see No-Build Alternative under Section 3.4.4.1).

3.4.4.3 Categorical Exclusions

Projects environmentally approved through NEPA as CEs do not require formal documentation of alternatives or a screening process unless required by regulation for a specific resource; for example, Section 4(f). NDOT often modifies the project design to avoid or minimize, or both, potential impacts on resources. One build alternative is evaluated in a CE, with the anticipated conclusion that the project will not result in a significant impact on the environment. For a CE, a no-build alternative is not evaluated.

3.5 NEPA/404 Merge Process

An Individual Permit under Section 404 of the Clean Water Act requires a Section 404(b)(1) alternatives analysis and selection of the least environmentally damaging practicable alternative (LEDPA). To coordinate the requirements of the NEPA and Section 404 processes, it is beneficial to begin working with USACE and other resource agencies early in the environmental review process. This is typically accomplished using NDOT's NEPA/404 Merge process. It is essential to the timely delivery of any project needing an Individual Permit that the NEPA preferred alternative and Section 404 LEDPA are the same. For additional information on wetlands and Section 404 permitting, see the NDOT [Wetland and Water Resource Procedure Document](#).

It is essential to the timely delivery of any project needing an Individual Permit that the NEPA preferred alternative and Section 404 LEDPA are the same.

3.6 Project Documentation and Administrative Record

Members of the project team generate materials such as data, maps, and documents throughout the project development process. Documents that demonstrate the deliberative and informed hard look required under NEPA, such as alternatives screening or manner of mitigation, are to be retained in the project file. This includes all materials used by the project team to advance the project, develop and consider alternatives, and demonstrate coordination. The content of the project file may vary considerably: a simple project with few impacts is likely to have a correspondingly smaller project file, while a complicated project with several alternatives and substantial impacts may result in an extremely large project file. A well-organized and up-to-date file assists all team members in efficiently finding important information, allows new team members to understand project history, and reduces the risk of misplacing or overlooking information.

The content of the project file may vary considerably. A well-organized and up-to-date file assists all team members in efficiently finding important information, allows new team members to understand project history, and reduces the risk of misplacing or overlooking information.

NDOT's official project documentation is retained in the project file in accordance with the [NDOT NEPA File Management and Documentation Guidance](#). The following should be included in the project file, if applicable:

- Technical studies and supporting information, GIS data layers and location information, modeling results, survey information, sampling results, and engineering reports or studies. Certain technical information, such as archeological reports or threatened and endangered species survey reports, should be kept in the project file but have access restricted to authorized personnel because of sensitive information contained therein.
- Documentation of reviews and discussions that reflect substantial input to the decision-making process (for example, draft documents, comment response matrices, and meeting notes).
- The formal Draft EA or EIS, Final EA or EIS, and decision document (Finding of No Significant Impact, Record of Decision, or other).
- Public and agency comments received on the Draft EA or EIS, Final EA or EIS, or decision document, and any responses to these comments.
- Agency consultation and coordination documentation (for example, a U.S. Fish and Wildlife Service Biological Opinion or Letter of Concurrence, or State Historic Preservation Office concurrence on a Section 106 Finding of Effect).
- Letters, memoranda, and any attachments.
- Emails that reflect deliberation or input into the decision-making process.
- Alternatives development and screening information, which may be documented in a separate report or technical memorandum.
- Correspondence and other forms of communication to and from agencies and the public, and any responses.
- Documentation of public involvement (see [Chapter 9, Public Involvement Procedures](#), for additional information).

The project file forms the basis for the administrative record, which is developed in the event that the NEPA decision is challenged in court. The administrative record will include the materials considered by the agency in reaching its NEPA decision. Under NEPA Assignment, as the project NEPA lead agency, NDOT is ultimately responsible for the administrative record.

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The NDOT project file will be a primary source of materials for the administrative record, and NDOT environmental staff should expect to work closely with its attorneys in preparing the administrative record. If NDOT is sued as a result of a NEPA decision, typically an attorney from the State Attorney General's office assigned to NDOT prepares the administrative record.

A strong administrative record is essential because the court's review of the agency decision will be based on the information in the administrative record. However, maintaining an accurate and up-to-date project file is an important element of every project, whether or not a legal challenge is involved.

[AASHTO Practitioner's Handbook 01, Maintaining a Project File and Preparing an Administrative Record for a NEPA Study](#) contains valuable guidance and practical tips on the project file and administrative record.

3.7 Laws, Regulations, and Guidance

The following regulations and guidance pertain to project development and documentation:

- [23 CFR 450, Appendix A, Linking the Transportation Planning and NEPA Processes](#)
- [23 CFR 771, Environmental Impact and Related Procedures](#)
- [40 CFR 1500–1508, Council on Environmental Quality NEPA Regulations](#)
 - [40 CFR 1500.2, Policy](#)
 - [40 CFR 1502.13, Purpose and Need](#)
 - [40 CFR 1502.14, Alternatives including the Proposed Action](#)
- [23 USC 134, Metropolitan Transportation Planning](#)
- [23 USC 139, Efficient Environmental Reviews for Project Decisionmaking](#)
- [AASHTO, July 2006, AASHTO Practitioner's Handbook 01, Maintaining a Project File and Preparing an Administrative Record for a NEPA Study](#)
- [AASHTO, August 2007, AASHTO Practitioner's Handbook 07, Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects](#)
- [CEO, March 23, 1981, Forty Most Asked Questions Concerning CEO's National Environmental Policy Act Regulations](#)
- [FHWA, October 30, 1987, Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#)
- [FHWA, November 15, 1993, The Development of Logical Project Termini](#)
- [FHWA, November 15, 2006, SAFETEA-LU Environmental Review Process \(Public Law 109-59\)](#)
- [NDOT, May 2018, Wetland and Water Resource Procedure Document](#)
- [NDOT, June 2018, NDOT NEPA File Management and Documentation Guidance](#)
- [NDOT, Planning and Environmental Linkages Guidance](#)