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Memorandum

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TO: Interested Persons

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SUBJECT: National Environmental Policy Act and Large Transportation Projects

Summary

One of the major components of transportation planning and project development is environmental review. This memorandum provides information on the National Environmental Protection Act and the environmental review process for large transportation projects.

Overview

The National Environmental Policy Act (NEPA) was signed into law in 1970. It requires federal agencies to consider the environmental effects of a project and to involve the public in the decision-making process before proceeding with a project. The requirements for complying with NEPA depend on many factors, including the size and scope of the project and the degree to which the project affects community resources, such as parks, water resources, and urban communities. This memorandum outlines the NEPA process for transportation-related projects in Colorado.

Background

The Federal-Aid Highway Act of 1956 provided revenue sources for the construction of the national interstate system, which took 35 years to complete and resulted in over 45,000 miles of highways, freeways, and bridges. Initially, interstate projects often had adverse impacts on resources, including historic sites, parks, and recreation areas, and land acquisition for projects in urban areas often had a disproportionate impact on the poor. NEPA, along with other legislation enacted in the 1960s and 1970s, created processes to identify and mitigate adverse impacts of highway projects on community and natural resources.

Outline of NEPA Process

Certain highway and bridge projects are eligible to receive federal funding from the federal Department of Transportation's Federal Highway Administration (FHWA). To receive funds for bridge and highway projects, a project sponsor (such as a local or state transportation agency) must meet certain standards and requirements. The FHWA is responsible for ensuring that individual projects comply with federal requirements. The NEPA environmental review process takes into account other applicable federal laws (e.g., the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act), and the completion of any environmental permit, approval, review, or study required under those other federal laws.

The majority of transportation projects require only limited review under NEPA. However, major transportation projects, such as new highway projects of four or more lanes and new construction high-occupancy vehicle (HOV) lanes, require a more in-depth environmental review process. Lead agencies on major transportation projects are required to disclose environmental consequences, consider alternatives, and evaluate mitigation measures. Documentation, government agency coordination, and public involvement are the essential elements of the NEPA process.

NEPA class of action. The degree to which NEPA compliance needs to be documented and implemented depends on a project's size, complexity, and potential to impact the environment. The first step in the NEPA process is to determine whether the project will have significant environmental impacts, or the class of action for the project. The significance of the environmental impact, not cost or size, determines the class of action (categorical exclusion, EA, or EIS).

Environmental Impact Statement (EIS). While this process is the least common form of NEPA document required, it is also the most intensive. Projects that typically require an EIS include new highway projects of four or more lanes and new construction of HOV lanes. When lead agencies determine that a project has significant environmental impacts, agencies publish a Notice of Intent in the *Federal Register* to indicate to the public and other interested parties that a project with significant impacts is being studied and planned. Along with publishing the Notice of Intent, agencies begin focusing on the scope of the project and investigating ways to lessen impacts. Agencies may conduct environmental analysis, talk to interested parties, coordinate with other governmental agencies, hold focus groups, and/or study alternative approaches. After this process, the lead agency prepares a draft EIS that is circulated for comment. Based on the reviews and public comments on the draft EIS, the lead agency prepares a final EIS. The final EIS should contain information on the preferred project alternative, an evaluation of all reasonable alternatives considered, responses to issues raised in public comment, a summary of the public involvement in the process, and documentation of compliance with all environmental laws and requirements. Before the project can go forward, the FHWA must approve the final EIS and issue a Record of Decision noting the reasoning for the FHWA's decision and highlighting all of the project's mitigation measures. A recent example of a Colorado project requiring an EIS is the current I-70 East project through the Denver metro area.

According to the U.S. Department of Energy's Office of NEPA Policy and Compliance, between 1994 and 2016, the median time to complete an EIS is

Environmental Assessments (EA). An environmental assessment is designed for an action that requires further investigation into the environmental impact. If a project does not clearly require an EIS, but further investigation is needed, lead agencies may use the EA process. The EA includes information on project scope, potential impacts, project alternatives, mitigation measures, and additional environmental requirements. Based on the EA documentation process, the lead agency then determines if the project requires preparation of an EIS or a Finding of No Significant Impact (FONSI). The FHWA then approves the EA and lead agencies make the EA public for inspection and comment. If a FONSI is approved, it stands as the final decision on the project. For example, the Denver International Airport is currently conducting an EA process for its concourse expansion project.

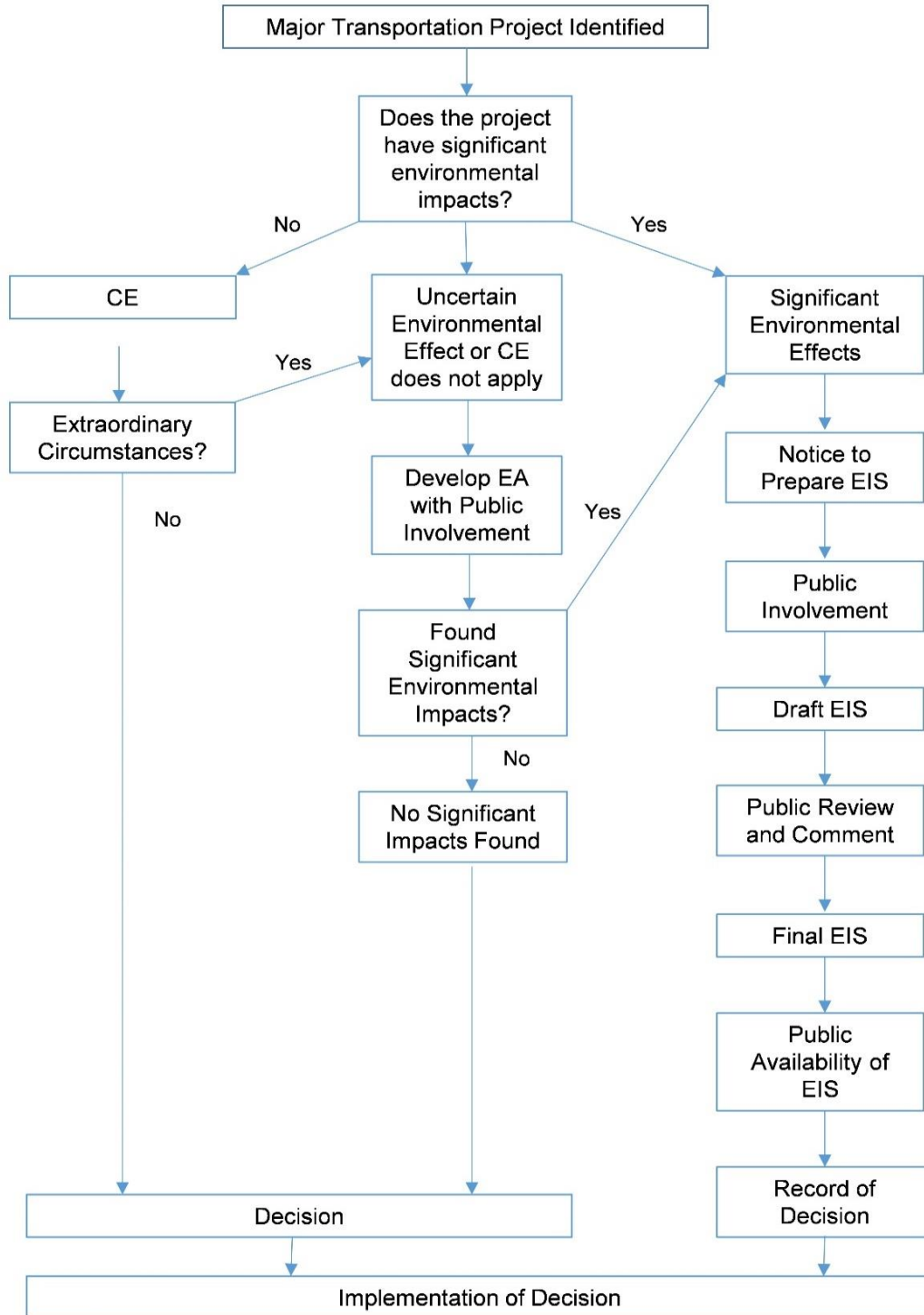
Categorical Exclusion (CE). Most projects are defined as a categorical exclusion, which are projects that, based on past experience with similar projects, do not have a significant impact on a natural, cultural, recreational, or historic resource. Projects that receive a categorical exclusion must not require the relocation of a significant number of people or have significant impacts on travel patterns. Examples of projects that would receive a categorical exclusion include non-construction activities, improving rest areas, installing noise barriers, or constructing bicycle and pedestrian lanes.

Agency roles and responsibilities. A NEPA document is prepared by a lead agency, and may require input from other agencies with an interest in the project. The FHWA generally serves as the lead agency for highway projects, and the recipient of federal funds serves as a joint lead agency. The recipient of federal funds will typically be a state department of transportation, a local agency sponsor, or an American Indian tribal government. In practice, the agency seeking federal funds will prepare the NEPA document with guidance from the FHWA. However, the responsibility to ensure that a project complies with laws and regulations rests with the FHWA.

Public involvement. Federal regulations require agencies to provide public notice of NEPA-related hearings and public meetings. Agencies must also make environmental documents available to stakeholders. The level of public engagement varies depending on the document required for the project, with the EIS requiring the most extensive public stakeholder engagement, and categorical exclusions requiring the least.

Figure 1 below demonstrates the NEPA process.

Figure 1
NEPA Documentation Process



Source: Federal Highway Administration and Environmental Protection Agency.
NEPA Documents: Categorical Exclusion (CE); Environmental Assessments (EA); and Environmental Impact Statement (EIS).