

Chapter 5

Environmental Assessment



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Chapter 5 Environmental Assessment

This chapter provides an overview of actions classified as environmental assessments (EA) and explains the documentation required by the Nebraska Department of Transportation (NDOT) to satisfy the National Environmental Policy Act (NEPA). NDOT prepares an EA following the procedures in this chapter. Chapter 2, Class of Action, explains the process used to determine the class of action for a given project.

5.1 Definition and Purpose of an Environmental Assessment

An EA is prepared when a project does not qualify for a categorical exclusion (CE) under [23 CFR 771.117](#) and does not clearly require preparation of an environmental impact statement (EIS) per [23 CFR 771.119\(a\)\(1\)](#). See Chapter 2, Class of Action, for additional information about classes of action and for definitions of CEs and EISs.

The purpose of an EA is to evaluate the effects of a project on the environment to determine if they are significant and if further analysis and documentation are needed. If analysis in the EA determines that social, economic, or environmental effects, referred to collectively as environmental effects, would be significant, then an EIS is prepared. If analysis in the EA determines that environmental effects would not be significant, then a Finding of No Significant Impact (FONSI) is prepared.

The EA is a concise document that does the following:

- Describes the purpose and need for the proposed action
- Describes the alternatives that were considered but eliminated as well as the alternatives carried forward for detailed analysis (typically only the No-Build Alternative and the Preferred Alternative)
- Describes the existing, or affected, environment and identifies the potential reasonably foreseeable social, economic, and environmental impacts of the project
- Compares reasonably foreseeable impacts that could result from the alternatives being considered
- Affords the public the opportunity to comment on the potential effects of the project
- Provides the necessary evidence and analysis to determine whether a FONSI is applicable or an EIS is required

If at any point during the development of the EA NDOT determines that the project would result in a reasonably foreseeable significant impact that cannot be mitigated to a non-significant level, an EIS must be prepared. NDOT determines significance as discussed in Chapter 2, Class of Action, Section 2.2. Chapter 6, Environmental Impact Statement, provides additional information about EISs.

The NDOT Environmental Section maintains a project file throughout the environmental process in accordance with the [NDOT NEPA File Management and Documentation Guidance](#). Materials in the project file document actions and decisions made during the development of the project regarding environmental aspects.

5.2 Overview of the Environmental Assessment Process

The process of preparing an EA for a proposed transportation project has evolved since NEPA was enacted in 1969. The laws, regulations, and guidance that help to inform that process, and the steps in the transportation EA process, are discussed in the following sections.

5.2.1 Laws, Regulations, and Guidance that Inform the Environmental Assessment Process

To address its responsibilities under NEPA Assignment, NDOT follows the NEPA statute ([42 USC 4321 et seq.](#)), the Federal Highway Administration's (FHWA) NEPA regulations ([23 CFR 771](#)), and corresponding guidance, such as FHWA's [Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#) and the US Department of Transportation's [DOT Order 5610.1D, Procedures for Considering Environmental Impacts](#). FHWA NEPA regulations provide a foundation for implementing NEPA and preparing an EA, and [Technical Advisory T 6640.8A](#) and [DOT Order 5610.1D](#) provide detailed information about the contents and processing of environmental documents.

Additionally, to streamline regulatory review and permitting, various other transportation acts, environmental laws, regulations, guidance, and executive orders (EO) are considered and addressed under the NEPA umbrella and documented in the EA. Additional information about the laws, regulations, guidance, and EOs that govern the development and approval of EAs is available in the [FHWA's Environmental Review Toolkit](#). There are also federal agency guidance documents that capture many of the coordination processes and efficiency tools, such as the [2015 Red Book: Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects](#), and other guidance that improves efficiency when multiple federal agencies are involved in the same project. The principles laid out in the *2015 Red Book* include early engagement with partner agencies, organized schedules, reduction of duplicative reviews, and structured dispute resolution that past EOs have required.

5.2.2 Steps in the Environmental Assessment Process

The following process is used to develop the EA; the steps are discussed in more detail in the sections indicated in parentheses:

- Pre-NEPA activities (5.3)
- Updating the Permitting Dashboard (5.4)
- Initiating the EA (5.5)
- Preparing the EA (5.6)
- Reviewing and approving the EA (5.7)
- Public review of the EA (5.8)
- Preparing the errata (5.9)
- Reviewing and approving the Errata (5.10)
- Preparing the environmental decision document (5.11)

5.3 Pre-NEPA Activities

Prior to NDOT officially determining the NEPA class of action as an EA, NDOT initiates pre-NEPA activities to gather information to support the environmental review process and the development of the NEPA documentation. These activities include agency coordination, public involvement, development of the purpose and need, analysis of alternatives to meet the project purpose and need, and technical resource studies to identify the potential reasonably foreseeable social, economic, and environmental impacts of the project.

5.3.1 Agency Coordination

Engagement with federal, state, tribal, and local resource and government agencies begins during pre-NEPA activities to facilitate the exchange of information and concerns that can help refine the project and support delivery success. NDOT's goal is that early engagement will strengthen relationships with individual agencies, build trust, and support the information gathering process. Agency input received during pre-NEPA activities can help define the project purpose and need, identify alternatives and measures that might mitigate environmental impacts, identify potential reasonably foreseeable environmental impacts, and identify non-standard study methodologies that may be necessary to quantify project impacts. NDOT begins coordination with agencies using one or more of the following methods, as determined by the NDOT Environmental Documents Unit (EDU) Supervisor:

- Sending resource agencies an early coordination package that includes a letter, map, project description, preliminary purpose and need, initial alternatives (if available), and summary of resources potentially affected.
- Holding a project-specific agency scoping meeting, which may be accompanied by a project site visit. If a scoping meeting is held, the early coordination package serves as the meeting invitation.

Early agency coordination should also consider the potential regulatory requirements of other federal and state agencies and the level of involvement of those agencies. An example regulatory requirement that should be considered during early coordination is an individual permit under [Section 404](#) of the Clean Water Act. An individual permit 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 the US Army Corps of Engineers (USACE) and other resource agencies once a preliminary purpose and need and initial alternatives have been developed. USACE has jurisdiction by law over wetlands and water resources in accordance with the Clean Water Act ([33 USC 1251 et seq.](#)) and is responsible for the day-to-day administration of the Clean Water Act, Section 404, and the Rivers and Harbors Appropriation Act, Section 10 ([33 USC 403](#)). This responsibility includes processing permit applications and issuing authorizations to discharge dredged and/or fill material into waters of the United States, including navigable waters and some wetlands. USACE acts in this role on all highway improvement projects that require Section 404/Section 10 permit authorization, regardless of highway improvement funding source. The [2015 Red Book](#) emphasizes the synchronization of the NEPA and Section 404 review processes. For additional information on wetlands and Section 404 permitting, see the NDOT [Wetland and Water Resource Procedure Document](#).

Agencies, such as USACE, that have a permitting or approval role on transportation projects may be offered a formal opportunity to participate in the review of a project as a joint lead agency, cooperating agency, or participating agency, as discussed in Sections 5.3.1.1 and 5.3.1.2. NDOT also notifies local government agencies of the initiation of project development, typically through written correspondence.

If NDOT chooses to invite agencies to be joint lead, cooperating, or participating agencies, this should be done at the earliest possible time during pre-NEPA activities. To keep the environmental process on schedule, the agency invitation letters should request a written response within 30 days.

Early coordination letters and substantive written responses are placed in the project file and will be included in the EA to document agency coordination.

5.3.1.1 Joint Lead Agencies

In its role as the lead agency and at its discretion, NDOT may identify other federal, state, tribal, or local governmental entities to act as joint lead agencies based on the agency's expertise, jurisdiction, or

approval authority for permits required for the project. Identifying a joint lead agency will most often apply to Local Public Agency (LPA) projects where the project sponsor receiving federal transportation funds serves as a joint lead agency with NDOT ([23 CFR 771.109\(C\)\(2\)](#)). Joint lead agencies may also be identified for complex projects where another federal agency has a significant role in the project or has an authorization requiring that agency to also prepare NEPA documentation. The NDOT EDU Supervisor, in coordination with the Environmental Section Manager, makes the decision to include joint lead agencies. For more information on this topic, see Chapter 6, Environmental Impact Statement, and USDOT's [Interim Final Guidance on Section 139 Environmental Review Process: Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision](#).

5.3.1.2 Cooperating Agencies

Cooperating agencies are any federal, state, tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a project and has been designated as a cooperating agency by the lead agency ([23 CFR 771.107](#)). Cooperating agencies offer technical expertise, help avoid duplication of effort, foster intergovernmental trust, and provide input to ensure comprehensive environmental review. During pre-NEPA activities, the NDOT EDU Supervisor, in coordination with the NDOT Environmental Section Manager, may invite other agencies with an interest in the project to become cooperating agencies. A cooperating agency that is subject to NEPA requirements related to its review and/or approval of the project may choose to adopt NDOT's EA and analysis therein. For more information on this topic, see Chapter 6, Environmental Impact Statement.

5.3.1.3 Participating Agencies

A participating agency is a formal classification for federal, state, tribal and local agency participation under the Efficient Environmental Reviews for Project Decisionmaking process in [23 USC 139](#). This process is not required for EAs; however, NDOT may choose to designate a project as a "major project" and follow the agency coordination procedures in [23 USC 139](#). During pre-NEPA activities, the NDOT Environmental Section Manager, in consultation with the Project Development Engineer, determines when use of the efficient environmental review process would be beneficial for efficient project delivery. For more information on this topic, see Chapter 6, Environmental Impact Statement.

5.3.2 Public Involvement

Early and proactive public involvement is a cornerstone of the NDOT project development process. Chapter 9, Public Involvement Procedures, provides more detailed information regarding public involvement for NEPA on transportation projects in Nebraska.

Public involvement is an essential component of NEPA. It allows NDOT and LPAs to learn what is important to communities and to understand their main concerns related to the reasonably foreseeable impacts of proposed transportation projects. Project-specific public involvement needs should be considered during pre-NEPA activities to identify potential stakeholders, issues of community concern, and needed outreach.

Unlike scoping for an EIS, there are no formal scoping requirements for an EA in FHWA NEPA regulations. Thus, the degree of public involvement and the means of soliciting public input for an EA may vary from project to project. Although NDOT typically holds a public information meeting for an EA early in the project development process during pre-NEPA activities, determining the level of public involvement for a project is based on the project type, scope, location, and complexity; community composition; community interest; and anticipated reasonably foreseeable impacts. The NDOT Public Involvement Unit, in coordination with the NDOT EDU Supervisor and the NDOT Environmental Section Manager, determines the level of public involvement for each project on a case-by-case basis. The

procedures described in Chapter 9, Public Involvement Procedures, provide detailed information and govern public involvement activities for NDOT projects.

5.3.3 Purpose and Need

NDOT develops a preliminary purpose and need statement for a project during pre-NEPA activities. Purpose and need are the foundation of the environmental document and provide the basis for evaluation of alternatives. Guidance regarding the development of a purpose and need statement can be found in Chapter 3, Project Development and Documentation, as well as in FHWA's [Technical Advisory T 6640.8A](#), FHWA's [The Importance of Purpose and Need in Environmental Documents](#), and the American Association of State Highway and Transportation Officials' (AASHTO) [Practitioner's Handbook #7: Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects](#).

NDOT includes the preliminary purpose and need statement for a project in the agency early coordination package, including the elements, reasoning, and background information. As part of early coordination, NDOT asks for specific, targeted feedback on the purpose and need statement, especially as it relates to each agency's particular jurisdiction. Such a request will help limit the input that agencies provide on items outside their expertise.

The purpose and need document prepared during pre-NEPA activities is briefly summarized in the EA and included as an appendix to the EA.

5.3.4 Preliminary Alternatives Analysis

NDOT develops and evaluates alternatives for a project during pre-NEPA activities and may document this analysis in a stand-alone Alternatives Analysis document. This document is briefly summarized in the EA and included as an appendix to the EA. Detailed evaluation of multiple build alternatives is not required by FHWA NEPA regulations or FHWA's [Technical Advisory T 6640.8A](#); however, depending on the project's size, complexity, and regulatory requirements, multiple build alternatives may be analyzed and screened to arrive at the alternative(s) to be studied in detail in the EA.

5.3.5 Technical Resource Studies

Technical resource studies may be prepared during pre-NEPA activities to identify and describe the number, location, and context of social, economic, and environmental resources potentially affected by the project. Studies may include community assessments, hazardous materials reviews, historic property reports, wetland delineations, and threatened and endangered species reviews. These studies may be prepared by NDOT staff or consultants. NDOT's Professionally Qualified Staff review and/or approve these studies prior to incorporation in the EA.

5.3.6 Documenting Pre-NEPA Activities

NDOT's pre-NEPA activities are typically documented in individual technical memos, resource reports, and corridor study reports. For some projects, NDOT (or an LPA) may conduct a Planning and Environment Linkages (PEL) study that covers the pre-NEPA activities and is documented in a PEL report (see NDOT's [Planning and Environment Linkages Guidance Document](#) for information about preparing a PEL).

The project development process is not always a linear process, and pre-NEPA activities can occur over a period of time, making some materials out-of-date. As such, prior to the official class of action determination, pre-NEPA activities should be reviewed to confirm they are still current and accurate. For example, NDOT should confirm that data (e.g., traffic volumes) used to support the purpose and

need statement are still valid and reasonable or that technical resource reports are still accurate and do not need updating (e.g., wetland delineation).

5.4 Permitting Dashboard for Federal Infrastructure Projects

The Permitting Dashboard for Federal Infrastructure Projects (Permitting Dashboard) is an online tool for federal agencies, project developers, and interested members of the public to track the federal government's environmental review and authorization processes for large or complex infrastructure projects. The [Fixing America's Surface Transportation Act, Section 1304\(j\)](#), requires agencies "to make publicly available the status and progress of projects requiring an environmental assessment" on the Permitting Dashboard.¹ According to the terms of the NEPA Assignment Memorandum of Understanding (MOU), NDOT is responsible for entering and updating information on EA projects in the Permitting Dashboard.

5.5 Initiating the Environmental Assessment

Pre-NEPA activities provide NDOT with the information necessary to determine that the project will require an EA to satisfy NEPA. FHWA NEPA regulations ([23 CFR 771.138\(2\)](#)) require that an EA be completed in 12 months. This time period starts with NDOT's formal determination that the project requires an EA (signified by NDOT's entry of the class of action into the Permitting Dashboard), or the date of publication of the Notice of Intent (if one is issued), and ends when the EA is signed. NDOT may extend the timeline to provide only so much additional time as necessary to complete the EA ([23 CFR 771.138\(a\)\(3\)](#)).

Although not often used for an EA project, the statutorily prescribed efficient environmental review process established under [23 USC 139](#) may be followed when a project requires multiple federal reviews or authorizations. These are called "major projects" ([23 CFR 771.107](#)). The NDOT Environmental Section Manager, in consultation with the Project Development Engineer, determines when use of the efficient environmental review process would be beneficial for efficient project delivery. The major project EA must be completed within a schedule consistent with an agency average of not more than 2 years from the class of action determination date to the signature date of the FONSI ([23 CFR 771.138\(2\)](#)).

Projects that would benefit from the efficient environmental review process include those that may require multiple federal authorizations, such as a formal Section 7 consultation, individual Section 404 permit, US Coast Guard bridge permit, or USACE Section 408 authorizations. These types of projects often involve complex permitting schedules and can benefit from the increased coordination with other federal agencies and other streamlining provisions in [23 USC 139](#). Additional information about the efficient environmental review process is provided in Chapter 6, Environmental Impact Statement.

5.6 Preparing the Environmental Assessment

The EA is intended to be a concise document that does not include detailed or lengthy descriptions of the information gathered for the analyses. It summarizes pre-NEPA activities, including technical studies, reviews, consultations, preliminary alternatives analysis, and coordination undertaken for the project, to the extent appropriate at this point in the environmental review process. Technical studies that form the basis of the information and conclusions in the EA should be summarized and incorporated by reference. These technical studies are maintained in the project file and are available

¹ The Permitting Dashboard is available at: <https://www.permits.performance.gov/projects>.

for public review on request. In addition, these technical studies may be appended to the EA at NDOT's discretion.

The EA focuses on environmental resources that may be affected by the project, particularly those where the significance of reasonably foreseeable impacts is in question, and those that were identified as potential concerns during the early agency coordination and public involvement process. Resources with minimal impact should be addressed briefly. Resource categories not affected by the project should be acknowledged but not further evaluated. Chapter 8, Resource Analysis, provides information regarding study approaches and documentation for individual resource topics. Individual resource discussion sections of the EA should begin with a brief presentation of the regulatory context.

5.6.1 Alternatives Analysis

At a minimum, a build alternative and the no-build alternative are required to be carried forward for detailed study in an EA. NDOT typically evaluates only the preferred alternative in detail in the EA. The decision on the number of build alternatives analyzed should consider reasonably foreseeable project impacts, avoidance for permitting, public and agency comments, and other relevant constraints such as risk and costs. The NDOT EDU Supervisor, in coordination with the Environmental Section Manager, makes the decision to evaluate more than one build alternative. [DOT Order 5610.1D](#) states that an EA "should address alternatives to a degree commensurate with the nature of the proposed action," as well as NDOT's experience with the environmental issues involved. See Chapter 3, Project Development and Documentation, Section 3.4, for additional information on alternatives.

5.6.1.1 No-Build Alternative

The no-build alternative considers the future scenario that includes other committed projects but not the project. Examples of committed projects can include other programmed activities in Nebraska's long-range transportation plan or state transportation improvement plan, a Metropolitan Planning Organization's transportation improvement program, or long-term operation and maintenance activities that would occur even if the project were not approved. As required by NEPA, the no-build alternative is included in the NEPA evaluation, regardless of whether it meets the project purpose and need, to serve as a baseline and to allow comparison with the build alternative(s) under consideration. The no-build alternative is also included to inform the public of the effects of maintaining the status quo.

5.6.1.2 Preferred Alternative

NDOT typically identifies the preferred alternative in the EA. However, if more than one build alternative is carried forward in the EA, the EA should comparably and objectively evaluate all alternatives carried forward. For state projects, the preferred alternative is generally the alternative that NDOT determines would best meet the project purpose and need; would avoid, minimize, or mitigate social, economic, and environmental impacts; would meet technical and cost requirements; and would receive the greatest support among agencies and the public. For LPA projects, the project sponsor, in coordination with NDOT, may identify a locally preferred alternative in the EA using a similar process as for state projects.

5.6.2 Resources for Preparing the Environmental Assessment

NDOT has developed a standard [EA template](#) and [Environmental Assessment Guidance](#) document to provide a standardized format and guidance on content and level of detail to assist authors in preparing EAs for transportation projects. See Appendix B of the NDOT Environmental Procedures Manual for the guidance and template. The text of an EA must not exceed 75 pages ([23 CFR](#)

[771.138\(b\)\(2\)](#). According to Appendix F of [USDOT Section 139 Guidance](#), a page is defined as 500 words and does not include explanatory maps, diagrams, graphs, tables or other means of graphically displaying quantitative or geospatial information.

Chapter 3, Project Development and Documentation, presents detailed guidance to be followed when developing the purpose and need statement and alternatives. Chapter 8, Resource Analysis, presents information about the analysis of specific environmental resources. Chapter 9, Public Involvement Procedures, presents guidance and best practices for engaging the public.

In compliance with NDOT's NEPA Assignment MOU pursuant to [23 USC 327](#), the following statement is required to appear on the cover page of the EA:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this proposed project are being, or have been, carried out by NDOT pursuant to 23 USC 327 and a Memorandum of Understanding dated [TO BE FILLED IN] and executed by FHWA and NDOT.

FHWA NEPA regulations at [23 CFR 771](#) include requirements for an EA. FHWA's [Technical Advisory T 6640.8A](#) describes methods for analyzing environmental resource categories and provides EA processing instructions, while [DOT Order 5610.1D](#) provides detailed information about the contents and processing of environmental documents. The FHWA web-based [Environmental Review Toolkit](#) provides tools for NEPA and Section 4(f) analysis and documentation, as well as resources for the analysis of reasonably foreseeable social, economic, and environmental impacts. AASHTO's [Practitioner's Handbook 07](#) contains recommendations for defining the project purpose and need and developing the range of alternatives for proposed transportation projects under NEPA. Finally, AASHTO's [Improving the Quality of Environmental Documents](#) offers suggestions for high-quality, readable documents. These resources can be consulted for additional information about EA content, format, and methods of analysis.

5.7 Reviewing and Approving the Environmental Assessment

After the EA is prepared, it is reviewed and approved by NDOT before it is released for public review. Quality control (QC) is the first step in this process, followed by legal review. More than one review cycle may be needed before the EA is ready for approval.

5.7.1 Quality Control Review

QC review is performed to verify that the EA is clear, accurate, and complete and that it conforms to all NEPA requirements and applicable laws, regulations, and guidelines, including those of NDOT. In addition, QC review focuses on consistency, both within the EA and between the EA and supporting technical studies. If the EA is consultant prepared, the consultant conducts an internal QC review in accordance with the NDOT [NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#) prior to submittal of the EA to NDOT for review and approval. Documentation of the consultant's internal QC review is submitted as part of the EA package.

QC review at NDOT is undertaken following the NDOT [NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#) and includes a Setup Phase, Review Phase, and Approval Phase. An NDOT NEPA Specialist is assigned to the project during the project programming phase to assist in meeting project environmental requirements, including development of the EA. Any of the NDOT NEPA Specialist's QC tasks may be performed by the assigned Environmental Project Manager rather than the NDOT NEPA Specialist. During the Setup Phase, the NDOT NEPA Specialist supports the document author in readying the EA for NDOT QC review, such as by reviewing preliminary versions of the EA, and determines that the EA is sufficiently complete and ready for review. If the EA is not ready for QC review, the NDOT NEPA Specialist returns it to the document author with instructions on the

needed improvements. The EA may be returned to the document author at any point for revision if it is determined to be incomplete or if substantial corrections must be made prior to entering or continuing the QC process.

After the NDOT NEPA Specialist determines that the EA is ready for QC review, the processes and procedures for the Review Phase are followed, as described in the NDOT [NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#). The levels of review include full document review, targeted technical review, and second review. During EA review, QC reviewers provide comments as to whether more analysis or detail is needed to support the conclusions and assertions contained in the document, identify specific information that needs to be included, or verify that the document is clear and concise in its writing. Following the review, the document author makes the necessary updates. The updated document is reviewed again to verify that the comments were adequately addressed.

5.7.2 Legal Review

Formal legal sufficiency review is not required for EAs (See Chapter 6, Environmental Impact Statements); however, following completion of QC review, the NDOT EDU Supervisor or Environmental Section Manager may have NDOT's branch of the Nebraska Attorney General's office (NDOT-Legal) review the document. The primary goal of this review is to assess the document for compliance with legal requirements. Documentation of NDOT-Legal's review is included in the project file. Legal review results and communications are subject to attorney-client privilege; thus they are confidential and are not available for public or agency distribution or review.

5.7.3 NDOT Approval

When the Review Phase is complete, the EA moves into the Approval Phase. The Approval Phase includes a final document check, closeout of the QC review process, and signing the NEPA documentation, as described in the NDOT [NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#). When the QC process is closed out, the NDOT EDU Supervisor or Environmental Section Manager determines that the EA is ready for approval. The Environmental Section Manager or Project Development Engineer signs the EA signature page to denote NDOT approval. This approval authorizes the EA to be made available to the public ([23 CFR 771.119\(c\)](#)) and is the end date for the NEPA clock.

5.8 Public Review of the Environmental Assessment

FHWA NEPA regulations do not require that the EA be circulated to agencies and the public; however, at a minimum, the EA must be made available for public review ([23 CFR 771.119\(d\)](#)). NDOT requires the EA to be available at NDOT headquarters and the appropriate NDOT district office ([23 CFR 771.119\(d\)](#)). NDOT will post the EA on its project web page and may make the EA available at additional locations that are convenient for the public, such as a public library or community center near the project and at the project sponsor's office if it is an LPA project. While not required, FHWA policy encourages that the EA be distributed to federal, state, and local agencies known to have an interest in the project or special expertise, as identified during agency coordination and scoping, and to any agency with permitting authority. If an individual permit would be required from USACE (i.e., Section 404 or Section 10) or from the US Coast Guard (i.e., Section 9), a copy of the EA should be distributed to the involved agency ([Technical Advisory T 6640.8A](#)).

NDOT conducts appropriate public involvement during pre-NEPA activities and may hold a public meeting for the EA according to NDOT public involvement procedures in Chapter 9, Public Involvement Procedures.

5.8.1 Notices and Time Frame

To announce the availability of the EA for public review, NDOT prepares a Notice of Availability (NOA) that briefly describes the project and its anticipated reasonably foreseeable impacts.

In compliance with NDOT's NEPA Assignment MOU pursuant to [23 USC 327](#), the following statement is required to appear in the NOA:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this proposed project are being, or have been, carried out by NDOT pursuant to 23 USC 327 and a Memorandum of Understanding dated [TO BE FILLED IN] and executed by FHWA and NDOT.

Detailed information about the NOA is provided in Chapter 9, Public Involvement Procedures, Section 9.5.

In addition to NEPA, other environmental regulations require public notification. If the project would result in a use of, or *de minimis* impacts on, properties protected by Section 4(f) of the US Department of Transportation Act of 1966 or effects on historic properties, floodplains involvement, wetlands impacts, or property impacts, the NOA identifies these impacts to meet the public notification requirements for these resources. The NOA also includes standard language from NDOT's Civil Rights Office to address Title VI and limited English proficiency compliance and Americans with Disabilities Act accessibility requirements. Chapter 8, Resource Analysis, and Chapter 9, Public Involvement Procedures, provide additional information.

The EA is to be available for review and comment for 30 days from the date it was made publicly available unless NDOT determines for good cause that a different review period is warranted ([23 CFR 771.119\(e\)](#) and [\(f\)](#)).

5.8.2 Public Comments on the EA

Public comments on the EA, whether received in response to the NOA or at a public meeting or hearing (if one is held), are logged, and responses are provided for all comments.

At the end of the EA public review period, NDOT reviews the comments received. The document author coordinates with the assigned NDOT NEPA Specialist and other appropriate NDOT staff to determine whether changes to the environmental analysis, conclusions, or the project itself are warranted and prepares a response to each comment, which may be acknowledgement of receipt of the comment if it isn't substantive or doesn't ask a question. Comment responses are to be written in an appropriate and respectful manner and are to adequately address the issue or concern raised by the commenter.

The NDOT Public Involvement Unit prepares a public involvement report for all public outreach conducted and comments received over the course of the pre-NEPA activities and development of the EA (see Chapter 9, Public Involvement Procedures, for details on the contents of the public involvement report). The public involvement report is maintained in the project file.

5.9 Preparing the Errata

NDOT uses an [errata format](#) to address revisions to the EA following the public availability period. Per FHWA [Technical Advisory T 6640.8A](#), the Errata should "(1) reflect changes in the proposed action or mitigation measures resulting from comments received on the EA or at the public hearing (if one is held) and any impacts of the changes, (2) include any necessary findings, agreements, or determination (e.g., wetlands, Section 106, Section 4(f)) required for the proposal, and (3) include a copy of pertinent comments received on the EA and appropriate responses to the comments."

The Errata summarizes public and agency comments and responses, identifies revisions to the EA, and includes a full list of mitigation measures required for the project. It is NDOT standard practice to include a full list of mitigation measures in the Errata so that final mitigation measures appear in a single location. The preferred alternative is identified in the Errata if it was not identified in the EA. If the preferred alternative is modified after the EA is reviewed by the public, the Errata must clearly identify the changes and impacts associated with the changes and must present why new impacts are not of concern, if applicable.

The Errata is appended to the EA. In compliance with NDOT's NEPA Assignment MOU pursuant to [23 USC 327](#), the following statement is required to appear on the cover page of the Errata:

The environmental review, consultation, and other actions required by applicable federal environmental laws for the proposed project are being, or have been, carried out by NDOT pursuant to 23 USC 327 and a Memorandum of Understanding dated [TO BE FILLED IN], and executed by FHWA and NDOT.

5.10 Reviewing and Approving the Errata

The Errata is reviewed in the same manner as the EA, discussed in Section 5.6 and the NDOT [NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#).

5.10.1 Quality Control Review

QC review of the Errata is similar to the QC review of the EA, described in Section 5.7. Refer to that section for additional detail on QC review of the Errata.

5.10.2 NDOT Approval

When the Review Phase is complete, the Errata moves into the Approval Phase, which includes a final document check, closeout of the QC review process, and signing the NEPA documentation, as described in the NDOT [NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#). When the QC process is closed out, the NDOT EDU Supervisor or Environmental Section Manager determines that the Errata is ready for approval. The Environmental Section Manager or Project Development Engineer signs the Errata signature page to denote NDOT approval. This approval authorizes the Errata to be made available to the public ([23 CFR 771.119\(c\)](#)).

5.11 Preparing the Environmental Decision Document

After completing the Errata, NDOT prepares the environmental decision document. This document will be one of the following:

- A FONSI
- Documentation that an EIS is required

If, at any time during the environmental process, it appears that the project is likely to have a significant effect on the environment, NDOT may consider initiating an EIS at that time. NDOT may impose mitigation measures to avoid the significant effects, as documented in the EA and FONSI (commonly known as a Mitigated FONSI).

5.11.1 Finding of No Significant Impact

A FONSI is a final determination by NDOT that the project will have no reasonably foreseeable significant impacts on the environment and that an EIS is not required. The FONSI is a separate,

signed decision document prepared only when NDOT determines that the project will not have a significant impact on the environment. If significant impacts are identified through the EA process and the project continues to move forward, an EIS would be prepared.

The FONSI determination is based on the analysis presented in the EA, comments received from agencies and the public, and changes to the project made in response to comments received.

After NDOT determines that no significant impacts would result from the project, the FONSI is prepared. The FONSI incorporates the EA and other appropriate environmental documents by reference ([23 CFR 771.121\(a\)](#)).

A statement similar to the following is the core of the FONSI:

NDOT, as assigned by FHWA, has determined that this project will not have any significant impact on the human or natural environment. This Finding of No Significant Impact is based on the enclosed Environmental Assessment and Errata, which has been determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required. NDOT takes full responsibility for the accuracy, scope, and content of the attached Environmental Assessment and Errata.

In compliance with NDOT's NEPA Assignment MOU pursuant to [23 USC 327](#), the following statement is required to appear on the FONSI:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 327 and a Memorandum of Understanding dated [TO BE FILLED IN], and executed by FHWA and NDOT.

The NDOT Project Development Engineer or the Environmental Section Manager signs and dates the FONSI to denote NDOT approval.

5.11.1.1 Mitigated FONSI

If significant effects would result from the project, NDOT may impose mitigation measures or modify the action to avoid the significant effects and issue a Mitigated FONSI. [DOT Order 5610.1D](#) identifies the following requirements for a Mitigated FONSI:

- The EA or FONSI must describe the mitigation measures necessary to reduce the potential impacts below the threshold of significance and describe how any mitigation requirements or commitments will be enforced.
- NDOT must ensure that sufficient legal authority and an adequate commitment of resources exist to execute the mitigation measures, including funding, as necessary.
- NDOT must ensure that the articles of agreement, award or grant agreement, permit, license, authorization, or other documentation reflect that the final decision on the action will require implementation of the mitigation measures.
- NDOT must ensure that monitoring strategies described in the FONSI will be adopted when deemed appropriate for the particular action and set of mitigation measures. This may include the project sponsor being responsible for implementing the monitoring strategies. A software application may be used for tracking and monitoring mitigation commitments, and NDOT must provide for corrective action, where appropriate, in the event of a failure to implement the mitigation measures or a failure in the effectiveness of the mitigation measures.

5.11.1.2 Adoption by Federal Agencies

Per [23 USC 139](#), an agency may adopt another federal agency's environmental document provided that the document was prepared in accordance with [23 USC 139](#) and meets the standards of the NEPA process. If the actions covered by the original EA and the proposed action are substantially the same, the adopting agency may adopt NDOT's EA in the adopting agency's FONSI. See Chapter 6, Environmental Impact Statement, for full discussion of adoption by federal agencies.

5.11.2 Notice of Availability

After the FONSI has been prepared, NDOT sends an NOA of the FONSI to the appropriate federal, state, and local agencies and makes the FONSI available to the public upon request ([23 CFR 771.121\(b\)](#)). While not required, NDOT may post the FONSI on its project web page.

In compliance with NDOT's NEPA Assignment MOU pursuant to [23 USC 327](#), the following statement is required to appear on the NOA:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 327 and a Memorandum of Understanding dated [TO BE FILLED IN], and executed by FHWA and NDOT.

See Chapter 9, Public Involvement Procedures, Section 9.5, for details on the NOA.

5.11.3 Statute of Limitations

[23 USC 139\(l\)\(1\)](#) establishes a statute of limitations that includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by federal agencies for a highway or public transportation capital project. If NDOT wants a 150-day statute of limitations to apply to a proposed transportation project, a Limitation of Claims Notice must be placed in the *Federal Register* ([23 CFR 771.139](#)). Publication in the *Federal Register* starts the clock for the statute of limitations. The *Federal Register* Limitation of Claims Notice is separate from the NOA and is published after the FONSI. Because only federal agencies may publish in the *Federal Register*, even under NEPA Assignment ([23 USC 327](#)), the NDOT Environmental Section prepares the notice and transmits it to FHWA for placement in the *Federal Register*.

5.12 Project File and Administrative Record

Chapter 3, Project Development and Documentation, provides information on the project file and administrative record.

5.13 Laws, Regulations, and Guidance

The following regulations and guidance documents pertain to EAs:

- [23 CFR 771, Environmental Impact and Related Procedures](#)
 - [23 CFR 771.119, Environmental Assessments](#)
 - [23 CFR 771.121, Findings of No Significant Impact](#)
- [23 USC 139, Efficient Environmental Reviews for Project Decision making](#)
- [AASHTO, May 2006, Improving the Quality of Environmental Documents](#)
- [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](#)
- [AASHTO, July 2014, AASHTO Practitioner's Handbook 15, Preparing High-Quality NEPA Documents for Transportation Projects](#)
- [AASHTO, August 2016, AASHTO Practitioner's Handbook 12, Assessing Indirect Effects and Cumulative Impacts under NEPA](#)
- [FHWA, October 30, 1987, Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#)
- [FHWA, September 18, 1990, The Importance of Purpose and Need in Environmental Documents](#)
- [FHWA, September 2015, 2015 Red Book: Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects](#)
- [FHWA, Environmental Review Toolkit](#)
- [NDOT, May 2018, Wetland and Water Resource Procedure Document](#)
- [NDOT, October 2025, NEPA Quality Assurance/Quality Control and Performance Measures Guidance](#)
- [USDOT, December 2024, Section 139 Environmental Review Process: Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision, Interim Final Guidance](#)